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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

Proper Media, LLC, a California limited liability company,
Christopher Richmond, an individual,
and **Drew Schoentrup**, an individual,

Plaintiffs,

v.

Bardav Inc., a California corporation, and
David Mikkelson, an individual,

Defendants.

Case No. 37-2017-00016311-CU-BC-CTL

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL



1 Plaintiffs Proper Media, LLC (“Proper Media”), Christopher Richmond
2 (“Richmond”), and Drew Schoentrup (“Schoentrup”) (collectively, “Plaintiffs”), by and
3 through their undersigned counsel, allege as follows:

4 INTRODUCTION

5 1. This case involves unlawful jockeying for ownership and control of the fact-
6 checking website Snopes.com (“Snopes”). Snopes advertises itself as “The definitive
7 Internet reference source for urban legends, folklore, myths, rumors, and misinformation”
8 and recently entered into a high-profile agreement with Facebook to integrate fact-
9 checking services into its social media platform. But while Snopes is built entirely around
10 the concepts of transparency and truth, its founder, Defendant David Mikkelson
11 (“Mikkelson”) has engaged in a lengthy scheme of concealment and subterfuge to gain
12 control of the company and to drain its profits.

13 2. Snopes is owned by Bardav Inc. (“Bardav”). Bardav was founded in 2003
14 by Mikkelson and his then-wife, Barbara Mikkelson (“Barbara”). Mikkelson and Barbara
15 each owned one share, or 50% of the equity in Bardav.

16 3. After a contentious divorce, Barbara sold her equity in Bardav to Plaintiff
17 Proper Media in July of 2016.

18 4. Proper Media is a San Diego-based Internet media company. Proper Media
19 manages several top-ranked web properties and, at the time of its purchase of Barbara’s
20 interest, it was already managing a significant amount of the operation of Snopes. Proper
21 Media’s management of Snopes is governed by a written General Services Agreement.

22 5. Because Bardav elected pass-through tax treatment under Subchapter S of
23 the Internal Revenue Code, Bardav’s shareholders may not be companies (such as
24 Proper Media, which is a limited liability company). 26 U.S.C. § 1361(b)(1)(B). The deal
25 was therefore structured as a sale by Barbara to Proper Media’s individual shareholders.
26 Proper Media’s members would only hold the shares for the benefit of Proper Media.
27 Accordingly, Bardav approved the issuance of fractional shares in the names of Proper
28 Media’s five members, including Vincent Green (“Green”), who was a small minority



1 member of Proper Media; however, no fractional shares were ever issued by Bardav.

2 6. As a member and officer of Proper Media, Green owes fiduciary duties both
3 to the company and to its other members under its Operating Agreement. These fiduciary
4 duties include duties of loyalty, care, and good faith, and any actions taken adversely to
5 Proper Media are expressly prohibited.

6 7. Mikkelson was unhappy that Barbara maintained ownership of half of what
7 he always considered to be *his* company after the divorce. Thus, after Proper Media's
8 purchase of Barbara's share, Mikkelson sought to finally gain control of Bardav by
9 aligning and conspiring with Green. Although Green purportedly holds only a small
10 fraction of Bardav's equity (which he only holds for the benefit of Proper Media), when
11 combined with Mikkelson's 50% interest, it would purportedly give Mikkelson majority
12 control of the company.

13 8. Beginning in February 2017, Mikkelson conspired with Green to block
14 Proper Media's access to the personnel, accounts, tools, and data necessary to manage
15 Snopes. On information and belief, Mikkelson, in conjunction with Green, intentionally did
16 block Proper Media's access to personnel, accounts, tools, and data to take over Snopes
17 and to prevent Proper Media from performing under the General Services Agreement.
18 Furthermore, Green instructed three Proper Media employees not to return to the Proper
19 Media office and removed thousands of dollars of equipment used by these three
20 employees from the Proper Media office.

21 9. Shortly thereafter, Green resigned from Proper Media. Green resigned
22 using a Snopes email account, indicating that he was now a direct employee of
23 Mikkelson at Bardav.

24 10. Accordingly, Mikkelson has induced Green to breach the Proper Media
25 Operating Agreement as well as Green's fiduciary duties.

26 11. Mikkelson has also caused Bardav to breach the General Services
27 Agreement.

28 12. Mikkelson has repeatedly engaged in fraud upon Proper Media, most



1 recently in an effort to obtain approval for Bardav to pay Mikkelson a sizable salary and
2 large sums of Mikkelson’s personal expenses.

3 13. Mikkelson’s actions amount to an abuse of control of Bardav and corporate
4 waste.

5 14. Proper Media now seeks relief for the harm Defendants Bardav and
6 Mikkelson have caused.

7 **PARTIES**

8 15. Plaintiff Proper Media, LLC is a California limited liability company with its
9 principal place of business in San Diego, California.

10 16. Plaintiff Christopher Richmond is an individual residing in San Juan, Puerto
11 Rico.

12 17. Plaintiff Drew Schoentrup is an individual residing in San Juan, Puerto Rico.

