1 2 3 4 5	LAW OFFICES OF DUNCAN M. JAMES DUNCAN M. JAMES, CA State Bar No. 40505 DONALD J. McMULLEN, CA State Bar No. 2 P.O. Box 1381 Ukiah, CA 95482 Telephone: (707) 468-9271 Attorneys for Defendants & Cross Complainant	20840
6	SUPERIOR COURT OF TH	IE STATE OF CALIFORNIA
7	COUNTY OF MENDO	CINO, UKIAH BRANCH
8	* * * *	* * *
9 10	PAUL E. DOLAN, III, TRUSTEE OF THE DOLAN 2003 FAMILY TRUST,	Case No.: SCUK CVG 12-0059846-000
10		UNLIMITED
12	Plaintiff,	UNVERIFIED <u>FIRST</u> AMENDED CROSS
12	VS.	COMPLAINT FOR DECLARATORY RELIEF; BREACH OF FIDUCIARY DUTY
14	MENDOCINO WINE GROUP, LLC; THOMAS A. THORNHILL, III; TIMOTHY	BREACH OF DUTY OF LOYALTY; FRAUD; NEGLIGENT MISREPRESENTA-
15	L. THORNHILL; THOMAS A. THORNHILL, JR.; MELISSA THORNHILL;	TION; INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC
16	and Does 1 through 20, inclusive,	ADVANTAGE; INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS;
17	Defendants.	MISAPPROPRIATION; UNJUST ENRICHMENT; CONSTRUCTIVE TRUST
18		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. DOLAN III, INDIVIDUALLY; AND ROES 21-	
24	30, INCLUSIVE,	
25	Cross-Defendants.	
26	-1- UNVERIFIED <u>FIRST</u> 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	

JOHN LOZANO

CROSS-COMPLAINANT Mendocino Wine Group, LLC, (hereinafter "MWG") hereby 1 2 alleges as follows: 1. MWG is, and at all times mentioned herein was, a limited liability company 3 organized and existing under the laws of the State of California, with its principal place of 4 business in Ukiah, Mendocino County, California. 5 2. MWG is engaged in the winery and vineyard business. 6 3. 7 MWG is informed and believes and thereon alleges that, at all times herein mentioned cross-defendant Paul E. Dolan, III was the Trustor and Trustee of the Dolan 2003 8 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 Family Trust. 11 4. Thornhill Management Corporation, a California corporation (hereinafter 12 "TMC"), is a corporation organized and existing under the laws of the State of California and 13 14 does business in Ukiah, Mendocino County, California. 5. MWG is unaware of the true names and capacities of those cross-defendants 15 16 named and sued herein as Roes 21 through 30, inclusive, and therefore sue these crossdefendants by such fictitious names. MWG will amend this complaint to allege their true names 17 and capacities when the same have been ascertained. MWG is informed and believes, and 18 thereon alleges, that each fictitiously named cross-defendant was negligently, intentionally, or in 19 some other manner responsible for the events and happenings referred to herein and the damages 20 proximately caused thereby, as herein alleged. Each reference in this complaint to "cross-21 defendant," "cross-defendants" or to a specifically named cross-defendant, refers also to all 22 cross-defendants sued under such fictitious names. 23 24 6. MWG is informed and believes and thereon alleges that, at all times herein mentioned, DOLAN, as well as all other cross-defendants, persons, or entities named, identified 25 26 -2-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

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

MWG was formed on March 29, 2004 and began operations on April 1, 2004, 7. 6 pursuant to an "Operating Agreement," attached hereto as "Exhibit A." Pursuant to said 7 Operating Agreement, "... the business, property and affairs of [MWG] shall be managed 8 exclusively by one or more managers (each a 'Manager') who may be Members. The signature 9 of only one Manager shall be required to bind the company in any transaction. As of the date of 10 this Agreement, the Manager shall be Thornhill Management Corporation...." (Exhibit A, ¶ 4.1) 11 Pursuant to the Operating Agreement (Exhibit A) the parties agreed in part as 8. 12 follows: 13 "Unless otherwise defined herein, capitalized terms shall have the meanings 14 a. set forth in Section 11.1 hereof. The Index of Definitions, attached and made a 15 part hereof, sets forth an index of the defined terms contained herein." 16 (Exhibit A, $\P 1.1$) 17 b. "Act' shall mean the Beverly-Killea Limited Liability Company Act, codified 18 in the California Corporations Code, Section 17000 et seq., as the same may 19 be amended from time to time." (Exhibit A, ¶ 11.1.a.) 20 "[MWG] shall not dissolve upon the death, Bankruptcy, retirement, 21 c. resignation, expulsion or dissolution of any Member; by executing this 22 Agreement, the Members agree that the business of the Company shall 23 continue in any of such events." (Exhibit A, $\P 1.3$) 24 25 26 -3-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	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, $\P 1$)	
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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26	-4- UNVERIFIED <u>FIRST</u> 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	

