

JUL 12 2014

JOHN LOZANO

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Attorneys for Defendants & Cross Complainant

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF MENDOCINO, UKIAH BRANCH

8 \* \* \* \* \*

9 PAUL E. DOLAN, III, TRUSTEE OF THE  
10 DOLAN 2003 FAMILY TRUST,

11 Plaintiff,

12 vs.

13 MENDOCINO WINE GROUP, LLC;  
14 THOMAS A. THORNHILL, III; TIMOTHY  
15 L. THORNHILL; THOMAS A.  
16 THORNHILL, JR.; MELISSA THORNHILL;  
and Does 1 through 20, inclusive,

17 Defendants.

Case No.: SCUK CVG 12-0059846-000

UNLIMITED

UNVERIFIED FIRST AMENDED CROSS  
COMPLAINT FOR DECLARATORY  
RELIEF; BREACH OF FIDUCIARY DUTY  
BREACH OF DUTY OF LOYALTY;  
FRAUD; NEGLIGENT MISREPRESENTA-  
TION; INTENTIONAL INTERFERENCE  
WITH PROSPECTIVE ECONOMIC  
ADVANTAGE; INTERFERENCE WITH  
CONTRACTUAL RELATIONSHIPS;  
MISAPPROPRIATION; UNJUST  
ENRICHMENT; CONSTRUCTIVE TRUST  
AND, FOR PUNITIVE DAMAGES

19 MENDOCINO WINE GROUP, LLC,

20 Cross-Complainant,

21 v.

22 PAUL E. DOLAN III, TRUSTEE OF THE  
23 DOLAN 2003 FAMILY TRUST; PAUL E.  
24 DOLAN III, INDIVIDUALLY; AND ROES 21-  
30, INCLUSIVE,

25 Cross-Defendants.

UNVERIFIED FIRST AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF; BREACH OF FIDUCIARY DUTY; BREACH OF DUTY OF LOYALTY; FRAUD; NEGLIGENT MISREPRESENTATION; INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS; MISAPPROPRIATION; UNJUST ENRICHMENT; CONSTRUCTIVE TRUST; AND, FOR PUNITIVE DAMAGES

1 CROSS-COMPLAINANT Mendocino Wine Group, LLC, (hereinafter "MWG") hereby  
2 alleges as follows:

3 1. MWG is, and at all times mentioned herein was, a limited liability company  
4 organized and existing under the laws of the State of California, with its principal place of  
5 business in Ukiah, Mendocino County, California.

6 2. MWG is engaged in the winery and vineyard business.

7 3. MWG is informed and believes and thereon alleges that, at all times herein  
8 mentioned cross-defendant Paul E. Dolan, III was the Trustor and Trustee of the Dolan 2003  
9 Family Trust and the Natural Person Designee (hereinafter collectively "DOLAN"), and in  
10 doing the acts alleged herein acted in an individual capacity or as the Trustee of the Dolan 2003  
11 Family Trust.

12 4. Thornhill Management Corporation, a California corporation (hereinafter  
13 "TMC"), is a corporation organized and existing under the laws of the State of California and  
14 does business in Ukiah, Mendocino County, California.

15 5. MWG is unaware of the true names and capacities of those cross-defendants  
16 named and sued herein as Roes 21 through 30, inclusive, and therefore sue these cross-  
17 defendants by such fictitious names. MWG will amend this complaint to allege their true names  
18 and capacities when the same have been ascertained. MWG is informed and believes, and  
19 thereon alleges, that each fictitiously named cross-defendant was negligently, intentionally, or in  
20 some other manner responsible for the events and happenings referred to herein and the damages  
21 proximately caused thereby, as herein alleged. Each reference in this complaint to "cross-  
22 defendant," "cross-defendants" or to a specifically named cross-defendant, refers also to all  
23 cross-defendants sued under such fictitious names.

