

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

2005 FEB 25 A 10:46

David B. Watkiss, Esq. (#3401)
Anthony C. Kaye, Esq. (#8611)
James W. Stewart, Esq. (#3959)
Boyd L. Rogers (#10095)

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

One Utah Center, Suite 600
201 South Main Street
Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001

Attorneys for Intervenor-Defendant The Canopy Group, Inc.,
Defendants Raymond J. Noorda and Lewena Noorda, as
Trustees of the Noorda Family Trust and as individuals, and
William Mustard

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

**RALPH J. YARRO III, an individual,
DARCY G. MOTT, an individual,
BRENT D. CHRISTENSEN, an individual,**

Plaintiffs,

- vs. -

**VAL NOORDA KREIDEL, an individual,
TERRY PETERSON, an individual,
WILLIAM MUSTARD, an individual,
THE NOORDA FAMILY TRUST, a Trust,
RAYMOND J. NOORDA, an individual,
and a trustee of the Noorda Family Trust,
LEWENA NOORDA, an individual and a
trustee of the Noorda Family Trust, and
JOHN DOES 1 THROUGH 10,**

Defendants,

- and -

**THE CANOPY GROUP, INC.,
Intervenor-Defendant.**

**ANSWER OF DEFENDANTS
RAYMOND J. NOORDA, LEWENA
NOORDA AND THE NOORDA
FAMILY TRUST AND
COUNTERCLAIM**

JURY TRIAL DEMANDED

Civil No. 050400205

Honorable Anthony W. Schofield

RAYMOND J. NOORDA and LEWENA NOORDA, as Trustees of the Noorda Family Trust, and THE CANOPY GROUP, INC.,

Counterclaim Plaintiffs,

- vs

**RALPH J. YARRO III, an individual,
DARCY G. MOTT, an individual,
BRENT D. CHRISTENSEN, an individual,
and JOHN DOES 1 THROUGH 10,**

Counterclaim Defendants.

Defendants Raymond J. Noorda (“**Mr. Noorda**”), Lewena Noorda (“**Mrs. Noorda**”), and the Noorda Family Trust (the “**Trust**”) (collectively, the “**NFT Defendants**”), by and through their counsel, Ballard Spahr Andrews & Ingersoll, LLP, hereby respond to the Amended Complaint and Jury Demand (“**Complaint**”) of Plaintiffs Ralph J. Yarro III (“**Yarro**”), Darcy G. Mott (“**Mott**”), and Brent D. Christensen (“**Christensen**”) (collectively, “**Plaintiffs**”) as follows:

FIRST DEFENSE

The Complaint fails to state a claim against the NFT Defendants upon which relief can be granted.

SECOND DEFENSE

The NFT Defendants respond to the specific allegations of the Complaint as follows:

The Parties

1. The NFT Defendants admit the allegations of ¶ 1, but state that pursuant to Utah Code Ann. § 16-10a-809, Yarro is subject to removal from his position as one of the three members of the Board of Directors (“**Board**”) of The Canopy Group, Inc. (“**Canopy**”), and that Yarro’s employment was at-will.

2. The NFT Defendants admit the allegations of ¶ 2, but state that Mott’s employment as Canopy’s Vice President and Chief Financial Officer was at-will and was terminated for cause on December 17, 2004.

3. The NFT Defendants admit the allegations of ¶ 3, but state that Christensen’s employment as Canopy’s Vice President, Corporate Counsel, and Assistant Secretary was at-will and was terminated for cause on December 17, 2004.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied.

Jurisdiction and Venue

10. The NFT Defendants state that insofar as the allegations of ¶ 10 state a legal conclusion, no response is necessary.

11. The NFT Defendants state that insofar as the allegations of ¶ 11 state a legal conclusion, no response is necessary.

General Allegations

12. Admitted.

13. Admitted.

14. The NFT Defendants deny the allegations of ¶ 14, and state that after his retirement as Director, President, and Chief Executive Officer of Novell, Inc. in 1994, Mr. Noorda was involved in numerous personal and business activities.

15. The NFT Defendants admit that Mr. Yarro met Mr. Noorda when Mr. Yarro was a graphic designer at Novell, Inc. The NFT Defendants deny the remaining allegations of ¶ 15.

16. Admitted.

17. To the extent that allegations in ¶ 17 concerning the interactions between Mr. Noorda and Yarro are vague and ambiguous, the NFT Defendants state no response is necessary and therefore deny them. The NFT Defendants admit, however, that Yarro worked closely with Mr. Noorda at NFT Ventures and Canopy and that Mr. Noorda mentored and trained Yarro until Mr. Noorda was no longer actively involved in the day-to-day affairs of Canopy. The NFT Defendants further state that as the Noordas aged, Yarro assumed primary responsibility for managing Canopy's affairs, both in his capacity as an officer and a director, and the Noordas increasingly relied on and deferred to Yarro's counsel and advice in all matters relating to Canopy. The NFT Defendants admit that incentive bonuses were paid to Mr. Yarro from time to

time, but deny that Mr. Noorda ever promised such incentives to Mr. Yarro. The NFT Defendants deny the remaining allegations of ¶ 17.

