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IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

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

Plaintiffs,

vs.

**AFFIDAVIT
OF RALPH J. YARRO, III**

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,

Civil No. 050400205

Honorable Anthony W. Schofield, Div. 8

Defendants.

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

RALPH J. YARRO, III, being first duly sworn, upon oath, deposes and says:

1. I am over twenty-one years of age and have personal knowledge of the facts stated below.

2. I reside in Utah County, Utah. I am one of the three members of the Board of Directors of The Canopy Group, Inc. ("Canopy"), which is a closely held corporation organized under the laws of the State of Utah, with its principal place of business in Lindon, Utah.

3. I came to know Ray Noorda ("Mr. Noorda") when he was President and Chief Executive Officer of Novell, Inc., and I was an employee of Novell. Mr. Noorda retired as Director, President and Chief Executive Officer of Novell in 1994.

4. In 1995, Mr. Noorda hired me at NFT Ventures, Inc., ("NFT Ventures") to assist him in managing the holdings and investments of NFT Ventures. Through my work at NFT Ventures, I came to know that NFT Ventures was a corporation wholly owned by the Noorda Family Trust (the "Trust"), and that the trustees of the Trust were Mr. Noorda and his wife Lewena Noorda ("Mrs. Noorda"). The Trust had contributed some cash to NFT Ventures; it also contributed equity investments that the Trust had previously made in various companies; and it assigned certain technologies to NFT Ventures.

5. In 1996, the president of NFT Ventures left the company. At that time, Mr. Noorda appointed me to the position of General Manager to assist Mr. Noorda directly in running the company. In 1996, NFT Ventures' name was changed to The Canopy Group, Inc.

6. I worked closely with Mr. Noorda at NFT Ventures and Canopy, interacting with him several hours a day over a period of several years. Mr. Noorda became my mentor. Mr. Noorda told me and others in my presence that he considered me to have exceptional business abilities, and to be a hard worker whose abilities and efforts added substantial value to Canopy, as well as to the various companies in which Canopy invested capital (the "portfolio companies"). In recognition of my efforts, Mr. Noorda promised me additional compensation and incentives, including, incentive

bonuses when portfolio companies were sold. Mr. Noorda also told me on several occasions over the years that Mr. Noorda would structure a compensation and ownership plan for me and other employees at Canopy.

7. After accepting appointment as General Manager, I developed and presented a comprehensive plan for each portfolio company to Mr. Noorda. Mr. Noorda and I then refined and implemented this plan together. With Mr. Noorda and me working closely together, Canopy exceeded its goals. Mr. Noorda in turn kept his commitments and paid incentive bonuses to me and other employees, and Mr. Noorda also began to develop the promised compensation and ownership plan. As a reward for my contributions to Canopy, I also began to receive annual bonuses and substantial salary increases.

8. In August 1998, I accepted appointment as President and Chief Executive Officer of Canopy, and was also named to the Board of Directors of Canopy. From that time to the present, Mr. and Mrs. Noorda and I been the only three members of Canopy's Board.

9. As a mentor, Mr. Noorda provided instruction and direction to me in nearly every facet of my responsibilities, first as General Manager and then as President and CEO of Canopy. Mr. Noorda used his own experience to illustrate the advice and direction he gave me. In this context, on numerous occasions, Mr. Noorda told me that he did not want his children to be substantively involved with Canopy. In numerous communications both with Mr. Noorda and Mrs. Noorda, I and others were informed that Mr. and Mrs. Noorda did not want to give their children any interest in Canopy, and that they did not want their children to participate in the management of Canopy.

10. On or about February 29, 2000, Mr. and Mrs. Noorda put in place an equity ownership plan for me (the "February 2000 Option Agreement").

11. The February 2000 Option Agreement was conceived and prepared by Mr. and Mrs. Noorda's personal accountants, financial advisors and lawyers, including their estate planning attorney, at the direction of Mr. and Mrs. Noorda. I learned this through conversations with Mr. Noorda and his professional advisors, as well as what I saw and heard during certain meetings.

12. Under the terms of the February 2000 Option Agreement I had the right to purchase one-half of the Canopy owned shares in all Canopy portfolio companies (except MTL) at a price equal to Canopy's basis and was entitled to participate in profits and proceeds upon the sale of any Canopy portfolio company. The February 2000 Option Agreement fulfilled Mr. Noorda's repeated statements and promises to me that he was going to recognize me as an equal in Canopy, by allowing me to obtain an interest in Canopy equal to his by paying one-half of the amount that the Trust paid for its ownership interest in Canopy. Attached hereto, as Exhibit A, is a true and correct copy of the February 2000 Option Agreement.