24 6. MWG is informed and believes and thereon alleges that, at all times herein  
25 mentioned, DOLAN, as well as all other cross-defendants, persons, or entities named, identified

26

1 or referenced herein, and each of them: were the agents, employees and officers of each other  
2 and of each cross-defendant; in doing the things herein alleged, acted within the scope, course  
3 and purpose of such agency (ostensible, explicit, implicit or direct) and/or employment and with  
4 the permission and consent of each cross-defendant; and, authorized or ratified the acts or  
5 omissions complained of herein.

6 7. MWG was formed on March 29, 2004 and began operations on April 1, 2004,  
7 pursuant to an "Operating Agreement," attached hereto as "Exhibit A." Pursuant to said  
8 Operating Agreement, "...the business, property and affairs of [MWG] shall be managed  
9 exclusively by one or more managers (each a 'Manager') who may be Members. The signature  
10 of only one Manager shall be required to bind the company in any transaction. As of the date of  
11 this Agreement, the Manager shall be Thornhill Management Corporation...." (Exhibit A, ¶ 4.1)

12 8. Pursuant to the Operating Agreement (Exhibit A) the parties agreed in part as  
13 follows:

- 14 a. "Unless otherwise defined herein, capitalized terms shall have the meanings  
15 set forth in Section 11.1 hereof. The Index of Definitions, attached and made a  
16 part hereof, sets forth an index of the defined terms contained herein."  
17 (Exhibit A, ¶ 1.1)
- 18 b. "'Act' shall mean the Beverly-Killea Limited Liability Company Act, codified  
19 in the California Corporations Code, Section 17000 et seq., as the same may  
20 be amended from time to time." (Exhibit A, ¶ 11.1.a.)
- 21 c. "[MWG] shall not dissolve upon the death, Bankruptcy, retirement,  
22 resignation, expulsion or dissolution of any Member; by executing this  
23 Agreement, the Members agree that the business of the Company shall  
24 continue in any of such events." (Exhibit A, ¶ 1.3)

1           9.       On or about April 1, 2004, MWG and TMC entered into a "Management  
2 Agreement," attached as "Exhibit B." Pursuant to said Management Agreement, MWG engaged  
3 and retained TMC to serve as MWG's manager and to provide administrative, financial, and  
4 management services to the Company. (Exhibit B, ¶ 2)

5           10.      On or about April 26, 2004 TMC and DOLAN entered into a written agreement  
6 hereinafter referred to as "Employment Agreement", attached as Exhibit C." Pursuant to  
7 paragraph 1 of the Employment Agreement (Exhibit C), DOLAN was designated to "...serve as  
8 the president of MWG, "with such duties, authority and responsibilities as are normally associated  
9 with and appropriate for such positions." (Exhibit C, ¶ 1)

10          11.      Pursuant to the Employment Agreement (Exhibit C), DOLAN was an at-will  
11 employee and TMC could terminate his employment at any time (Exhibit C, ¶2).

12          12.      Pursuant to the Operating Agreement, DOLAN was an Employee Member of  
13 MWG. (Exhibit A, ¶ 8.7.)

14          13.      On or about December 17, 2010, the Operating Agreement (Exhibit A) was  
15 amended by the "Amendment to Operating Agreement," attached hereto as "Exhibit D."

16          14.      Cross complainants are informed and believe and thereon allege that, during his  
17 tenure as MWG's president, among other things (including, but not limited to, matters alleged  
18 herein), DOLAN competed with MWG, usurped and diverted business opportunities, worked  
19 and invested with, for, and on behalf of other persons or entities, including other wineries,  
20 vineyards, and managers of the same, interfered with MWG's contractual and prospective  
21 economic interests, and expended time and resources owing or belonging to MWG for his own  
22 benefit and/or that of third parties, which cross complainants discovered within one year of the  
23 date this action was filed.