18. Denied.

19. The NFT Defendants deny the allegation that Ms. Kreidel had no substantive involvement in NFT Ventures or Canopy. The NFT Defendants admit the remaining allegations of ¶ 19.

20. The NFT Defendants lack sufficient information to assess the truth or falsity of Plaintiffs' allegation that Defendant Terry Peterson ("**Mr. Peterson**") "also convinced Mr. Yarro to allow him to manage Mr. Yarro's personal account," and therefore deny the same (hereinafter "Denied for lack of information"). The NFT Defendants admit the remaining allegations of ¶ 20.

21. The NFT Defendants admit that some of Canopy's funds and other assets were under Mr. Peterson's management and that the accounts managed by Mr. Peterson were transferred and remained under his management when he moved to another firm. The NFT Defendants deny the remaining allegations of ¶ 21 for lack of information.

22. The NFT Defendants deny Plaintiffs' allegation that Mr. Peterson's management of the Trust's account was "marginal." The NFT Defendants deny Plaintiffs' allegation that Mr. Peterson's management of other parties' accounts was "marginal" for lack of information. The NFT Defendants admit that Mr. Peterson managed a Canopy money market account used as Canopy's main operating account, but deny Plaintiffs' allegation that the balance of that account totaled \$40 to \$50 million for lack of information. The NFT Defendants admit the remaining allegations of ¶ 22.

23. The NFT Defendants admit that Yarro accepted appointment as President and Chief Executive Officer of Canopy in or about August 1998, and state that such employment was at-will and was terminated for cause on December 17, 2004. The NFT Defendants deny the remaining allegations of ¶ 23.

24. The NFT Defendants admit that Mr. Noorda provided Yarro with some training and instruction, but state that such instruction ceased when Mr. Noorda, as a consequence of age and associated health issues, ceased his participation in the day-to-day management of Canopy's affairs. The NFT Defendants further state that as the Noordas aged, Yarro assumed primary responsibility for managing Canopy's affairs, both in his capacity as an officer and a director, and the Noordas increasingly relied on and deferred to Yarro's counsel and advice in all matters relating to Canopy. The NFT Defendants aver that by 1998, if not earlier, Yarro dominated and controlled the Noordas in their capacity as officers and directors of Canopy, through the force of his own will and the close personal relationships he had established with them. The NFT Defendants admit that the Noordas chose not to involve their children in the management of Canopy and that the Noordas chose not to bequeath any interest in Canopy to their children. The NFT Defendants deny the remaining allegation of ¶ 24.

25. The NFT Defendants admit that on Yarro's advice, Canopy hired Mott as its Vice President-Finance, Chief Financial Officer and Treasurer on May 3, 1999. The NFT Defendants state that Mott's employment at Canopy was at-will and was terminated for cause on December 17, 2004. The NFT Defendants deny the remaining allegations of ¶ 25.

26. The NFT Defendants admit that commencing in 2000, Plaintiffs, including Mott, advised the Noordas to adopt an equity compensation plan that would provide employees an opportunity to acquire an equity interest in Canopy as a purported incentive to remain in Canopy's service. The NFT Defendants state that during the course of his employment at Canopy, Mott, at the direction of Yarro and in concert with Christensen, worked on the development of a self-interested and unfair equity ownership plan. The NFT Defendants deny the remaining allegations of ¶ 26.

27. The NFT Defendants admit on or about February 29, 2000, Canopy adopted an equity ownership plan (the "February 2000 Option Agreement") and states that such document speaks for itself. The NFT Defendants admit that the February 2000 Option Agreement was adopted by Canopy at the insistence of and on the advice of Plaintiffs, but deny that it was ever implemented. The NFT Defendants admit that Mr. Mott was involved in the development of the February 2000 Option Agreement, but deny Plaintiffs' allegation that his only involvement "was to verify Canopy's investment basis in the various portfolio companies" for lack of information. The NFT Defendants deny the remaining allegations of ¶ 27 for lack of information.

28. The NFT Defendants state that the February 2000 Option Agreement speaks for itself. The NFT Defendants further state that the February 2000 Option Agreement was adopted at the insistence of and on the advice of Plaintiffs and was unfair and excessive. The NFT Defendants deny the remaining allegations of ¶ 28.

29. The NFT Defendants admit that the February 2000 Option Agreement, although never formally implemented, was rescinded and that such rescission was partially due to a

negative impact of that agreement on the IPO of Caldera Systems. The NFT Defendants deny any specific effects of the February 2000 Option Agreement on Canopy portfolio company IPOs for lack of information. The NFT Defendants deny the remaining allegations of ¶ 29 for lack of information.

30. The NFT Defendants admit that commencing in 2000, Plaintiffs advised the Noordas to adopt an equity compensation plan that would provide employees an opportunity to acquire an equity interest in Canopy as a purported incentive to remain in Canopy's service. The NFT Defendants aver that Plaintiffs, as a part of their scheme to put in place an unfair and excessive equity compensation plan, advised the Noordas that the implementation of the needed plan required a significant modification of Canopy's capitalization structure. The NFT Defendants admit that in November 2000 a recapitalization plan was implemented at the insistence of Plaintiffs. The NFT Defendants deny the remaining allegations of ¶ 30.