13 18. On information and belief, Defendant Bardav Inc. is a California corporation
14 with its principal place of business in San Diego County, California.

15 19. On information and belief, Defendant Mikkelson is an individual residing in
16 or around Calabasas, California.

17 **JURISDICTION AND VENUE**

18 20. This Court has original jurisdiction over this matter under the California
19 Constitution, Article VI, section 10.

20 21. This Court has personal jurisdiction over Defendants, and each of them,
21 because (1) a substantial part of Defendants’ misconduct that gave rise to this action
22 occurred in California and the primary injury as a result of Defendants’ misconduct was
23 felt in California; (2) Defendant Bardav is a California corporation, and Defendant
24 Mikkelson is a principal of Bardav; and (3) for all or part of the relevant period, Mikkelson
25 was a resident of and domiciled in California.

26 22. Venue is proper in San Diego County because Defendant Bardav maintains
27 its principal place of business within this County.

28 //



FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

23. Plaintiff Proper Media is an Internet-based media company. Proper Media manages several top-ranked web properties. Proper Media owns, develops, and manages advertising-technology systems and offers services related to website design, web-server management, and Internet-content management systems.

24. Plaintiffs Christopher Richmond and Drew Schoentrup co-founded Proper Media in 2015, and together are Proper Media's majority equity holders. Until recently, there were three other minority members, including Green.

25. At all relevant times, the ownership of Proper Media was divided among its members as follows: Schoentrup owned 40%; Richmond owned 40%; Ryan Miller owned 6.66%; Green owned 6.66%; and Tyler Dunn owned 6.68%.

Proper Media

26. Proper Media is governed by the Limited Liability Company Agreement of Proper Media, LLC (the "Operating Agreement"), which all five of its members signed.

27. Section III.H of the Operating Agreement sets forth the following duties of members to other members as well as Proper Media itself:

H. Fiduciary Duties of the Members.

1. *Loyalty and Care.* Except to the extent otherwise provided herein, each Member shall have a fiduciary duty of loyalty and care similar to that of members of limited liability companies organized under the laws of California.

2. *Competition with the Company.* The Members shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority of the Members excluding the interested Member, consents thereto. The Members shall refrain from competing with the Company in the conduct of the Company's business unless a majority of the Members excluding the interested Member, consents thereto. In the event that a Member is the sole Member of the Company, no vote shall be required.

3. *Duties Only to the Company.* The Member's fiduciary duties of loyalty and care are to the Company and not to the other Members. The Members shall owe fiduciary duties of disclosure,



1 good faith and fair dealing to the Company and to the other
2 Members. A Member who so performs their duties shall not have
any liability by reason of being or having been a Member.

3 28. Section VI.C of the Operating Agreement sets forth additional fiduciary
4 duties of officers of Proper Media. The duties enumerated in Section VI.C are identical to
5 those set forth in Section III.H, with the sole difference being that Section III.H applies to
6 members while Section VI.C applies to officers.

7 **Bardav**

8 29. On information and belief, Bardav was founded in 2003 by Mikkelson and
9 his then-wife, Barbara. Mikkelson and Barbara each owned one-half, or fifty percent
10 (50%), of the equity in Bardav. Mikkelson's and Barbara's respective ownership interest
11 were each represented by a single share in the company, for a total of two (2) shares.

12 30. On information and belief, Bardav is and always has been an
13 S Corporation, meaning it has elected pass-through tax treatment under Subchapter S of
14 the Internal Revenue Code.

15 31. Bardav's web property, Snopes, is one of the 1000 most popular websites
16 in the United States, and is highly profitable, with revenue coming primarily from
17 advertising that appears on the site. On information and belief, in the aftermath of the
18 reported Russian intelligence operation to influence the 2016 election with so-called "fake
19 news" spread through Facebook and other social media websites, Facebook entered into
20 an agreement with Snopes and other media organizations to integrate fact-checking
21 services into Facebook. See, e.g., Mike Isaac, THE NEW YORK TIMES, *Facebook Mounts*
22 *Effort to Limit Tide of Fake News*, [https://www.nytimes.com/2016/12/15/technology/
23 facebook-fake-news.html? r=0](https://www.nytimes.com/2016/12/15/technology/facebook-fake-news.html? r=0) (Dec. 15, 2016); Jen Weedon, et al., *Information*
24 *Operations and Facebook*, [https://fbnewsroomus.files.wordpress.com/2017/04/facebook-
25 and-information-operations-v1.pdf](https://fbnewsroomus.files.wordpress.com/2017/04/facebook-and-information-operations-v1.pdf) (Apr. 27, 2017).

26 **The General Services Agreement**

27 32. In or about August 2015, Proper Media entered into a General Services
28 Agreement with Bardav (the "General Services Agreement"), under which Proper Media



1 would manage most of the operations of the popular fact-checking website Snopes.

2 33. Under the General Services Agreement, Proper Media is responsible for
3 managing all content and advertising accounts for Snopes. To perform these
4 management services, Bardav gave Proper Media control of Snopes' email hosting and
5 content-management system. Proper Media also relied on third-party project
6 management tools, such as Slack and Asana, to manage Snopes-related data.