13. Almost immediately after the February 2000 Option Agreement was implemented, it was learned as a result of the SEC review in connection with the Initial Public Offering ("IPO") of Caldera Systems (a portfolio company) that the SEC would require Caldera Systems to incur and disclose a compensation charge for the difference between the contemplated IPO stock price and the Canopy basis for my option shares. The amount of this charge would have a highly detrimental effect on Caldera Systems. Since this type of charge would have a potentially negative impact on any Canopy portfolio company IPO, I agreed to rescind the February 2000 Option Agreement. Mr. Noorda told me and others that he was committed to come up with a new equity ownership plan that would provide rights for me similar to the February 2000 Option Agreement but without the detrimental impact on Canopy portfolio companies.

14. Mr. Noorda subsequently tasked several persons, including Mr. Noorda's personal legal, accounting and financial advisors, as well as Darcy Mott, Canopy's Chief Financial Officer, to develop such a replacement equity ownership plan. Mr. and Mrs. Noordas' personal advisors subsequently conceived such a plan, which was subsequently prepared, reviewed and approved by various legal, accounting and financial professionals. Mr. and Mrs. Noorda approved, signed and adopted various legal documents in November of 2000, which provided for the recapitalization of Canopy and implemented this new plan (the new plan and the documents comprising this plan, some of which are detailed below, are collectively referred to hereafter as the "Canopy 2000 Recapitalization Plan"), and included the following:

(a) On or about November 3, 2000, Mr. and Mrs. Noorda voted the Trust's shares in favor of adopting Canopy's Amended and Restated Articles of Incorporation, authorizing Canopy to issue up to 25 million shares of common stock, with 25,000 of the shares designated as Class A Voting Common Stock, and 24,975 million shares designated as Class B Non-Voting Common Stock. The Trust's shares were converted into 10,000 shares of Class A Voting Common Stock and 9,990 million shares of Class B Non-Voting Common Stock. Each Class A Voting Common Stock share has one vote on each matter to be voted on by Canopy's shareholders. A copy of Canopy's Amended and Restated Articles of Incorporation is attached hereto as Exhibit B.

(b) On or about November 7, 2000, Canopy's Board of Directors, consisting of Mr. and Mrs. Noorda and myself, unanimously adopted The Canopy Group, Inc. 2000 Stock Option Plan, by which certain persons, such as eligible employees, could acquire equity in Canopy by obtaining and exercising stock options

in Canopy, at prices consistent with Canopy's value at the time each employee joined Canopy. Under this equity plan, I was granted an option to purchase 10,000 shares of Class A Voting Common Stock and 9.990 million shares of Class B Non-Voting Common Stock at \$5 per share, a price consistent with Canopy's value at the time he joined Canopy. A copy of this equity plan is attached hereto as Exhibit C.

(c) On or about November 8, 2000, Canopy, Mr. and Mrs. Noorda as trustees of the Trust, and myself entered into a Shareholder Agreement. This Shareholder Agreement contains provisions assuring that the three signatories (Mr. and Mrs. Noorda and myself) would serve as directors of Canopy and it contains other provisions consistent with the intention previously stated by Mr. Noorda that I would be accorded the right of an equal participant in Canopy. Among other things, this Shareholder Agreement prohibits any of the signatories from taking any action that adversely affects the rights of any of the other signatories. A copy of the Shareholder Agreement is attached hereto as Exhibit D.

15. I have exercised my Class A Voting Common Stock options, but I have not exercised all of my Class B Non-Voting Common Stock options. After I exercised my Class A Voting Common Stock options, I held and owned the same amount of Class A Voting Common Stock (10,000 shares) as the Trust. Since the end of 2000, my rights and interest in controlling and managing Canopy has been equal to the interest of Mr. and Mrs. Noorda.

16. On several occasions, in reviewing the effects of the Canopy 2000 Recapitalization Plan, Mr. Noorda commented that he was satisfied with this plan because it fulfilled his intention to provide Canopy employees, and in particular myself, with incentives to stay with Canopy for a long

time, to work hard, and to add value to Canopy and its portfolio companies.

17. On numerous occasions, Mr. and Mrs. Noorda both emphatically instructed me not to discuss Canopy or their other holdings with their children or to provide their children with substantive information about Canopy or their other holdings. For example, in a meeting with Mr. and Mrs. Noorda in February 2003, they specifically told me that Canopy information was to be kept confidential and that they did not want their children involved.