(a) The NFT Defendants admit that, based on Plaintiffs' advice, on November 3, 2000, the Noordas voted the Trust's shares in favor of Canopy's adoption of Amended and Restated Articles of Incorporation authorizing Canopy to issue up to 25,000,000 shares of common stock, with 25,000 shares of such stock designated as Class A Common Stock and 24,975,000 shares designated as Class B Common Stock. The NFT Defendants further admit that in connection with Plaintiffs' recapitalization scheme, the Trust's 10,000,000 shares of stock – Canopy's only outstanding shares at the time – were converted into 10,000 shares of Class A Common Stock and 9,990,000 Shares of Class B Common Stock. The NFT Defendants further state that Canopy's Amended and Restated

Articles of Incorporation speaks for itself. The NFT Defendants deny the remaining allegations of ¶ 30(a).

(b) The NFT Defendants admit that on November 7, 2000, based on Plaintiffs' advice, Canopy adopted an equity compensation plan entitled The Canopy Group, Inc. 2000 Stock Option Plan (the "**Equity Plan**"). The NFT defendants state that the Equity Plan provides for excessive compensation and, on its face, is unfair to Canopy and the Trust. The NFT Defendants further admit that on November 7, 2000, the same day Canopy adopted the Equity Plan, Yarro executed a Stock Option Agreement, personally and purportedly on behalf of Canopy, granting himself a fully-vested twenty-year option to purchase 10,000 Class A voting shares at \$5.00 per share. The NFT Defendants also admit that, on the same day, Yarro also executed a second Stock Option Agreement, personally and purportedly on behalf of Canopy, granting himself a fully-vested twenty-year option to purchase 9,990,000 Class B shares at \$5.00 per share. The NFT Defendants aver that at that time, the \$5.00 strike price of Yarro's options was \$14.27 below Canopy's then net value per share of \$19.27, and that Yarro therefore had caused himself to receive options allowing him to immediately acquire 40% of Canopy's authorized Class A and B shares at a fraction of their value. The NFT Defendants further state that the Equity Plan speaks for itself. The NFT Defendants deny the remaining allegations of ¶ 30(b).

(c) The NFT Defendants admit that on or about November 8, 2000, on the advice of Plaintiffs, the Trust, Yarro, and Canopy entered into a Shareholder Agreement, which speaks for itself. The NFT Defendants deny the remaining allegations of ¶ 30(c).

31. The NFT Defendants admit that Plaintiffs have purported to exercise their purported Class A Voting Common Stock options, but have not exercised all of their purported Class B Nonvoting Common Stock Options. The NFT Defendants further admit that Yarro purports to hold the same amount of Class A Voting Common Stock Options (10,000 Shares) as the Trust. The NFT Defendants deny the remaining allegations of ¶ 31.

32. Denied.

33. The NFT Defendants admit that the Noordas caused their personal advisors to perform work related to their estate plan in 2000. The NFT Defendants deny the remaining allegations of ¶ 33.

34. To the extent that allegations concerning avoidance of “double taxation on the proceeds of the Novell shares owned by the Trust” are vague and ambiguous, the NFT Defendants state no response is necessary and therefore deny them. The NFT Defendants admit, however, that the Noordas wanted the Trust to provide for an adult son with special needs, to make large charitable donations, and to serve as a vehicle to minimize estate taxes.

35. The NFT Defendants admit that the Noordas did not make provisions in the Trust for their children to inherit any interest in Canopy, and state that the Trust’s principal beneficiaries are Angel Partners, Inc., and The Worth of a Soul, both of which are Utah non-profit corporations. Angel Partners, Inc., is a supporting organization for the Church of Jesus

Christ of Latter-day Saints. The NFT Defendants further admit that the Noordas have, to the extent they wish to do so, provided for their children through other assets. The NFT Defendants deny the remaining allegations of ¶ 35.

36. The NFT Defendants admit that in approximately 2001 Mr. Peterson sold over \$100 million of life insurance to the Trust to provide for the Noordas' children and grandchildren. The NFT Defendants deny that Mr. Peterson earned "significant commissions" on such policies for lack of information. The NFT Defendants deny the remaining allegations of ¶ 36 and state that such policies were cancelled because the Noordas chose to provide for their children through other means.

37. The NFT Defendants admit that Christensen was hired by Canopy as an at-will employee on January 16, 2001 on the instructions and advice of Yarro and Mott. The NFT Defendants admit that Christensen served most recently as Canopy's Vice President-Legal, Corporate Counsel and Assistant Secretary until his termination for cause on December 17, 2004. The NFT Defendants also admit that, prior to his employment with Canopy, Christensen served as Canopy's outside legal counsel. The NFT Defendants state that Christensen accepted his employment at Canopy with a view toward obtaining excessive and unfair incentives and compensation in concert with Yarro and Mott. The NFT Defendants deny Plaintiffs' allegation that Christensen accepted his employment at Canopy at a substantial reduction from his prior salary for lack of information. The NFT Defendants deny the remaining allegations of ¶ 37.