7 34. Proper Media performed all obligations required of it under the General
8 Services Agreement at all times from the inception of the General Services Agreement
9 until prevented from doing so by Mikkelson, as outlined below.

10 **Proper Media's Acquisition of Barbara Mikkelson's Share of Bardav**

11 35. On information and belief, in or about 2014, David and Barbara Mikkelson
12 began what would prove to be a contentious divorce. As a result, by 2016, Barbara
13 sought to sell her 50% equity interest in Bardav.

14 36. During the summer of 2016, Proper Media negotiated to buy Barbara's 50%
15 equity in Bardav. Because Bardav elected pass-through tax treatment under Subchapter
16 S of the Internal Revenue Code, Bardav's shareholders may not be companies (such as
17 Proper Media, which is a limited liability company). 26 U.S.C. § 1361(b)(1)(B). The deal
18 was therefore structured as a sale by Barbara to Proper Media's individual shareholders,
19 but for the benefit of Proper Media. Accordingly, Proper Media's interest in Bardav was
20 taken in the name of its individual members.

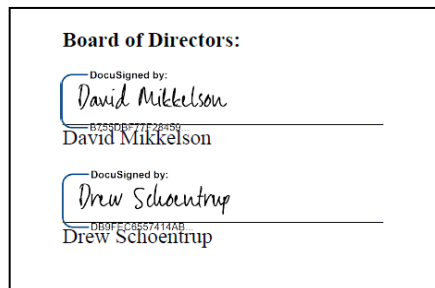
21 37. It was mutually agreed and expected that a representative of Proper Media
22 would join Bardav's Board of Directors after the Closing. Indeed, Barbara represented to
23 Schoentrup that a representative of Proper Media would be appointed to the Board of
24 Directors to replace her, as Barbara had a guaranteed board seat. Furthermore,
25 Mikkelson did not object to Barbara's sale of all of her interest and rights in her Bardav
26 stock to Proper Media. Proper Media's members entered into the agreement to purchase
27 Barbara's equity in reliance on this representation.

28 38. The sale of Barbara's equity in Bardav to Proper Media's five members

1 closed on July 1, 2016 (the “Closing”).

2 39. On the date of the Closing, Barbara resigned in writing from Bardav’s Board
3 of Directors, and from all of her officer roles with Bardav. Barbara sent her resignation to
4 Mikkelson and Schoentrup as the company’s presumptive Directors.

5 40. On August 26, 2016, all of Bardav’s nominal shareholders—namely,
6 Mikkelson and the five members of Proper Media—signed a shareholder and board
7 resolution permitting the issuance of fractional shares of Bardav to the five Proper Media
8 members. Both Mikkelson and Schoentrup signed this resolution a second time in their
9 separate capacities as directors of Bardav:



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15 This resolution was executed as an amendment to Bardav’s original bylaws; however,
16 Plaintiffs have recently discovered those bylaws do not exist. Moreover, no fractional
17 shares were ever issued by Bardav.

18 41. A significant portion of the purchase price for Barbara’s equity was financed
19 by Diamond Creek Capital, LLC (“DCC”). Proper Media is a party to the financing and
20 loan agreements with DCC, and is also a party to a promissory note with Barbara. The
21 individual members of Proper Media are not parties to the promissory note with Barbara.
22 From the Closing through April 2017, Proper Media, Richmond, and Schoentrup
23 exclusively made all payments to DCC and Barbara. To be clear, Green has not
24 personally made any payments related to Proper Media’s acquisition of ownership
25 interests in Bardav.

26 **Mikkelson’s Misuse of Bardav Funds**

27 42. Throughout Proper Media’s business relationship with Mikkelson, despite
28 being paid handsomely, Mikkelson has claimed to be underpaid. Mikkelson has also

1 submitted large expenses for reimbursement by Bardav, but without any receipts or other
2 documentation.

3 43. In the second half of 2016, Mikkelson's purported business expenses
4 included tens of thousands of dollars in legal fees, which, on information and belief, were
5 not for Bardav's benefit, but rather for personal legal representation in his ongoing and
6 contentious divorce proceeding with Barbara.

7 44. Mikkelson's purported business expenses in the second half of 2016 also
8 included tens of thousands of dollars in travel expenses, which, on information and belief,
9 were actually for personal travel—including a honeymoon to Asia with Mikkelson's new
10 wife (and Bardav/Snopex employee) Elyssa Young in November or December 2016.¹

11 45. Toward the end of 2016, Mikkelson and the other shareholders in Bardav
12 discussed how to close out Bardav's financial books for 2016, including what
13 compensation Mikkelson was due, culminating in a draft document titled the "Bardav, Inc.
14 2016 Compensation Agreement" (the "2016 Compensation Agreement").

15 46. On information and belief, Mikkelson knowingly and falsely represented to
16 Proper Media and its members, including Richmond and Schoentrup, that all the claimed
17 expenses listed in the draft 2016 Compensation Agreement were for business purposes.