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1	16. TMC performed or caused to be performed several Fair Market Valuation	
2	valuations in accordance with Sections 8.7 and 8.8 of the Operating Agreement (Exhibit A),	
3	including two within eighteen (18) months preceding Dolan's termination.	
4	PIDOT CALIGE OF ACTION	
5	FIRST CAUSE OF ACTION (Declaratory Relief)	
6	17. MWG realleges and incorporates herein by reference, paragraphs 1-16.	
7	18. Pursuant to the terms of the Operating Agreement (Exhibit A), upon termination	
8	of an Employee Member's employment with MWG, MWG shall redeem the Employee	
9	Member's MWG Units at a price and on the terms as set forth in Section 8.7 of the agreement.	
10	19. MWG contends DOLAN breached his fiduciary duty and the duty of loyalty as a	
11	member, Employee Member, manager, or officer of MWG, or an employee or officer of TMC,	
12	and that his employment was terminated for "Cause."	
13	20. The Operating Agreement states "if [an Employee Member's] employment is	
14	terminated for Cause, the purchase price for such Employee Member's Units shall be eighty-five	
15	percent (85%) of their Fair Market ValueFor 'Cause' means termination because of (i)	
16	material failure to perform duties to the Company; (ii) the material violation of the written	
17	policies of the Company; or (iii) the commission of any fraudulent, dishonest or illegal act."	
18	(Operating Agreement, Exhibit A, ¶ 8.7.a.)	
19	21. The Operating Agreement further provides that, "[i]f such employment is	
20	terminated by [TMC] other than for Cause the purchase price for such Employee Member's_Units	
21	shall be their Fair Market Value" (Operating Agreement, Exhibit A, ¶ 8.7.b.)	
22	22. "The 'Fair Market Value' of a Class A Unit or a Class B Unit, as the case-may	
23	be, means the fair market value of such Unit as determined in good faith at least annually by the	
24	Manager." (Operating Agreement, Exhibit A, ¶ 8.8)	
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26		
	UNVERIFIED <u>FIRST</u> 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	23. "To the extent the Fair Market Value has not been determined within the eighteen
2	(18) calendar months preceding the date oftermination of employment, then the Terminated
3	Member or Employee Member may elect either (1) to accept the most recent-Fair Market Value
4	as so determined by the Manager, or (2) to have the Fair Market Value determinedin
5	accordance with [Sections 8.8.a and 8.8.b. of the Operating Agreement]:" (Ibid.):
6	a. And, if arbitration is selected, "[f]irst, the arbitrator shall determine (1) the cash
7	sales price that would be obtained in an arm's length transaction between an informed and
8	willing seller under no compulsion to sell and an informed and willing purchaser of all of the
9	assets of the-Company, <u>less</u> (2) the long term debt of the Company to the extent that the
10	Members are unable to agree on the same (the 'Enterprise Value')." (Operating Agreement,
11	Exhibit A, ¶ 8.8.a., emphasis added)
12	b. Once the Arbitrator determines the "Enterprise Value" the Operating
13	Agreement specifies that "The Fair Market Value of a Class A Unit will be an amount equal to
14	(a) <u>the lesser of</u> (i) the Enterprise Value <u>or</u> (ii) the total of all amounts which have not yet been
15	distributed to Class A Members under Sections 7.1.a(ii),7.1.a(iv) and 7.1.b(iii) divided by (b) the
16	total number of outstanding Class B [sic] Units on the date of thetermination of Employment."
17	(Operating Agreement, Exhibit A, ¶ 8.8.b., emphasis added)
18	24. An actual controversy has arisen and now exists between MWG and DOLAN
19	concerning their respective rights, duties and obligations under the Operating Agreement
20	(Exhibit A), Management Agreement (Exhibit B) and Employment Agreement (Exhibit C) as
21	follows:
22	a. DOLAN'S fiduciary duties and duties of loyalty to MWG in each of the
23	following capacities: member, Employee Member, manager, or officer of
24	MWG, or as an employee or officer of TMC;
25	
26	-6- UNVERIFIED <u>FIRST</u> 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	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	с.	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, \P 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
26	FIDUCIARY DUTY	-7- <u>RST</u> AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF; BREACH OF Y; BREACH OF DUTY OF LOYALTY; FRAUD; NEGLIGENT MISREPRESENTATION; NTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; INTERFERENCE TRACTUAL RELATIONSHIPS; MISAPPROPRIATION; UNJUST ENRICHMENT; CONSTRUCTIVE TRUST; AND, FOR PUNITIVE DAMAGES