18. In early 2002, Mr. Noorda told me and others that he wanted to reduce the time he was devoting to Canopy.

19. During 2002, Mr. Noorda resigned from all the Boards of the various Canopy portfolio companies on which he had previously served.

20. Throughout the remainder of 2002, and during 2003 and 2004, Mr. Noorda's direct involvement in the operation of Canopy diminished. Mr. and Mrs. Noorda, however, remained members of the Board of Directors of Canopy, along with me.

21. After Mr. Noorda began to reduce the time he devoted to Canopy, Mr. and Mrs. Noorda continued to attend all meetings of Canopy's Board of Directors. The Board meetings included consideration of all material matters including, by way of illustration, Mr. and Mrs. Noorda's review, approval and ratification of Canopy's annual budgets and Canopy's expenditures, including any and all distributions of bonuses, incentives, and all other compensation to Canopy management and employees. Mr. and Mrs. Noorda also participated in various other meetings and discussions with me with respect to the management and business of Canopy. In the Board meetings as well as in other meetings, Mr. and Mrs. Noorda directed me to continue to follow the same course of management and to continue running the affairs of Canopy as Mr. Noorda had in the past, which

course of management was based upon the precepts and management principles Mr. Noorda had employed when he operated Canopy.

22. I believe that the knowledge I gained, and the advise and direction I received, from Mr. Noorda during our close association, as well as my adherence to the principles he taught me, are the primary reasons Canopy has been a highly successful company under my management. Canopy's success is manifested by its financial position which, in late 2004, included assets of over \$100 million in cash and an estimated value of approximately \$300 million. This is in stark contrast to Canopy's financial position of having minimal cash and an estimated value less than \$100 million when I was appointed General Manager.

23. During the Board meetings as well as my other meetings with Mr. and Mrs. Noorda during the first few months of 2003, I found Mr. Noorda to be engaged and involved in our discussions and I am confident that he understood our discussions regarding Canopy and other matters. At about the same time, however, I was made aware of concerns that the Noordas had based on discussions they had with their children. During a meeting in February of 2003, Mr. Noorda told me that he felt Canopy's management was doing exactly what he wanted us to do. During a meeting in March of 2003, both Mr. and Mrs. Noorda told me that their children were putting "pressure" on them to meet their "needs and wants," and, as a result, they were interested in creating some liquidity in their assets.

24. In the Canopy Board meeting held in March 2004, I was concerned about Mr. Noorda's mental competency and capacity. I believed, however, that Mrs. Noorda understood the actions discussed and approved them. Specifically, during this meeting, the Board discussed and approved Canopy's 2003 financial results and its 2004 annual operating budget. Terry Peterson,

acting as Mr. and Mrs. Noorda's personal financial advisor, was also present at this Canopy Board meeting. The budgets, prior financial and resolutions were provided to the Noordas a week before the meeting and it is my understanding that Mr. Peterson had reviewed it prior to the meeting. During this meeting, Mr. Peterson did not voice any concerns or objections to Mr. and Mrs. Noorda regarding any actions discussed and, in fact, Mr. Peterson advised Mr. and Mrs. Noorda that it was okay for them to approve the board and shareholder actions.

25. In the March 2004 Board meeting, Mrs. Noorda expressed concerns about her and Mr. Noorda's deteriorating health, the fact that Mr. Noorda's deteriorating memory made it very difficult for him to make decisions, which required Mrs. Noorda to make decisions that Mr. Noorda would otherwise make. Mrs. Noorda also expressed how difficult it was for them to continue dealing with Canopy matters. To address the concerns raised by Mrs. Noorda, I suggested that, if they wished, Canopy would redeem the Trust's shares at fair market value under negotiated terms that Canopy could bear. I recommended that Mr. and Mrs. Noorda engage their own legal counsel and financial advisors and obtain their own valuation of Canopy if they wished to proceed.

26. I saw a marked decline in Ray Noorda's mental faculties. He appeared confused and appeared to have a hard time following the discussion. During the meeting, Mr. Noorda asked "What company are we talking about?" I spent considerable time taking Mr. and Mrs. Noorda through the documents and I do not believe that even with my explanations that Mr. Noorda fully understood the nature of the documents and the other substantive matters discussed. I believe, as I indicated previously, that Mrs. Noorda did. Based on my profound love and respect for Mr. Noorda, I did not want to suggest that Mr. Noorda should be removed as a Canopy Board member due to his apparent incapacity. I had seen first-hand how hard it was for him to leave the Boards of the portfolio

companies.