18 47. Relying on this representation, and the representation by Mikkelson that he
19 would thereafter enter into a compensation agreement for 2017, all Proper Media's
20 members signed the 2016 Compensation Agreement, but Mikkelson did not.
21 Nevertheless, Mikkelson transferred large sums of money to himself. On May 4, 2017,
22 both Richmond and Schoentrup expressly revoked their agreement to the 2016
23 Compensation Agreement, which at the time of the revocation was still unsigned by
24 Mikkelson.

25 **Mikkelson's Conspiracy with Green**

26 48. On information and belief, beginning as early as the start of 2017,

27 ¹ Notably, Barbara made similar accusations against Mikkelson in their divorce proceedings, namely, that
28 he improperly used company funds to pay his personal attorneys' fees, personal travel, and other personal expenses.

1 Mikkelson conspired with Green to obtain a controlling interest in Bardav and to exclude
2 Proper Media from its operation.

3 49. Green was an employee and member of Proper Media from approximately
4 March 2015 through April 3, 2017. Green was also an officer of Proper Media, with his
5 most recent title being Vice President of Operations. Throughout his employment, Green
6 worked extensively on the Snopes website, and, as a result, came to personally know
7 and befriend Mikkelson.

8 50. On Saturday, February 18, 2017, Richmond and Schoentrup had an in-
9 person conversation with Green at Proper Media's offices. When confronted, Green
10 admitted that he was not acting in the best interest of Proper Media. After this
11 conversation, Green never returned to the Proper Media office, and performed no further
12 work for Proper Media. On Tuesday, February 21, 2017—the second business day after
13 the conversation described above—without Richmond's or Schoentrup's knowledge or
14 consent, Green removed Richmond's and Schoentrup's access to the Snopes content-
15 management system, instructed three Proper Media employees not to return to work, and
16 removed thousands of dollars of computer equipment from the Proper Media offices used
17 by these three employees. On information and belief, Green did so in conspiracy with
18 and at the direction of Mikkelson.

19 51. Under the General Services Agreement, Proper Media was, *and still is*,
20 responsible for operating this content-management system. Without access, Proper
21 Media cannot fulfill its obligations under the General Services Agreement.

22 52. On or about March 8, 2017, Green added himself to the "Snopes.com Staff"
23 page on Snopes, which lists his role as "Business Development". *Snopes.com Staff*,
24 <http://www.snopes.com/snopes-staff/> (last accessed Apr. 27, 2017; archived at
25 <https://perma.cc/BRX7-C99L>).

26 53. On March 10, 2017, again without Richmond's or Schoentrup's knowledge
27 or consent, Green removed Snopes-related data from Proper Media's communication
28 and project-management tools, including Slack and Asana. On information and belief,



1 Green did so in conspiracy with and at the direction of Mikkelson.

2 54. Without access to this Snopes-related data in Slack and Asana, Proper
3 Media cannot fulfill its obligations under the General Services Agreement.

4 55. Also on March 10, 2017, Mikkelson purported to terminate the General
5 Services Agreement, to be effective in 60 days, *i.e.*, on or about May 9, 2017.

6 56. On or about April 1, 2017, Mikkelson removed Richmond's and
7 Schoentrup's access to the bank account used for Snopes business by Bardav and
8 Proper Media.

9 57. On April 3, 2017, Green gave written notice—from his Snopes email
10 account—of his resignation from Proper Media.

11 58. During the weeks between February 18, 2017 and April 3, 2017, Green
12 admitted that he was doing no work for Proper Media, and was instead working with
13 Mikkelson at Bardav. Despite doing no work, until April 3, 2017, Proper Media continued
14 to pay Green, and contributed to Green's health-insurance premiums.

15 59. Under the express terms of Sections III.H and VI.C of the Operating
16 Agreement, and under California law, Green owed fiduciary duties both to the other
17 members of Proper Media and to Proper Media as a company.

18 60. Through the actions cited above, and in conspiracy with Mikkelson, Green
19 breached his fiduciary duties to Proper Media and its members.

20 **Mikkelson's Violation of Proper Media's Director and Shareholder Rights**

21 61. Under Section 1602 of the Corporations Code, "Every director shall have
22 the absolute right at any reasonable time to inspect and copy all books, records and
23 documents of every kind..."

24 62. Under Section 1600 of the Corporations Code, "A shareholder or
25 shareholders holding at least 5 percent in the aggregate of the outstanding voting shares
26 of a corporation...shall have an absolute right to...inspect and copy the record of
27 shareholders' names and addresses and shareholdings during usual business hours
28 upon five business days' prior written demand upon the corporation..."



1 63. Under Section 1601 of the Corporations Code, “The accounting books and
2 records and minutes of proceedings of the shareholders and the board and committees
3 of the board of any domestic corporation...shall be open to inspection upon the written
4 demand on the corporation of any shareholder...at any reasonable time during usual
5 business hours, for a purpose reasonably related to such holder’s interests as a
6 shareholder...”