38. The NFT Defendants admit that Christensen purports to have acquired options on Class A Voting Common Stock and Class B Non-Voting Common Stock, that Christensen has

purported to exercise all his purported options on Class A Voting Common Stock but has not purported to exercise all his purported options on Class B Non-Voting Common Stock. The NFT defendants deny the remaining allegations of ¶ 38.

39. Denied for lack of information.

40. Denied.

41. The NFT Defendants admit that Mr. Noorda resigned from the boards of various portfolio companies in or around 2002. The NFT Defendants deny the remaining allegations of ¶ 41 for lack of information.

42. The NFT Defendants admit that, beginning in 1998 and possibly earlier, Mr. Noorda's direct involvement in the operation of Canopy diminished, and aver that Mr. Noorda has not participated in the day-to-day management of Canopy's affairs since at least 1998. The NFT Defendants admit that Mr. and Mrs. Noorda and Yarro remain the only members of Canopy's Board, but aver that Yarro is subject to removal as a director pursuant to Utah Code Ann. § 16-10a-809. The NFT Defendants deny the remaining allegations of ¶ 42.

43. The NFT Defendants admit that meetings of the Board continued to be held after Mr. Noorda reduced the amount of time he devoted to Canopy and admit that the Noordas were present at those meetings. The NFT Defendants deny that such meetings included consideration of all material matters and affirmatively state that Plaintiffs failed to disclose material facts and relevant information to the Noordas during those meetings. The NFT Defendants deny the remaining allegations of ¶ 43.

44. The NFT Defendants deny the allegations of ¶ 44 and state that Canopy's successful investments were the result of investment decisions made by Mr. Noorda.

45. The NFT Defendants deny the allegations of ¶ 45 and state that, beginning as early as 1998, for reasons relating to Mr. Noorda's age and health, including deteriorating memory, the Noordas increasingly relied on and deferred to Plaintiffs' guidance, counsel and advice in matters relating to Canopy. The NFT Defendants further state that Plaintiffs were aware of Mr. Noorda's deteriorating condition and that, as a consequence of Mr. Noorda's condition and the Noordas' trust in and respect for Plaintiffs, the Noordas were subject to being unduly influenced by Plaintiffs.

46. Denied.

47. Denied for lack of information.

48. Denied.

49. Denied.

50. Denied.

51. The NFT Defendants admit that a meeting of the Board was held in March 2004, and admit that the Noordas, Yarro, and Mr. Peterson were present at that meeting. The NFT Defendants expressly deny that the Noordas expressed any concerns regarding their health or desire to "continue dealing with Canopy matters." The NFT Defendants state that at Mr. Peterson's suggestion, the Noordas requested and reviewed Canopy financial information prior to the meeting. At the meeting, the Noordas expressed frustration and dismay concerning Canopy's finances, including, specifically, excessive bonuses that Plaintiffs had caused Canopy

to pay to Plaintiffs and Canopy's other employees. Mrs. Noorda, in particular, expressed strong disapproval of such bonuses. Moreover, following careful review of Canopy's financial information, Mr. Noorda stated to Mrs. Noorda that it was his desire to terminate Plaintiffs' employment, and Mrs. Noorda agreed. The NFT Defendants further assert that it was Plaintiffs, not the Noordas, who first expressed a desire to buy the Trust's interest in Canopy, but that their offer — \$50 million paid over time — was plainly inadequate. The NFT Defendants deny the remaining allegations of ¶ 51.

52. The NFT Defendants admit that commencing in May 2004, counsel for the Noordas conducted due diligence concerning the potential for a transaction between the Noordas and Canopy. The NFT Defendants deny Plaintiffs' allegation that Mr. Peterson "monitored the day-to-day cash transactions of Canopy and, upon information and belief, made reports about the same to Ms. Kreidel and others" for lack of information. The NFT Defendants deny the remaining allegations of ¶ 52.

53. The NFT Defendants admit that commencing in May 2004, Jerold Oldroyd, Esq., of Ballard Spahr Andrews & Ingersoll, LLP ("**Ballard Spahr**"), communicated with Yarro on behalf of the Noordas, as directors of Canopy. The NFT Defendants state that on behalf of the Noordas, Ballard Spahr advised Yarro in writing that "that no significant transactions (including, but not limited to, the sale of any portfolio company or the payment of any employee bonuses) should be undertaken without express board approval" and further that "[p]roposed significant transactions should be brought to the Noordas' attention for consideration by written notice to the Noordas, with a copy to [Ballard Spahr]." The NFT Defendants further state that Ballard Spahr

requested information from Canopy for the purpose of evaluating an overture by Canopy to purchase the Trust's interest in Canopy and any "other courses of action [the Noordas] may want to consider." The NFT Defendants deny the remaining allegations of ¶ 53.