24          15.      On January 20, 2012, MWG terminated DOLAN's employment for cause.  
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- 1 b. Whether, and to what extent, the exclusion from fiduciary obligations  
2 provided in the Operating Agreement ¶ 3.2 applies to any or all said  
3 capacities;
- 4 c. DOLAN'S liability as a result of, *inter alia*, breaching his fiduciary duties and  
5 duties of loyalty to MWG;
- 6 d. Whether DOLAN'S termination was "because of (i) material failure to  
7 perform duties to the Company; (ii) the material violation of the written  
8 policies of the Company; or (iii) the commission of any fraudulent, dishonest  
9 or illegal act." (Operating Agreement, Exhibit A, ¶ 8.7.a.);
- 10 e. The amount to which DOLAN is entitled as an "Employee Member" of MWG  
11 for the Fair Market Value for his Class A Units given termination of his  
12 employment by TMC (Operating Agreement, Exhibit A, ¶ 8.7.a. or b.);
- 13 f. Whether TMC, as MWG's named Manager, determined or caused to be  
14 determined the Fair Market Value of DOLAN's Class A Units in accordance  
15 with the Operating Agreement (Exhibit A) within eighteen (18) calendar  
16 months preceding the termination of DOLAN's employment with MWG;
- 17 g. If TMC, as Manager of MWG, did not determine or cause to be determined  
18 the Fair Market Value of DOLAN's Class A Units in accordance with the  
19 Operating Agreement (Exhibit A) within eighteen (18) calendar months  
20 preceding the termination of DOLAN's employment with MWG and DOLAN  
21 elects to have the Fair Market Value determined in accordance with 8.8.a and  
22 8.8.b of the Operating Agreement (Operating Agreement, Exhibit A, ¶ 8.8),  
23 whether:

- 24 (1) The Arbitrator's authority is limited by the terms of the Operating  
25 Agreement to determining "the cash sales price that would be obtained in

1 an arm's length transaction between an informed and willing seller under  
2 no compulsion to sell and an informed and willing purchaser of all of the  
3 assets of the Company," which is defined as the "Enterprise Value"  
4 (Operating Agreement, Exhibit A, ¶ 8.8.a.); and, then,

5 (2) "The Fair Market Value of a Class A Unit [is] an amount equal to  
6 (a) **the lesser of:** (i) the **Enterprise Value** as defined in the Operating  
7 Agreement, Exhibit A, ¶ 8.8.a.; **or**, the total of all amounts which have not  
8 yet been distributed to Class A Members under Sections 7.1.a(ii), 7.1.a(iv)  
9 and 7.1.b(iii) **divided by** (b) the total number of outstanding Class [A]  
10 Units on the date of the... termination of Employment." (Operating  
11 Agreement, Exhibit A, ¶ 8.8.b., emphasis added).

12 25. MWG desires a judicial determination of its rights and duties, and a declaration  
13 that:

- 14 a. The exclusion from fiduciary obligations provided in the Operating  
15 Agreement ¶ 3.2, if any, does not apply to Employee Members, managers,  
16 officers of MWG or as an employee or officer of TMC;
- 17 b. DOLAN had fiduciary duties and/or duties of loyalty to MWG;
- 18 c. DOLAN breached his fiduciary duties and/or duties of loyalty to MWG;
- 19 d. As a result of DOLAN'S breaches of fiduciary duty and/or duty of loyalty to  
20 MWG, DOLAN is liable for damages and/or other relief to MWG.
- 21 e. DOLAN's employment by TMC as President of Mendocino Wine Group and  
22 as an Employee Member was terminated for "Cause" as defined in the  
23 Operating Agreement (Operating Agreement, Exhibit A, ¶ 8.7.a.);
- 24
- 25