7 64. On May 4, 2017, Proper Media, Schoentrup, and Richmond sent letters to
8 Mikkelson demanding (1) that Schoentrup, as a director of Bardav, be allowed to inspect
9 certain corporate books and records under Section 1602 (the “Director Inspection
10 Demand”); (2) that Mikkelson, as chair of Bardav’s board of directors, call a special
11 meeting of the board (the “Board Meeting Demand”); and (3) that Proper Media,
12 Schoentrup, and Richmond, as beneficial owners and owners of equity in Bardav, be
13 allowed to inspect certain corporate books and records under Sections 1600 and 1601
14 (the “Shareholder Inspection Demand”). Plaintiffs requested that Mikkelson satisfy the
15 Director Inspection Demand by noon on May 8, 2017, and, if he refused to do so, to
16 satisfy the Shareholder Inspection Demand by the close of business on May 11, 2017.

17 65. Among other items, both the Director Inspection Demand and the
18 Shareholder Inspection Demand seek documentation of expenses for which Bardav has
19 reimbursed Mikkelson, annual reports that Bardav is legally required to prepare, notices
20 and minutes of board and shareholder meetings, resolutions of the board and the
21 shareholders, and copies of Bardav’s bylaws.

22 66. Schoentrup is a director of Bardav, and made the Director Inspection
23 Demand in that role.

24 67. Schoentrup made the Director Inspection Demand in good faith and for the
25 purpose of fulfilling his duties to Bardav’s shareholders as a director, including
26 investigating the property, funds, and affairs of Bardav—specifically, among other
27 legitimate investigatory topics, whether Bardav is in compliance with certain provisions of
28 the Corporations Code, and whether Mikkelson has wasted corporate assets or breached



1 his fiduciary duties to Bardav or its shareholders.

2 68. Schoentrup and Richmond own, for the benefit of Proper Media, 40% of the
3 equity in Bardav. Schoentrup and Richmond made the Shareholder Inspection Demand
4 in their roles as shareholders for Proper Media's benefit, and Proper Media made the
5 Shareholder Inspection Demand as the beneficial owner of their equity.

6 69. Schoentrup and Richmond made the Shareholder Inspection Demand in
7 good faith and for the purpose of investigating the property, funds, and affairs of
8 Bardav—specifically, among other legitimate investigatory topics, whether Bardav is in
9 compliance with certain provisions of the Corporations Code, and whether Mikkelson has
10 wasted corporate assets or breached his fiduciary duties to Bardav or its shareholders.

11 70. Despite answering other business-related correspondence over the May 6–
12 7 weekend (including making demands of Schoentrup and Richmond), on May 8, 2017,
13 Mikkelson attempted to excuse his failure to satisfy Plaintiffs' demands because they
14 purportedly "arrived while I was traveling over the past few weeks on a trip from which I
15 have only just returned".

16 71. As of May 15, 2017, neither Mikkelson nor Bardav have satisfied any of the
17 three above demands, nor provided further justification for their failure to do so.

18 **FIRST CLAIM FOR RELIEF**

19 **Breach of Contract**

20 **(By Plaintiff Proper Media Against Defendant Bardav)**

21 72. Proper Media realleges and incorporates by reference the allegations in
22 each of the preceding Paragraphs as if fully set forth herein.

23 73. The General Services Agreement is a valid written contract between Proper
24 Media and Bardav.

25 74. Until Defendants' actions made Proper Media's performance impossible,
26 Proper Media performed all of its obligations under the General Services Agreement.

27 75. Bardav's actions as stated herein, including, among other things,
28 intentionally excluding Plaintiffs from the accounts, tools, and data necessary to fulfill

1 Proper Media's obligations under the General Services Agreement, constitute a breach
2 of the General Services Agreement.

3 76. As a direct and proximate result of Bardav's conduct, Proper Media has
4 suffered actual damages, in an amount to be determined according to proof at trial.

5 **SECOND CLAIM FOR RELIEF**

6 **Intentional Interference with Contract**

7 **(By All Plaintiffs Against Defendant Mikkelson)**

8 77. Plaintiffs reallege and incorporate by reference the allegations in each of
9 the preceding Paragraphs as if fully set forth herein.

10 78. A written agreement exists between Proper Media and Bardav—namely,
11 the General Services Agreement.

12 79. Mikkelson knew about the General Services Agreement.

13 80. Mikkelson has intentionally excluded Proper Media from the accounts,
14 tools, and data necessary to fulfill Proper Media's obligations under the General Services
15 Agreement, and has conspired with Green to frustrate and/or terminate the General
16 Services Agreement.

17 81. Mikkelson undertook the actions alleged herein with the intent and
18 understanding that Proper Media would be unable to fulfill its obligations under the
19 General Services Agreement and/or that Bardav would terminate the General Services
20 Agreement.

21 82. As a result of Mikkelson's actions, Bardav has terminated the General
22 Services Agreement.

23 83. Similarly, Mikkelson knew about the Proper Media Operating Agreement, to
24 which Plaintiffs Proper Media, Schoentrup, and Richmond are parties.

25 84. Mikkelson has intentionally induced Green to breach the Operating
26 Agreement by conspiring with Green to take actions adverse to Proper Media, including
27 by intentionally excluding Proper Media from the accounts, tools, and data necessary to
28 fulfill Proper Media's obligations under the General Services Agreement.