54. The NFT Defendants admit that Yarro was notified on or about December 9, 2004 of a meeting of Canopy's Board to be held on December 17, 2004 (the "**December 17th Meeting**"). The NFT Defendants also admit that Yarro was advised that officers of Canopy were not invited to attend the meeting. The NFT Defendants deny the remaining allegations of ¶ 54.

55. The NFT Defendants deny Plaintiffs' allegation that "Mr. and Mrs. Noorda did not personally attend the December 17th meeting," and state that Mr. and Mrs. Noorda attended the meeting telephonically as permitted by the Bylaws of NFT Ventures, Inc. ("**Bylaws**"). The NFT Defendants admit the remaining allegations of ¶ 55.

56. The NFT Defendants admit that, during the December 17th Meeting, Mrs. Noorda, using an outline prepared by counsel pursuant to her instructions and in anticipation of the complicated and emotional nature of the December 17th Meeting, moved to adopt six separate resolutions. The NFT Defendants admit that one of the six resolutions adopted during the December 17th Meeting was a resolution granting Mr. Noorda and Mrs. Noorda options to purchase additional Class A Voting Common Stock and Class B Non-Voting Common Stock in Canopy. The NFT Defendants admit that three additional resolutions were adopted during the meeting that terminated the at-will employment of Mott, Christensen, and Yarro as officers of Canopy. The NFT Defendants also admit that another resolution was adopted during the

December 17th Meeting that appointed William Mustard as the President, Chief Executive Officer, and Treasurer of Canopy, and that an additional “enabling resolution” was adopted during the December 17th Meeting. The NFT Defendants deny the remaining allegations of ¶ 56.

57. Denied.

58. Denied.

59. The NFT Defendants deny Plaintiffs’ allegation that “Mr. Peterson has stated that he was the person who helped bring down Canopy’s management” for lack of information. The NFT Defendants deny the remaining allegations of ¶ 59.

60. Denied.

61. The NFT Defendants admit that Ms. Kreidel, in her capacity as an employee of Canopy, was present at various meetings held subsequent to the December 17th Meeting. The NFT Defendants deny the remaining allegations of ¶ 61.

62. Denied.

63. The NFT Defendants deny that any actions taken by them or by Canopy’s management subsequent to December 17, 2004 played any role in the suicide of Robert Penrose. The NFT Defendants further assert that Plaintiffs have made this baseless accusation in bad faith and in violation of Utah R. Civ. P. 11. The NFT Defendants deny the remaining allegations of ¶ 63.

64. Denied.

65. The NFT Defendants admit that following Plaintiffs’ terminations, one Canopy employee died and five others voluntarily terminated their own employment. The NFT

Defendants deny that any actions taken by them or by Canopy's management subsequent to December 17, 2004 played any role in the suicide of Robert Penrose. The NFT Defendants further assert that Plaintiffs have made this baseless accusation in bad faith and in violation of Utah R. Civ. P. 11. The NFT Defendants assert that those employees who terminated their own employment did so voluntarily and/or as a result of Plaintiffs' influence and/or encouragement. The NFT Defendants deny the remaining allegations of ¶ 65.

66. The NFT Defendants admit that Canopy and the Trust filed a Complaint (the "**Canopy Complaint**") against Plaintiffs in this Court (Case No. 050400245) on January 25, 2005, which speaks for itself. The NFT Defendants deny the remaining allegations of ¶ 66.

First Claim for Relief
(Invalid Actions Purportedly Taken at the December 17th Meeting and Thereafter)

67. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-66 above, and 73 to 156 below.

68. Denied.

69. The NFT Defendants admit that resolutions were passed at the December 17th Meeting including resolutions granting Class A Voting Common Stock options and Class B Non-Voting Common Stock options to Mr. and Mrs. Noorda; the terminations for cause of Yarro, Mott, and Christensen; the appointment of Mr. Mustard as President, Chief Executive Officer and Treasurer of Canopy, and certain enabling resolutions. The NFT Defendants deny the remaining allegations of ¶ 69.

70. Denied.

71. Denied.

72. Denied.

Second Claim for Relief
(Breach of Contract)

73. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-72 above, and 84 to 156 below.

74. Denied.

75. The NFT Defendants state that the Shareholder Agreement speaks for itself and deny the remaining allegations of ¶ 75.

76. The NFT Defendants state that the Shareholder Agreement speaks for itself and deny the remaining allegations of ¶ 76.

77. The NFT Defendants state that the Shareholder Agreement speaks for itself and deny the remaining allegations of ¶ 77.

78. Denied.

79. The NFT Defendants state that the Shareholder Agreement speaks for itself, admit that Yarro did not approve any actions taken during the December 17th Meeting, and deny the remaining allegations of ¶ 79.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

Third Claim for Relief

(Breach of Fiduciary Duty—Joint Shareholders and Directors of Closely Held Business)

84. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-83 above, and 90 to 156 below.

85. Admitted.

86. The NFT Defendants admit the allegations of ¶ 86, and assert that Plaintiffs, and Yarro in particular, owed Mr. and Mrs. Noorda a fiduciary duty analogous to that owed by partners in a partnership to act with the utmost good faith and loyalty with respect to each other's interests in Canopy. The NFT Defendants further assert that Plaintiffs, and Yarro in particular, breached that duty as set forth in the Canopy Complaint.