- 1 f. The purchase price for DOLAN’S Class A Units shall be 85% of their Fair  
2 Market Value given his employment with MWG was terminated for cause  
3 (Operating Agreement, Exhibit A, ¶ 8.7);
- 4 g. MWG is entitled to redeem DOLAN’S Class A Units as an “Employee  
5 Member” of MWG “at the price and on the terms set forth in [ ] Section 8.7”  
6 of the Operating Agreement (Operating Agreement, Exhibit A, ¶ 8.7);
- 7 h. TMC determined or caused to be determined the Fair Market Value of  
8 DOLAN’s Class A Units in accordance with the Operating Agreement  
9 (Exhibit A) within eighteen (18) calendar months preceding the termination of  
10 DOLAN’s employment with MWG.
- 11 i. In the event TMC determined or caused to be determined the Fair Market  
12 Value of DOLAN’s Class A Units in accordance with the Operating  
13 Agreement (Exhibit A) within eighteen (18) calendar months preceding the  
14 termination of DOLAN’s employment with MWG, then the redemption price  
15 of DOLAN’s MWG Units shall be set according to said determination(s);
- 16 j. In the event TMC as the named Manager of MWG did not determine or  
17 caused to be determined the Fair Market Value of DOLAN’s Class A Units in  
18 accordance with the Operating Agreement (Exhibit A) within eighteen (18)  
19 calendar months preceding the termination of DOLAN’s employment with  
20 MWG, then DOLAN has the right to “elect (1) to accept the most recent Fair  
21 Market Value as so determined by the Manager, or (2) to have the Fair Market  
22 Value determined ...in accordance with [Sections 8.8.a. and 8.8.b. of the  
23 Operating Agreement.” (Operating Agreement, Exhibit A, ¶ 8.8)
- 24 k. In the event TMC as the named Manager of MWG did not determine or  
25 caused to be determined the Fair Market Value of DOLAN’s Class A Units in  
26

1 accordance with the Operating Agreement (Exhibit A) within eighteen (18)  
2 calendar months preceding the termination of DOLAN's employment with  
3 MWG, and if DOLAN elects to have the Fair Market Value determined in  
4 accordance with the Sections 8.8.a and 8.8.b of the Operating Agreement,  
5 then:

6 (1) "First, the arbitrator shall determine (1) the cash sales price that would be  
7 obtained in an arm's length transaction between an informed and willing  
8 seller under no compulsion to sell and an informed and willing purchaser  
9 of all of the assets of the Company, less (2) the long term debt of the  
10 Company to the extent that the Members are unable to agree on the same  
11 (the 'Enterprise Value')" (Operating Agreement, Exhibit A, ¶ 8.8.a.),  
12 emphasis added); and,

13 (2) Once the Arbitrator determines the "Enterprise Value," the Operating  
14 Agreement mandates that "The Fair Market Value of a Class A Unit will  
15 be an amount equal to (a) the lesser of (i) the Enterprise Value or (ii) the  
16 total of all amounts which have not yet been distributed to Class A  
17 Members under Sections 7.1.a(ii), 7.1.a(iv) and 7.1.b(iii) divided by (b)  
18 the total number of outstanding Class [A] Units on the date  
19 of...termination of Employment." (Operating Agreement, Exhibit A, ¶  
20 8.8.b., emphasis added)

21 26. MWG is informed and believes and thereon alleges that DOLAN contests the  
22 same.

23 27. A dispute has arisen and an actual controversy exists between MWG and DOLAN  
24 concerning their respective rights, duties and obligations under the Operating Agreement  
25 (Exhibit A).



- 1 d. Acquired through improper means, confidential and proprietary information  
2 or trade secrets belonging to MWG and used or attempted to use said  
3 information for his financial advantage or to the advantage of third parties and  
4 competitors;
- 5 e. Disclosed to third parties, financial institutions, and competitors confidential  
6 and proprietary information or trade secrets belonging to MWG;
- 7 f. Induced MWG employees to provide to him confidential and proprietary  
8 information or trade secrets belonging to MWG, which DOLAN then  
9 disclosed to third parties, financial institutions, and MWG competitors;
- 10 g. Used illegally obtained proprietary and confidential information for his  
11 personal benefit and the benefit of third parties and other businesses and  
12 competitors in which he had both a managerial and financial interest;
- 13 h. Solicited new producers, on and off premise customers, or banking institutions  
14 for his personal benefit and the benefit of third parties and other businesses  
15 and competitors in which he had both a managerial and financial interest; and,
- 16 i. Violated MWG's written policies by, *inter alia*, actively pursuing business  
17 interests unrelated to MWG's business and those in direct competition with  
18 MWG and diverted business opportunities from MWG.

19 34. MWG is informed and believes and thereon alleges that DOLAN failed to  
20 disclose, concealed, and misrepresented the truth regarding the foregoing as well as his true  
21 relationship with MWG competitors with whom he had both a managerial and financial interest.