1 85. Mikkelson undertook the actions alleged herein with the intent and
2 understanding that Green would breach the Operating Agreement.

3 86. As a result of Mikkelson's actions, Green has breached the Operating
4 Agreement.

5 87. As a direct and proximate result of Mikkelson's conduct, Plaintiffs have
6 suffered substantial economic loss and other general and specific damages, all in an
7 amount to be determined according to proof at trial.

8 88. Mikkelson acted maliciously, oppressively, and fraudulently, and Plaintiffs
9 are entitled to punitive and exemplary damages.

10 **THIRD CLAIM FOR RELIEF**

11 **Civil Conspiracy**

12 **(By Plaintiff Proper Media Against Defendant Mikkelson)**

13 89. Proper Media realleges and incorporates by reference the allegations in
14 each of the preceding Paragraphs as if fully set forth herein.

15 90. Sometime between January 2017 and the present, Mikkelson did knowingly
16 and willfully conspire and agree with Green, and attempted to (1) convert a portion of
17 Proper Media's interest in Bardav into Green's individual interest, (2) join forces such
18 that, together, Mikkelson and Green would purportedly own a controlling share of Bardav,
19 (3) frustrate and/or prevent Proper Media's access to the tools, data, and accounts
20 necessary for Proper Media to perform under the General Services Agreement, and
21 (4) terminate the General Services Agreement.

22 91. In furtherance of this conspiracy and agreement, Mikkelson engaged in
23 fraudulent representations, omissions, and concealment of facts, acts of cover-up, and
24 statements calculated to obtain Proper Media's trust for the Defendants' and Green's
25 benefit.

26 92. Mikkelson's actions were in violation of the rights of Proper Media, and
27 committed in furtherance of the above conspiracies and agreements. Moreover,
28 Mikkelson lent aid and encouragement and knowingly financed, ratified, and adopted the

1 acts of his co-conspirator.

2 93. As a proximate result of the wrongful acts herein alleged, Proper Media has
3 suffered substantial economic loss and other general and specific damages, all in an
4 amount to be determined according to proof at trial.

5 94. Mikkelson acted maliciously, oppressively, and fraudulently, and Proper
6 Media is entitled to punitive and exemplary damages.

7 **FOURTH CLAIM FOR RELIEF**

8 **Abuse of Control**

9 **(By Plaintiff Proper Media Against Defendant Mikkelson)**

10 95. Proper Media realleges and incorporates by reference the allegations in
11 each of the preceding Paragraphs as if fully set forth herein.

12 96. By virtue of his position and financial holding in Bardav, Mikkelson
13 exercised control over Bardav and its operations, and owed duties as a controlling
14 person to Bardav and its shareholders not to use his position of control within Bardav for
15 his own personal interests and contrary to the interest of Bardav and its shareholders.

16 97. Mikkelson's conduct amounts to an abuse of his control of Bardav, in
17 violation of his obligations to Bardav and its shareholders. Mikkelson knowingly aided,
18 encouraged, cooperated, and/or participated in this abuse of control.

19 98. As a proximate result of the abuse of control herein alleged, Proper Media
20 has suffered substantial economic loss and other general and specific damages, all in an
21 amount to be determined according to proof at trial.

22 **FIFTH CLAIM FOR RELIEF**

23 **Corporate Waste**

24 **(By Plaintiffs Against Defendant Mikkelson)**

25 99. Plaintiffs reallege and incorporate by reference the allegations in each of
26 the preceding Paragraphs as if fully set forth herein.

27 100. Proper Media brings this claim as the beneficial owner of the 50% equity in
28 Bardav that Barbara sold. In the alternative, if the Court determines as a matter of law



1 that Proper Media is not a beneficial owner of equity in Bardav, then Schoentrup and
2 Richmond bring this claim as owners of 40% of the equity in Bardav.

3 101. By virtue of his position and financial holding in Bardav, Mikkelson had a
4 fiduciary duty to exercise good faith and diligence in the administration of the affairs of
5 Bardav and in the use and preservation of its property and assets, and the highest
6 obligation of fair dealing.

7 102. Mikkelson wasted Bardav's corporate assets by using them to pay for
8 personal expenses.

9 103. As a result of Mikkelson's actions, Bardav's shareholders have suffered
10 losses.

11 104. As a proximate result of the corporate waste herein alleged, Proper Media
12 has (or, in the alternative, Schoentrup and Richmond have) suffered substantial
13 economic loss and other general and specific damages, all in an amount to be
14 determined according to proof at trial.

15 SIXTH CLAIM FOR RELIEF

16 Breach of Fiduciary Duty

17 (By Plaintiffs Against Defendant Mikkelson)

18 105. Plaintiffs reallege and incorporate by reference the allegations in each of
19 the preceding Paragraphs as if fully set forth herein.

20 106. Proper Media brings this claim as the beneficial owner of the 50% equity in
21 Bardav that Barbara sold. In the alternative, if the Court determines as a matter of law
22 that Proper Media is not a beneficial owner of equity in Bardav, then Schoentrup and
23 Richmond bring this claim as owners of 40% of the equity in Bardav.