27. For the next nine months after the March Board meeting, my contact with Mr. or Mrs. Noorda was limited. Any communications from Mr. and Mrs. Noorda were directed through Terry Peterson. In fact, approximately one month after the March Board meeting, Terry Peterson told me that I should not call the Noordas.

28. Following the March board meeting, in what I thought was in follow-up of Mrs. Noorda's request to find a reasonable way to liquidate the Noorda's ownership interest in Canopy, Mr. Peterson began making requests for information regarding Canopy. Other persons purporting to be Mr. and Mrs. Noorda's personal attorneys and financial advisors, including Mr. Jerold Oldroyd, an attorney at Ballard Spahr Andrews and Ingersoll, LLP, ("Ballard Spahr"), subsequently began requesting extensive documentation regarding the business activities of Canopy as well as the portfolio companies. Canopy acted promptly in providing these persons with all of the information requested.

29. During the period from March to December 2004, I continued to direct the operations of Canopy in the same manner previously approved in the March 2004 meeting by at least Mrs. Noorda and myself. Since I had been asked not to call the Noordas, I asked Mr. Oldroyd if the Noordas wanted any changes in the way Canopy was being managed. Mr. Oldroyd replied that I should continue on the same course.

30. On or about December 5, 2004, I was notified of a purported meeting of Canopy's Board of Directors to be held on December 17, 2004 (the "December 17th meeting") at Scenic View Care Center. I was instructed that no one other than Mr. and Mrs. Noorda and myself would and should attend this meeting, including attorneys or Canopy employees.

31. Contrary to representations made to me, Mr. and Mrs. Noorda did not attend the December 17th meeting in person. Instead, when I arrived at Scenic View Care Center, I was met by two Ballard Spahr attorneys who purported to represent Mr. and Mrs. Noorda as well as Canopy. These attorneys told me that Mr. and Mrs. Noorda, as well as Val Noorda Kreidel ("Ms. Kreidel"), the daughter of Mr. and Mrs. Noorda, were at a separate location with another Ballard Spahr attorney, and would participate in the meeting via a speaker phone. As Canopy's President and CEO, and as a director, I had not retained Ballard Spahr to represent Canopy.

32. I was surprised and dismayed by what then took place. During the December 17th meeting, Mrs. Noorda, apparently reading from a script, moved to adopt a resolution which:

- (a) purportedly granted Mr. Noorda 1,486 additional Canopy Class A Voting Common Stock options and 1,484,514 Class B Non-Voting Common Stock options, and granted herself 1,487 additional Class A Voting Common Stock options and 1,485,513 Class B Non-Voting Common Stock options;
- (b) purportedly terminated me along with Mr. Mott and Mr. Christensen as employees and officers of Canopy, purportedly for cause;
- (c) purportedly elected Mr. Mustard in my place as the President and Chief Executive Officer of Canopy; and
- (d) purportedly enacted certain "enabling resolutions."

33. The proceedings, though scripted, were not without drama. Following the presentation by Mrs. Noorda, she requested a second. Her request was met with silence. Following a second request for a second and muffled conversation that I could not completely hear, Mr. Noorda then seconded the motion. Although, as I said, I was not permitted to hear everything, it sounded to me

like Mr. Noorda had to be instructed to second the motion. I did not believe that Mr. Noorda understood what he was doing, or that he was mentally able to follow and understand what was occurring. As a Board member, I voted against the resolutions.

34. At the December 17th meeting, and following my purported termination, the Ballard Spahr attorneys handed me a copy of an unfiled Complaint which they threatened would be filed unless I agreed to give up my interest in Canopy and pay approximately \$14 million. A complaint essentially similar to what was shown to me was subsequently filed in the Fourth District Court. I know from personal knowledge that the Complaint filed against me is based on false allegations and, in my opinion, it asserts claims that are without merit. This Complaint is based on the false assertion that salaries, bonuses and incentives paid me and other Canopy employees over many years was without the knowledge or consent of Mr. and Mrs. Noorda. This is absolutely false. Mr. Noorda created the compensation and incentive plans in question, and he himself determined and personally signed most of the incentives paid over the years. He approved the incentives that he did not sign, and he also set most of the salaries and bonuses. I have followed the principles and procedures that Mr. Noorda put in place in paying salaries, bonuses and incentives. Moreover all such compensation was discussed and approved by Mr. and Mrs. Noorda in annual Board meetings.