22 35. DOLAN expended time and resources owing or belonging to MWG, and for  
23 which MWG paid, for his own benefit and/or that of third parties.



1 himself or others financially, and with the intent of causing, or recklessly disregarding the  
2 probability of causing, injury to cross complainant, thereby entitling MWG to exemplary and  
3 punitive damages.

4  
5 **FOURTH CAUSE OF ACTION**

6 (Fraud – Intentional Misrepresentation, Concealment, Deceit)

7 45. MWG realleges and incorporates herein by reference, paragraphs 1-44.

8 46. MWG is informed and believes and thereon alleges that DOLAN made the false  
9 representations, concealed his conduct, actions, and the truth, and failed to disclose to MWG the  
10 true nature and extent of his conduct, actions, and involvement with third parties and competitors  
11 as alleged herein.

12 47. MWG is informed and believes and thereon alleges that DOLAN did so with  
13 knowledge that said representations were false and that said conduct, actions, and omissions  
14 were wrongful, or acted with reckless disregard for the same.

15 48. MWG is informed and believes and thereon alleges that DOLAN did so with the  
16 intent to induce MWG's reliance thereon and/or with the intent to deceive MWG.

17 49. MWG justifiably relied on, and reasonably believed, DOLAN's representations,  
18 and reasonably relied on DOLAN's conduct, actions, and omissions, which it only later learned  
19 were wrongful and fraudulent.

20 50. As a direct and proximate result of DOLAN's conduct as alleged herein, MWG  
21 was damaged in an amount according to proof.

22 51. MWG is informed and believes and thereon alleges that, in committing the acts  
23 and undertaking the conduct alleged herein, DOLAN acted oppressively, maliciously, and/or  
24 fraudulently, with a conscious disregard of cross complainant's rights and with the intent of  
25 benefiting himself or others financially, and with the intent of causing, or recklessly disregarding

1 the probability of causing, injury to cross complainant, thereby entitling cross complainant to  
2 exemplary and punitive damages.

3  
4 FIFTH CAUSE OF ACTION  
(Negligent Misrepresentation)

5 52. MWG realleges and incorporates herein by reference, paragraphs 1-51.

6 53. DOLAN carelessly and negligently made the representations, concealed his  
7 conduct, actions, and the truth, and/or failed to disclose to MWG the true nature and extent of his  
8 conduct, actions, and involvement with third parties and competitors as alleged herein.

9 54. DOLAN had no reasonable ground for believing said representations true and no  
10 reasonable basis for believing his conduct and actions, as alleged herein, was other than  
11 wrongful.

12 55. MWG reasonably and justifiably relied on DOLAN's representations, conduct,  
13 actions, and omissions, which it only later learned were wrongful.

14 56. As a direct and proximate result of DOLAN's conduct as alleged herein, MWG  
15 was damaged in an amount according to proof.

16 SIXTH CAUSE OF ACTION  
17 (Intentional Interference with a Prospective Economic Advantage)

18 57. MWG realleges and incorporates herein by reference, paragraphs 1-56.

19 58. MWG is informed and believes and thereon alleges that MWG has, and at all  
20 times herein mentioned had, relationships in the wine industry, including with producers,  
21 suppliers, and financial institutions, and that it is reasonably probable that said relationships  
22 would have resulted in economic benefits to MWG.

23 59. MWG is informed and believes and thereon alleges that DOLAN was aware of  
24 said relationships.







1 incidental and consequential compensatory damages, and DOLAN was unjustly enriched, in an  
2 amount according to proof.

3 75. MWG is informed and believes and thereon alleges that, in committing the acts  
4 and undertaking the conduct alleged herein, DOLAN acted oppressively, maliciously, and/or  
5 fraudulently, with a conscious disregard of MWG's rights and with the intent of benefiting  
6 himself or others financially, and with the intent of causing, or recklessly disregarding the  
7 probability of causing, injury to cross complainant, thereby entitling MWG to exemplary and  
8 punitive damages.

9  
10 NINTH CAUSE OF ACTION  
(Unjust Enrichment)

11 76. MWG realleges and incorporates herein by reference, paragraphs 1-75.