24 107. At all relevant times, Bardav was a corporation organized and existing
25 under the General Corporation Law of California.

26 108. At all relevant times, Mikkelson was a 50% shareholder, officer, and
27 director of Bardav.

28 109. As an officer and director of Bardav, at all times, Mikkelson owed fiduciary

1 duties both to Bardav and to Bardav's other shareholders—*i.e.*, to Proper Media (or, in
2 the alternative, to its members). Besides Mikkelson, the only other shareholder or
3 beneficial shareholder in Bardav is Proper Media (or, in the alternative, its members).

4 110. As the controlling owner of a 50% plurality of Bardav's equity, Mikkelson
5 owed additional fiduciary duties to Bardav's non-controlling beneficial shareholder,
6 Proper Media (or, in the alternative, to its members).

7 111. Among other duties, Mikkelson owed Proper Media (or, in the alternative,
8 its members) the fiduciary duties of good faith, loyalty, and disclosure.

9 112. Mikkelson breached these fiduciary duties by, among other acts and
10 omissions: (1) misappropriating Bardav funds for personal expenses and lying about
11 those expenses; (2) employing a scheme or artifice to attempt to defraud Proper Media
12 into agreeing to his misappropriation of those funds; (3) failing to even discuss whether to
13 terminate the General Services Agreement, a material contract of Bardav, with Proper
14 Media or its director Schoentrup; (4) interfering with Proper Media's ability to perform its
15 obligations under the General Services Agreement; (5) poaching Green from Proper
16 Media; (6) conspiring to have Green violate his fiduciary and contractual duties to Proper
17 Media; (7) conspiring with Green to convert Proper Media's equipment to his own or
18 Bardav's uses; (8) conspiring with Green to usurp the voting rights in a portion of the
19 equity Proper Media purchased from Barbara and wholly paid for; and (9) failing to
20 comply with the Director Inspection Demand and Shareholder Inspection Demand.

21 113. Mikkelson knowingly acted against Proper Media's (or, in the alternative, its
22 members') interests in connection with the above acts.

23 114. Neither Proper Media nor its members gave informed consent to
24 Mikkelson's above acts.

25 115. As a proximate result of Mikkelson's fiduciary breaches, Proper Media has
26 (or, in the alternative, its members have) suffered substantial economic loss and other
27 general and specific damages, all in an amount to be determined according to proof at
28 trial.



1 116. Mikkelson acted with malice and oppression, justifying the award of
2 exemplary damages.

3 **SEVENTH CLAIM FOR RELIEF**

4 **Involuntary Dissolution of Corporation**

5 **(By Plaintiffs Against Defendant Bardav)**

6 117. Plaintiffs reallege and incorporate by reference the allegations in each of
7 the preceding Paragraphs as if fully set forth herein.

8 118. Proper Media brings this claim as the beneficial owner of the 50% equity in
9 Bardav that Barbara sold. In the alternative, if the Court determines as a matter of law
10 that Proper Media is not a beneficial owner of equity in Bardav, then Schoentrup and
11 Richmond bring this claim as owners of 40% of the equity in Bardav.

12 119. Mikkelson holds 50% of the equity in Bardav.

13 120. Plaintiffs seek Bardav's involuntary dissolution on two independent bases:
14 (1) that Bardav's directors are deadlocked, endangering the company, Corp. Code.
15 § 1800(b)(2); and (2) that Mikkelson, who controls Bardav, is guilty of pervasive fraud,
16 mismanagement, abuse of authority, persistent unfairness toward shareholders, or
17 waste, Corp. Code. § 1800(b)(4).

18 121. Bardav's two directors, Mikkelson and Schoentrup, are equally divided and
19 cannot agree as to the management of Bardav's affairs, as is shown by (among other
20 things) Mikkelson's refusal to discuss his purported unilateral termination of Bardav's
21 most material contract—the General Services Agreement—as well as his refusal to
22 convene a board meeting on that and other topics despite the express Board Meeting
23 Demand.

24 122. On information and belief (because Mikkelson refused to respond to either
25 the Director Inspection Demand or the Shareholder Inspection Demand), Bardav has
26 never held an annual shareholders meeting at which new directors could be elected, and
27 as is required by Section 600 of the Corporations Code.

28 123. Because of the deadlock between both Bardav's directors and its



1 shareholders, there is danger that Bardav’s property and business will be impaired or
2 lost.

3 124. There is cause for the Court to decree the winding up and dissolution of
4 Bardav, and to appoint a provisional director to break the deadlock.

5 **EIGHTH CLAIM FOR RELIEF**

6 **Removal of Director**

7 **(By Plaintiff Proper Media Against All Defendants)**

8 125. Plaintiffs reallege and incorporate by reference the allegations in each of
9 the preceding Paragraphs as if fully set forth herein.

10 126. Proper Media brings this claim as the beneficial owner of the 50% equity in
11 Bardav that Barbara sold. In the alternative, if the Court determines as a matter of law
12 that Proper Media is not a beneficial owner of equity in Bardav, then Schoentrup and
13 Richmond bring this claim as owners of 40% of the equity in Bardav.