35. In addition to having equal control of Canopy with the Noordas, I personally own options for Canopy stock that have a value in excess of \$100 million.

36. I have been informed by Canopy employees who have now left Canopy's employment, as well as certain management persons at Canopy's portfolio companies, that Ms. Kreidel is now "running the show" at Canopy, in that she is managing Canopy through Mr. Mustard, and that Mr. Mustard must obtain Ms. Kreidel's approval before making any significant or substantial decision

regarding Canopy.

37. As of December 16, 2004, Canopy had 12 full-time employees and, over the prior nine years, most if not all employees who have left Canopy have done so to work for Canopy portfolio companies. Following principles taught me by Mr. Noorda, I believe that I perpetuated a wonderful working environment at Canopy where employees enjoyed their work and felt that they belonged to the Canopy family. Now, as a result of the purported termination of myself, Mr. Mott and Mr. Christensen, and the threatening, heavy-handed, and demeaning treatment of the remaining employees, one long-time employee has taken his own life, and five other employees have resigned their employment at Canopy, all of which has caused and continues to cause irreparable harm to Canopy and, therefore, its shareholders, including me, Mr. Mott and Mr. Christensen. Negative repercussions to the portfolio companies have started as well, because a similar heavy-handed approach is being utilized in dealings with them.

38. On December 24, 2004, I was informed that Rob Penrose, a long-time and valuable employee of Canopy had committed suicide. I loved Rob Penrose like a brother. His death has been devastating to me. I believe, based on my conversations with members of Rob Penrose's family, that the heavy-handed and intimidating actions of Canopy's current management, including Mr. Mustard, was a substantial contributing cause to Rob Penrose's death.

39. Currently, to the best of my knowledge, Canopy has only three employees other than Mr. Mustard. Two of these employees only handle real estate and physical facility matters. The remaining employee is a financial person who reported to Mr. Mott. Canopy now no longer has its legal counsel and paralegal, its Chief Financial Officer, its Controller, its administrative assistants, or its technology or its business development employees. Accordingly, Canopy does

not have the capacity to provide the administrative services and support that it previously provided and, upon which, Canopy and the portfolio companies heavily rely, including tax, financial, legal, maintenance of corporate documents and records, technological support, and/or human resources.

40. Most of the top management of Canopy's portfolio companies have talked to me since December 17th, and have expressed grave concern about my removal, as well as the removals of Darcy Mott and Brent Christensen as officers of Canopy, and also about Mr. Mustard's current management of Canopy. Many have told me privately that they fear retaliation from Canopy's current management and Mr. Mustard. They have informed me that they lack confidence in Mr. Mustard's ability to manage Canopy or to provide the necessary support to the portfolio companies. They have informed me that Mr. Mustard has been slow to respond to their requests, that he has been unable or unwilling to provide them with the leadership they need, and that he has little understanding of technology issues. I have also been informed that portfolio company employees are looking for other jobs, and that some have already quit as a result of Mr. Mustard's management and the uncertainty regarding Canopy.

41. Prior to the December 17th meeting, I was very involved in a number of portfolio company deals that are confidential and have the capacity to generate millions of dollars of revenue for Canopy and the portfolio companies. I have no confidence that Mr. Mustard will be able to follow through on these deals.

42. I am informed that Canopy's current management has removed me, Mr. Mott and/or Mr. Christensen from at least one portfolio company board of directors, PointeCast (formerly Learning Optics), and that it is in the process of attempting to remove us from the boards of all the remaining portfolio companies.


43. In late 2003, Ms. Kreidcl called me and told me that I needed to run Canopy in the status quo because her father had Alzheimer disease.

44. On December 28, 2004, Andy Noorda, a son of Mr. and Mrs. Noorda informed me that his parents "were like children."

45. I believe that prior to the December 17th meeting, Mr. Noorda had become unable to serve as a director of Canopy by reason of mental incapacity and incompetency. The actions that were taken at the December 17th meeting as well as the subsequent actions by Canopy's new management, are directly contrary to everything Mr. Noorda taught me and what he repeatedly told me he wanted to have happen for Canopy. Based on my long and close association with Mr. Noorda, these actions do not represent the mind and will of Mr. Noorda as expressed to me repeatedly over the past ten years.


RALPH J. YARRO, III

SUBSCRIBED AND SWORN TO before me this 28th day of January, 2005.


Notary Public
Residing in Salt Lake City, Utah

My Commission Expires:

8/30/08

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