

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY
2005 FEB 16 AM 11:07

STANLEY J. PRESTON (4119)
MICHAEL R. CARLSTON (0577)
MARALYN M. REGER (8468)
BRYAN M. SCOTT (9381)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Plaintiffs
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

THE CANOPY GROUP, INC., a Utah
corporation, and RAYMOND J. NOORDA
and LEWENA NOORDA, as Trustees of
the NOORDA FAMILY TRUST,

Plaintiffs,

vs.

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

Defendants.

**DEFENDANTS' MOTION TO
DISMISS FOR FAILURE TO PLEAD
AS COMPULSORY
COUNTERCLAIM**

ORAL ARGUMENT REQUESTED

Civil No. 050400245

Honorable Anthony W. Schofield, Div. 8

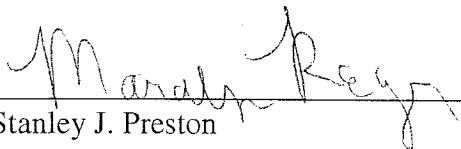
Pursuant to Rule 13(a) of the Utah Rules of Civil Procedure, Plaintiffs Ralph J. Yarro III, Darcy G. Mott and Brent D. Christensen (collectively the "Yarro Plaintiffs") hereby move this Court to dismiss the Complaint in the instant action filed by The Canopy Group, Inc., Raymond J. Noorda and Lewena Noorda as trustees for the Noorda Family Trust (collectively the "Noorda

Parties”) for failure to plead as a compulsory counterclaim. The Yarro Plaintiffs filed a lawsuit (the “Original Lawsuit”) against, among others, Mr. Noorda, Mrs. Noorda and the Trust, prior to the filing of the complaint in the instant case (the “Second Lawsuit”). The allegations and claims forming the basis of both the Original Lawsuit and the Second Lawsuit arise out of the same transactions, agreements, and occurrences. Therefore, under Rule 13(a), the Noorda Parties are required to state their claims as a compulsory counterclaim to the Original Lawsuit. For the reasons set forth in the accompanying Memorandum In Support Of Defendants’ Motion To Dismiss For Failure To Plead As Compulsory Counterclaim, the Yarro Plaintiffs respectfully move this Court to dismiss this action for failure to comply with Rule 13(a)

The Yarro Plaintiffs request that the Court hear oral argument on this matter at a time and date set by the Court.

DATED this 14th day of February, 2005.

SNOW, CHRISTENSEN & MARTINEAU

By: 
Stanley J. Preston
Michael R. Carlston
Maralyn M. Reger
Bryan M. Scott
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law offices of Snow, Christensen & Martineau, attorneys for defendants, and that a true and correct copy of the **DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO PLEAD AS COMPULSORY COUNTERCLAIM** (Case No. 050400205, Fourth Judicial District Court, Utah County, for the State of Utah) was served on the following, by mailing, postage prepaid, this 14th day of February, 2005:

David B. Watkiss, Esq.
James W. Stewart, Esq.
Anthony C. Kaye, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
One Utah Center, Suite 600
201 South Main Street
Salt Lake City, Utah 84111-2221

*Attorneys for William Mustard, The Noorda Family Trust,
Raymond J. Noorda, Lewena Noorda, and The Canopy
Group, Inc.*

Jeffrey S. Facter, Esq.
Shearman & Sterling, LLP
525 Market Street
San Francisco, CA 84105

Eric G. Maxfield, Esq.
Holme Roberts & Owen, LLP
299 South Main, Suite 1800
Salt Lake City, Utah 84111

Attorneys for Terry Peterson

Blake D. Miller, Esq.
Miller Magleby & Guymon, PC
170 South Main Street, #350
Salt Lake City, UT 84101

Attorney for Val Kriedel