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 thetermination 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.);
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26	-8-
	UNVERIFIED <u>FIRST</u> AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF; BREACH OF FIDUCIARY DUTY; BREACH OF DUTY OF LOYALTY; FRAUD; NEGLIGENT MISREPRESENTATION; DITENTIONAL DITERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE: DITERFERENCE
	INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS; MISAPPROPRIATION; UNJUST ENRICHMENT; CONSTRUCTIVE TRUST; AND, FOR PUNITIVE DAMAGES
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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	-9- UNVERIFIED <u>FIRST</u> 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	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) <u>the lesser of</u> (i) the Enterprise Value <u>or</u> (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	oftermination 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).
26	-10- UNVERIFIED <u>FIRST</u> 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

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1	28.	A judicial declaration is necessary and appropriate at this time under all of the
2	circumstances	s so that MWG may determine its rights and duties under the Operating Agreement
3	(Exhibit A).	
4 5		SECOND CAUSE OF ACTION (Breach of Fiduciary Duty)
6	29.	MWG realleges and incorporates herein by reference, paragraphs 1-28.
7	30.	As a member, Employee Member, manager, and/or officer of MWG, or as an
8	employee or o	officer of TMC DOLAN owed fiduciary duties to MWG.
9	31.	MWG is informed and believes and thereon alleges that, during his tenure as
10	MWG's presi	dent, among other things, DOLAN competed with MWG, usurped and diverted
11	business oppo	ortunities, worked and invested with, for, and on behalf of other persons or entities,
12	including othe	er wineries, vineyards, and managers of the same, interfered with MWG's
13	contractual and prospective economic interests, and expended time and resources owing or	
14	belonging to 1	MWG for his own benefit and/or that of third parties.
15	32.	DOLAN disclosed confidential information or trade secrets to third parties and
<u>1</u> 6	competitors a	nd actively assisted third parties and competitors of MWG, including for his own
17	benefit, in, among other things, marketing, branding, label design, fruit procurement, contract	
18	negotiation ar	nd purchases or attempts to purchase real property.
19	33.	During his tenure as President of MWG, among other things, DOLAN also:
20		a. Attempted to, and did, acquire multiple vineyard properties, wineries, and
21		wine brands without first presenting MWG with such opportunities;
22		b. Attempted to, and did, sell wine grapes to third parties and competitors
23		without first presenting MWG with such opportunities;
24		c. Caused MWG to crush wine grapes from his personal vineyards for the
25		benefit of another winery(ies) at reduced cost;
26	FIDUCIARY	-11- ED <u>FIRST</u> AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF; BREACH OF DUTY; BREACH OF DUTY OF LOYALTY; FRAUD; NEGLIGENT MISREPRESENTATION; IAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; INTERFERENCE CONTRACTUAL RELATIONSHIPS; MISAPPROPRIATION; UNJUST ENRICHMENT; CONSTRUCTIVE TRUST; AND, FOR PUNITIVE DAMAGES