14 127. Proper Media owns (or, in the alternative, Schoentrup and Richmond each
15 own) more than 10 percent of the outstanding equity in Bardav.

16 128. At all relevant times, Mikkelson was a 50% shareholder, officer, and
17 director of Bardav.

18 129. Mikkelson is guilty of fraudulent or dishonest acts, or abuse of authority or
19 discretion. Among others, Mikkelson is guilty of: (1) misappropriating Bardav funds for
20 personal expenses and lying about those expenses; (2) employing a scheme or artifice to
21 attempt to defraud Proper Media and its members into agreeing to his misappropriation
22 of those Bardav funds; and (3) committing multiple torts and other statutory violations
23 against Proper Media, exposing Bardav to liability.

24 130. There is cause for the Court to remove Mikkelson as a director of Bardav,
25 and to bar his reelection to its board of directors.

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1 **NINTH CLAIM FOR RELIEF**

2 **Declaratory Relief**

3 **(By All Plaintiffs Against Defendant Bardav)**

4 131. Plaintiffs reallege and incorporate by reference the allegations in each of
5 the preceding Paragraphs as if fully set forth herein.

6 132. Mikkelson and Schoentrup each signed, both as directors of Bardav and as
7 shareholders, a joint board and shareholder resolution which was also signed
8 unanimously by all of Bardav’s shareholders.

9 133. Relying on this document and on representations and understandings
10 dating back to Proper Media’s purchase of Barbara’s 50% equity in Bardav, Plaintiffs
11 have believed—and Defendants have led them to believe—that Schoentrup is a director
12 of Bardav along with Mikkelson.

13 134. Mikkelson and Bardav have since failed to comply with both Schoentrup’s
14 Director Inspection Demand and Plaintiffs’ Board Meeting Demand.

15 135. Mikkelson and Bardav have acted as though Mikkelson is the sole director
16 of Bardav, ignoring or denying every demand by Schoentrup in his role as co-director.

17 136. Because this is an action for involuntary dissolution and Mikkelson’s and
18 Bardav’s acts purport to call Schoentrup’s status as a director into question, under
19 Section 2003 of the Corporations Code, the Court may determine the identity of Bardav’s
20 directors.

21 137. Present and actual controversies exist between the parties as to (1) the
22 composition of Bardav’s board of directors, and (2) whether Proper Media is the
23 beneficial owner of the 50% equity in Bardav that Barbara sold.

24 138. Plaintiffs seek a declaratory judgment from this Court that Schoentrup is a
25 director of Bardav, and that Proper Media is the beneficial owner of the 50% equity in
26 Bardav that Barbara sold.

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1 **PRAYER FOR RELIEF**

2 Plaintiffs respectfully request that the Court enter judgment in favor of Plaintiffs
3 and against Defendants, and award the following relief to Plaintiffs and against
4 Defendants:

- 5 1. Compensatory damages in an amount to be proved at trial;
- 6 2. Exemplary damages under California Civil Code § 3294 and as otherwise
7 allowable by law;
- 8 3. A declaration that Proper Media is the beneficial owner of the 50% equity in
9 Bardav that Barbara sold;
- 10 4. An order for specific performance that Bardav issue stock certificates to
11 Proper Media’s members as nominal owners of equity in Bardav, but with
12 legends stating that Proper Media is the beneficial owner of that equity;
- 13 5. A declaration that Schoentrup is a director of Bardav;
- 14 6. An order that Mikkelson be removed as a director of Bardav, and that he be
15 barred from re-election to the board for a specified time;
- 16 7. An order appointing a provisional director to Bardav’s board of directors;
- 17 8. A decree that Bardav be wound up and dissolved in the manner provided
18 by law;
- 19 9. Any ancillary orders and decrees as may be necessary to effectuate
20 Bardav’s winding up and dissolution;
- 21 10. Plaintiffs’ costs of the suit;
- 22 11. Interest on the sum of the compensatory and exemplary damages; and
- 23 12. Such other relief as the Court may deem proper.

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VERIFICATION

I am a member of Proper Media, LLC, which is a party to this action, and am authorized to make this verification on its behalf. I am also an individual plaintiff in this action. I have read the foregoing First Amended Complaint and know its contents. I am informed and believe, and on that ground allege, that the matters stated in the First Amended Complaint are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed on May 15, 2017, at San Juan, Puerto Rico, USA.

By: *Drew W. Schoentrup*
Drew W. Schoentrup (May 15, 2017)
Drew Schoentrup

DATED: May 15, 2017

KRONENBERGER ROSENFELD, LLP
By: *Karl S. Kronenberger*
Karl S. Kronenberger

Attorneys for Plaintiffs

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial of this action by jury of all issues that may be tried
3 to the jury.

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5 DATED: May 15, 2017

KRONENBERGER ROSENFELD, LLP

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7 By: *Karl S. Kronenberger*
8 Karl S. Kronenberger

9 Attorneys for Plaintiffs
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