87. Denied.

88. Denied.

89. Denied.

Fourth Claim for Relief

**(Breach of Directors and Officers Statutory Standard
of Conduct—Utah Code § 16-10a-840)**

90. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-89 above, and 97 to 156 below.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

Fifth Claim for Relief

(Breach of Fiduciary Duties and Standards of Conduct—By Arrogated Directors)

97. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-96 above, and 106 to 156 below.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

Sixth Claim for Relief

(Temporary Restraining Order/Preliminary and Permanent Injunction)

106. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-105 above, and 118 to 156 below.

107. Denied.

108. Denied.

109. Admitted.

110. Admitted.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. The NFT Defendants state that ¶ 116 does not make any allegations with respect to them, and therefore no response is required.

117. The NFT Defendants state that ¶ 117 does not make any allegations with respect to them, and therefore no response is required. The NFT Defendants further state that while they are willing to permit an examination of Mr. Noorda pursuant to Utah R. Civ. P. 35, such an exam is irrelevant to, and not probative of, the issue of Mr. Noorda's competence on December 17, 2004.

Seventh Claim for Relief
(Breach of Covenant of Good Faith and Fair Dealing)

118. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-117 above, and 123 to 156 below.

119. The NFT Defendants state that insofar as the allegations of ¶ 119 state a legal conclusion, no response is necessary. The NFT Defendants deny the remaining allegations of ¶ 119.

120. Denied.

121. Denied.

122. Denied.

Eighth Claim for Relief
(Promissory Estoppel)

123. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-122 above, and 128 to 156 below.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

Ninth Claim for Relief
(Constructive/Resulting Trust)

128. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-127 above, and 131 to 156 below.

129. Denied.

130. Denied

Tenth Claim for Relief
(Declaration that Plaintiffs' Employment Was not Terminated)

131. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-130 above, and 138 to 156 below.

132. The NFT Defendants state that the Equity Plan speaks for itself and further state that insofar as the allegations of ¶ 132 state conclusions of law, no response is necessary.

133. The NFT Defendants state that the Equity Plan speaks for itself and further state that insofar as the allegations of ¶ 133 state conclusions of law, no response is necessary.

134. The NFT Defendants state that the Equity Plan speaks for itself and further state that insofar as the allegations of ¶ 134 state conclusions of law, no response is necessary.

135. The NFT Defendants state that the Equity Plan speaks for itself and further state that insofar as the allegations of ¶ 135 state conclusions of law, no response is necessary.

136. Denied.

137. Denied.

Eleventh Claim for Relief
**(Tortious Interference With Contract and Existing Economic Relations,
and Tortious Interference with Prospective Economic Relations)**

138. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-137 above, and 148 to 156 below.

139. Denied

140. Denied for lack of information.

141. Denied for lack of information.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

Twelfth Claim for Relief
(Undue Influence)

148. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-147 above, and 153 to 156 below.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

Thirteenth Claim for Relief
(Aiding and Abetting Breach of Fiduciary Duty)

153. The NFT Defendants restate and incorporate by reference their responses to ¶¶ 1-152 above.

154. Denied.

155. Denied.

156. Denied.

157. The NFT Defendants specifically deny each and every allegation of the Complaint not specifically admitted in ¶¶ 1-156 above.

THIRD DEFENSE

The Complaint is barred, in whole or in part, to the extent Plaintiffs have waived or are estopped from asserting the claims asserted therein.

FOURTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, and/or acquiescence.

FIFTH DEFENSE

The allegations and claims asserted in the Complaint, in each purported cause of action alleged therein, have always been and continue to be frivolous, unreasonable, and groundless. Plaintiffs brought this action in bad faith. *See* Utah Code Ann. § 78-27-56.

SIXTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they are not asserted by the real party in interest.

SEVENTH DEFENSE

The Complaint is barred, in whole or in part, to the extent that the claims asserted therein are claims that belong to Canopy.

EIGHTH DEFENSE

Plaintiffs have suffered no damages because their employment at Canopy was at-will and was therefore terminable by Canopy at any time for any reason or no reason.

NINTH DEFENSE

Plaintiffs have failed to mitigate their damages, if any, and to the extent of such failure to mitigate, any damages awarded to Plaintiffs should be reduced accordingly.

TENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, based on the doctrine of unclean hands.

ELEVENTH DEFENSE

Plaintiffs' request for a preliminary injunction is improper because Plaintiffs have failed to show that they have suffered, or will continue to suffer, irreparable harm in the absence of their requested injunction.

TWELFTH DEFENSE

Plaintiffs' request for a preliminary injunction is improper because Plaintiffs' purported options are invalid and do not give them any substantive rights with regard to the management and/or control of Canopy.

THIRTEENTH DEFENSE

Plaintiffs' request for a preliminary injunction is improper because the proposed injunction would cause substantial harm to the NFT Defendants, which harm outweighs any harm suffered by Plaintiffs, and is contrary to the public interest.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the actions taken by the NFT Defendants were proper and/or protected by the business judgment rule.

FIFTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing.

SIXTEENTH DEFENSE

Plaintiffs are estopped from asserting that the NFT Defendants breached any contractual obligations owed to them on the grounds that Plaintiffs committed prior material breaches of contractual obligations to the NFT Defendants.

SEVENTEENTH DEFENSE

The NFT Defendants assert and allege that they have, or may have, additional affirmative defenses which are not yet known but which may become known through future discovery. The NFT Defendants assert each and every defense as may be ascertained through future discovery herein.

WHEREFORE, the NFT Defendants respectfully request that the Complaint be dismissed with prejudice and that Plaintiffs take nothing thereby; that the NFT Defendants be awarded their attorney's fees and costs as provided by law; and that the NFT Defendants be awarded such other and further relief as the Court deems warranted.

COUNTERCLAIM

Raymond J. Noorda and Lewena Noorda, as trustees of the Noorda Family Trust, and Intervenor-Defendant The Canopy Group, Inc. (collectively, "**Counterclaim Plaintiffs**"), as and for their counterclaim against Yarro, Mott, and Christensen, incorporate by reference as if fully set forth herein ¶¶ 1-110 of Canopy Complaint and the nine causes of action set forth therein. A true and correct copy of the Canopy Complaint is attached hereto as Exhibit A. Counterclaim Plaintiffs further allege as follows:

ADDITIONAL PARTIES

111. Counterclaim Defendants John Does 1 through 10 are persons whose identities are currently unknown who assisted, or otherwise acted in concert with, Yarro, Mott, and Christensen.

TENTH CAUSE OF ACTION (Undue Influence)

112. Counterclaim Plaintiffs incorporate by reference the allegations contained in ¶¶ 1-110 of the Canopy Complaint and ¶ 111 above.

113. Yarro, Mott, and Christensen were aware by 1998 or earlier that Mr. Noorda's memory and business judgment were deteriorating.

114. Being aware of Mr. Noorda's deteriorating condition, and the increasing difficulty that it caused Mr. Noorda in exercising business judgment, and being aware of Mr. and Mrs. Noorda's respect for and trust in them, Yarro, Mott and Christensen embarked on a scheme to personally profit by exercising undue influence over the Noordas.

115. Yarro, Mott, and Christensen exercised undue influence over the Noordas in a willful, malicious, and wrongful attempt to personally profit while causing substantial harm to Canopy and the Trust.

116. Yarro, Mott, and Christensen were able to overcome the will of the Noordas through undue influence, causing Canopy and the Trust to suffer damages in an amount to be proven at trial.

117. The above-described acts of Yarro, Mott, and Christensen were performed intentionally, knowingly, and with reckless indifference toward, and a disregard of, the rights of Canopy and the Trust.

ELEVENTH CAUSE OF ACTION
(Intentional Interference With Existing and Prospective Economic Relations)

118. Counterclaim Plaintiffs incorporate by reference the allegations contained in ¶¶ 1-110 of the Canopy Complaint and ¶¶ 111-117 above.

119. After the termination of their employment at Canopy, Yarro, Mott, and Christensen, in concert with and with the assistance of John Does 1-10, embarked on a scheme to interfere with Canopy's relations with its employees and portfolio companies.

120. Yarro, Mott, and Christensen conducted their efforts to interfere in Canopy's relations with its employees and portfolio companies for improper purposes, which purposes included, without limitation:

(a) Causing and encouraging Canopy employees to terminate their employment in order to create the appearance that Canopy's current management was doomed to failure, for the purpose of enabling Yarro, Mott, and Christensen to seek reinstatement through injunction and continue their scheme to profit at Canopy's expense through excessive and unfair compensation;

(b) Causing or encouraging Canopy portfolio companies to doubt the authority of Canopy's current management in an effort to obstruct current management's ability to complete business transactions for the purpose of enabling Yarro, Mott, and

Christensen to seek reinstatement through injunction and continue their scheme to profit at Canopy's expense through excessive and unfair compensation; and

(c) Causing or attempting to cause irreparable harm to Canopy, or create the illusion thereof, for the purpose of enabling Yarro, Mott, and Christensen to seek reinstatement through injunction and continue their scheme to profit at Canopy's expense through excessive and unfair compensation.

121. Yarro, Mott, and Christensen's improper purposes dominated over any legitimate business interest.

122. Yarro, Mott, and Christensen, in concert with and with the assistance of John Does 1-10, used improper means to intentionally interfere in Canopy's existing and prospective economic relations with its employees and portfolio companies, including, without limitation, the following:

(a) Yarro, Mott, and Christensen and John Does 1-10 have directly and/or indirectly encouraged current Canopy employees to terminate their employment;

(b) Yarro, Mott, and Christensen, who seldom if ever socialized with Canopy employees outside of the workplace prior to their voluntary terminations, have, since their terminations, arranged and held several meetings of current and former Canopy employees at which Canopy business, including current working conditions, was discussed;

(c) Yarro, Mott, and Christensen have interfered in Canopy's existing and prospective relations with its portfolio companies by contacting principals and board

members of Canopy portfolio companies and encouraging them to not deal with and/or recognize Canopy's current management;