12 77. MWG is informed and believes and thereon alleges that, due to his wrongful conduct  
13 as alleged herein, DOLAN received a benefit in the form of money and/or interests in assets,  
14 property, and third party businesses, the retention of which would be unjust and at MWG's expense.

15  
16 TENTH CAUSE OF ACTION  
(Constructive Trust)

17 78. MWG realleges and incorporates herein by reference, paragraphs 1-77.

18 79. As a result of DOLAN's conduct and actions in usurping and diverting MWG  
19 business opportunities, including his failure to disclose various business opportunities and the  
20 availability of certain parcels of real properties, wineries, and wine brands, through which  
21 DOLAN and third parties in which he holds an interest or is affiliated benefitted, is an  
22 involuntary trustee holding resulting interests and assets in trust for MWG, to prevent unjust  
23 enrichment by DOLAN pursuant to *California Civil Code* § 2223 and § 2224.

24 80. As a direct and proximate result of DOLAN'S wrongful conduct and actions as  
25 alleged herein, DOLAN has no legal or equitable right, claim, or interest therein, but instead is

1 an involuntary trustee holding the referenced interests and assets in constructive trust for MWG,  
2 to prevent unjust enrichment by DOLAN pursuant to *California Civil Code* § 2223 and § 2224.

3 81. MWG first discovered DOLAN's wrongful conduct as alleged herein within  
4 approximately one year of the date this action was filed.

5 WHEREFORE, MWG prays for Judgment as follows:

- 6 1. A declaration that:
- 7 a. The exclusion from fiduciary obligations provided in the Operating
  - 8 Agreement ¶ 3.2, if any, does not apply to Employee Members, managers, or
  - 9 officers of MWG or as an employee or officer of TMC;
  - 10 b. DOLAN had fiduciary duties and/or duties of loyalty to MWG;
  - 11 c. DOLAN breached his fiduciary duties and/or duties of loyalty to MWG;
  - 12 d. As a result of DOLAN'S breaches of fiduciary duty and/or duty of loyalty to
  - 13 MWG, DOLAN is liable for damages and/or other relief to MWG.
  - 14 e. DOLAN's employment with MWG was terminated for "Cause" as defined in
  - 15 the Operating Agreement (Operating Agreement, Exhibit A, ¶ 8.7.a.);
  - 16 f. The purchase price for DOLAN'S Class A Units shall be 85% of their Fair
  - 17 Market Value given his employment with MWG was terminated for cause
  - 18 (Operating Agreement, Exhibit A, ¶ 8.7)
  - 19 g. MWG is entitled to redeem DOLAN'S Class A Units as an "Employee
  - 20 Member" of MWG "at the price and on the terms set forth in [ ] Section 8.7"
  - 21 of the Operating Agreement (Operating Agreement, Exhibit A, ¶ 8.7);
  - 22 h. TMC determined or caused to be determined the Fair Market Value of
  - 23 DOLAN's Class A Units in accordance with the Operating Agreement
  - 24 (Exhibit A) within eighteen (18) calendar months preceding the termination of
  - 25 DOLAN's employment with MWG