(d) Yarro, Mott, and Christensen have interfered in Canopy's existing and prospective relations with its portfolio companies by appearing, after their terminations, at board meetings of portfolio companies purporting to represent Canopy without Canopy's consent;

(e) Yarro, Mott, and Christensen, in concert with and with the assistance of John Does 1-10, after their terminations, wrongfully and surreptitiously obtained a copy of Canopy's back-up of its computer system, on which all of Canopy's electronic data was stored, without requesting such from Canopy and without obtaining consent from Canopy's management;

(f) Yarro, Mott, and Christensen, in concert with and with the assistance of John Does 1-10, enlisted former Canopy employee Allan Smart ("**Smart**") to help in wrongfully and surreptitiously making a copy of Canopy's back-up of its computer system, on which all of its electronic data, including commercially sensitive and confidential information, was stored. By doing so, Yarro, Mott, and Christensen and John Does 1-10 induced Smart to breach a written Employee Invention and Confidentiality Agreement (the "**Confidentiality Agreement**") signed by Smart on December 18, 2001, which prohibited Smart from, among other things, assisting parties outside of Canopy in obtaining possession of Canopy's confidential information;

(g) On information and belief, Yarro, Mott, and Christensen and John Does 1-10 enlisted Smart to encourage Canopy employees to terminate their employment, and encouraged Smart to disparage Canopy's current officers to third parties in violation of the terms of the Confidentiality Agreement; and

(h) Yarro, Mott, and Christensen and, on information and belief, John Does 1-10 were aware of the existence of the Confidentiality Agreement and its terms and that their actions had caused Smart to breach the Confidentiality Agreement.

123. As a direct and proximate result of Yarro, Mott, and Christensen's interference with Canopy's economic relations, performed with the assistance of and in concert with John Does 1-10, Canopy has suffered damages in an amount to be determined at trial.

124. Yarro, Mott, and Christensen's above-described acts were performed intentionally, knowingly, and with reckless indifference toward, and a disregard of, the rights of Canopy and the Trust.

DEMAND FOR JURY TRIAL

Pursuant to Utah R. Civ. P. 38, Counterclaim Defendants demand a trial by jury on all issues raised by the pleadings and so triable.

WHEREFORE, Counterclaim Plaintiffs request the following relief:

A. A judgment awarding Counterclaim Plaintiffs, actual, special and consequential damages in amounts to be proved at trial;

B. A judgment declaring that Yarro, Mott, and Christensen's stock option agreements are null and void, that all stock and cash compensation acquired by Yarro, Mott, and Christensen pursuant to the Equity Plan must be returned to Canopy, and that all options acquired by Yarro, Mott, and Christensen pursuant to the Equity Plan are terminated and rescinded;

C. A judgment declaring that all cash, stock, options and other property acquired by Yarro, Mott, and Christensen in violation of their fiduciary duty of loyalty to Canopy is being held by Yarro, Mott, and Christensen in constructive trust for Canopy and that Yarro, Mott, and Christensen are under an equitable duty to return and convey such property to Canopy;

D. An order removing Yarro as a director of Canopy pursuant to Utah Code Ann. § 16-10a-809;

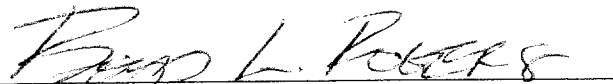
E. A judgment declaring that Yarro, Mott, and Christensen's purported rights under the Shareholder Agreement are void, terminated, and rescinded;

F. A judgment awarding Canopy punitive damages as appropriate; and

G. A judgment that Plaintiffs recover the costs of suit herein, including attorney's fees and costs.

DATED this 24th day of February 2005.

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

A handwritten signature in cursive script, reading "Boyd L. Rogers", written over a horizontal line.

David B. Watkiss, Esq.

Anthony C. Kaye, Esq.

James W. Stewart, Esq.

Boyd L. Rogers, Esq.

Attorneys for Intervenor-Defendant The Canopy
Group, Inc., Defendants Raymond J. Noorda
and Lewena Noorda, as Trustees of the Noorda
Family Trust and as individuals, and William
Mustard

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER OF DEFENDANTS RAYMOND J. NOORDA, LEWENA NOORDA AND THE NOORDA FAMILY TRUST AND COUNTERCLAIM** was served to the following this 24th day of February 2005, in the manner set forth below:

☐ Hand Delivery

☒ U.S. Mail, postage prepaid

☐ Federal Express

☐ Certified Mail, Receipt No. _____, return receipt requested

Stanley J. Preston, Esq.
Michael R. Carlston, Esq.
Maralyn M. Reger, Esq.
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84145

Blake D. Miller, Esq.
MILLER & GUYMON, P.C.
165 South Regent Street
Salt Lake City, Utah 84111

Blaine J. Benard, Esq.
Eric G. Maxfield, Esq.
HOLME ROBERTS & OWEN, LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111

Jeffrey S. Facter, Esq.
SHEARMAN & STERLING LLP
525 Market Street
San Francisco, California 94105