- 1 i. In the event TMC determined or caused to be determined the Fair Market  
2 Value of DOLAN's Class A Units in accordance with the Operating  
3 Agreement (Exhibit A) within eighteen (18) calendar months preceding the  
4 termination of DOLAN'S employment with MWG, then the redemption price  
5 of DOLAN's MWG Units shall be set according to said determination(s);
- 6 j. In the event TMC as the named Manager of MWG did not determine or  
7 caused to be determined the Fair Market Value of DOLAN's Class A Units in  
8 accordance with the Operating Agreement (Exhibit A) within eighteen (18)  
9 calendar months preceding the termination of DOLAN's employment with  
10 MWG, then DOLAN has the right to "elect (1) to accept the most recent Fair  
11 Market Value as so determined by the Manager, or (2) to have the Fair Market  
12 Value determined ...in accordance with [Sections 8.8.a. and 8.8.b. of the  
13 Operating Agreement." (Operating Agreement, Exhibit A, ¶ 8.8)
- 14 k. In the event TMC as the named Manager of MWG did not determine or  
15 caused to be determined the Fair Market Value of DOLAN's Class A Units in  
16 accordance with the Operating Agreement (Exhibit A) within eighteen (18)  
17 calendar months preceding the termination of DOLAN's employment with  
18 MWG, and if DOLAN elects to have the Fair Market Value determined in  
19 accordance with Sections 8.8.a and 8.8.b, then:
- 20 (1) "First, the arbitrator shall determine (1) the cash sales price that would be  
21 obtained in an arm's length transaction between an informed and willing  
22 seller under no compulsion to sell and an informed and willing purchaser  
23 of all of the assets of the Company, less (2) the long term debt of the  
24 Company to the extent that the Members are unable to agree on the same  
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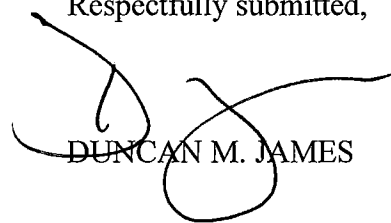
(the ‘Enterprise Value’)” (Operating Agreement, Exhibit A, ¶ 8.8.a.),  
emphasis added.); and,

(2) Once the Arbitrator determines the “Enterprise Value,” the Operating Agreement mandates that “The Fair Market Value of a Class A Unit will be an amount equal to (a) **the lesser of** (i) the Enterprise Value **or** (ii) the total of all amounts which have not yet been distributed to Class A Members under Sections 7.1.a(ii), 7.1.a(iv) and 7.1.b(iii) **divided by** (b) the total number of outstanding Class [A] Units on the date of... termination of Employment.” (Operating Agreement, Exhibit A, ¶ 8.8.b., emphasis added.)

- 2. Damages in an amount according to proof;
- 3. The imposition of a constructive trust to prevent unjust enrichment by DOLAN;
- 4. An amount(s) by which DOLAN has been unjustly enriched;
- 5. Exemplary or punitive damages;
- 6. Attorney fees, costs, and expenses based on the tort-of-another doctrine;
- 7. Costs of suit and attorney fees; and,
- 8. For such other and further relief as the Court may deem just and proper.

Dated: June 12, 2014

Respectfully submitted,



DUNCAN M. JAMES

PROOF OF SERVICE

I, Duncan M. James, declare that I am a citizen of the United States and a resident of the County of Mendocino. I am over the age of eighteen years and not a party to the within above entitled action; my business address is 445 N. State Street, Ukiah, CA 95482.

On June 12, 2014, I served the within:

UNVERIFIED FIRST AMENDED CROSS COMPLAINT FOR DECLARATORY RELIEF; BREACH OF FIDUCIARY DUTY; BREACH OF DUTY OF LOYALTY; FRAUD; NEGLIGENT MISREPRESENTATION; INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS; MISAPPROPRIATION; UNJUST ENRICHMENT; CONSTRUCTIVE TRUST; AND, FOR PUNITIVE DAMAGES

on the parties in this action as follows:

Gregory Spaulding, Esq.  
Spaulding, McCullough & Tansil LLP  
90 South E Street, Ste. 200  
P. O. Box 1867  
Santa Rosa, CA 95404  
[spaulding@smlaw.com](mailto:spaulding@smlaw.com)

**By Personal Delivery.** I caused each such envelope to be personally delivered to the above named.

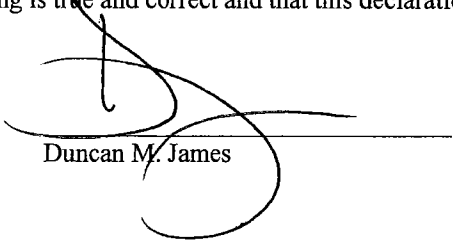
**By Mail.** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Ukiah, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one date after date of deposit for mailing in affidavit.

**By Overnight Delivery** - I enclosed the documents in an envelope or package provided by an overnight deliver carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

**By Electronic Service** - Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above.

**By Facsimile.** I caused each such document to be transmitted by facsimile to the number listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 12, 2014.

  
Duncan M. James