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, <i>inter alia</i> , 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.
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26	-12- UNVERIFIED <u>FIRST</u> 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	36. MWG is informed and believes and thereon alleges that as a result of DOLAN's		
2	conduct, MWG's contractual and prospective economic advantages were damaged and its		
3	competitors and other third parties gained an advantage over MWG.		
4	37. By and through the conduct and actions alleged herein, DOLAN breached his	!	
5	fiduciary duty to MWG.		
6	38. As a direct and proximate result of DOLAN's conduct and actions, MWG was		
7	damaged in an amount according to proof.		
8	39. MWG is informed and believes and thereon alleges that, in committing the acts		
9	and undertaking the conduct alleged herein, DOLAN acted oppressively, maliciously, and/or		
10	fraudulently, with a conscious disregard of MWG's rights and with the intent of benefiting		
11	himself or others financially, and with the intent of causing, or recklessly disregarding the		
12	probability of causing, injury to cross complainant, thereby entitling MWG to exemplary and		
13	punitive damages.		
14	THIRD CAUSE OF ACTION		
15	(Breach of Duty of Loyalty)		
16	40. MWG realleges and incorporates herein by reference, paragraphs 1-39.		
17	41. As a member, Employee Member, manager, or officer of MWG or as an		
18	employee or officer of TMC, DOLAN owed a duty of loyalty to MWG.		
19	42. DOLAN breached his duty of loyalty to MWG by and through the conduct and		
20	actions set forth herein.		
21	43. As a direct and proximate result of DOLAN's conduct, MWG was damaged in an		
22	amount according to proof.		
23	44. MWG is informed and believes and thereon alleges that, in committing the acts		
24	and undertaking the conduct alleged herein, DOLAN acted oppressively, maliciously, and/or		
25	fraudulently, with a conscious disregard of MWG's rights and with the intent of benefiting		
26	-13- UNVERIFIED <u>FIRST</u> 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	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 (Fraud – Intentional Misrepresentation, Concealment, Deceit)	
6	45. MWG realleges and incorporates herein by reference, paragraphs 1-44.	
7	46. MWG is informed and believes and thereon alleges that DOLAN made the false	
8	representations, concealed his conduct, actions, and the truth, and failed to disclose to MWG the	
9	true nature and extent of his conduct, actions, and involvement with third parties and competitors	
10	as alleged herein.	
11	47. MWG is informed and believes and thereon alleges that DOLAN did so with	
12	knowledge that said representations were false and that said conduct, actions, and omissions	
13	were wrongful, or acted with reckless disregard for the same.	
14	48. MWG is informed and believes and thereon alleges that DOLAN did so with the	
15	intent to induce MWG's reliance thereon and/or with the intent to deceive MWG.	
16	49. MWG justifiably relied on, and reasonably believed, DOLAN's representations,	
17	and reasonably relied on DOLAN's conduct, actions, and omissions, which it only later learned	
18	were wrongful and fraudulent.	
19	50. As a direct and proximate result of DOLAN's conduct as alleged herein, MWG	
20	was damaged in an amount according to proof.	
21	51. MWG is informed and believes and thereon alleges that, in committing the acts	
22	and undertaking the conduct alleged herein, DOLAN acted oppressively, maliciously, and/or	
23	fraudulently, with a conscious disregard of cross complainant's rights and with the intent of	
24	benefiting himself or others financially, and with the intent of causing, or recklessly disregarding	
25		
26	-14- UNVERIFIED <u>FIRST</u> 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	the probability of causing, injury to cross complainant, thereby entitling cross complainant to
2	exemplary and punitive damages.
3	FIFTH CAUSE OF ACTION
4	(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.
25	
26	-15- UNVERIFIED <u>FIRST</u> 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	60. MWG is informed and believes and thereon alleges that DOLAN'S conduct and	
2	actions as alleged herein were intended or designed to disrupt MWG's relationships with third	
3	parties and/or DOLAN had knowledge that such interference was certain or substantially certain	
4	to occur as a result of his conduct and actions as alleged herein.	
5	61. MWG is informed and believes and thereon alleges that, as a result DOLAN's	
6	wrongful conduct and actions as alleged herein, MWG's relationship with certain third parties	
7	was disrupted and it was damaged.	
8	62. MWG is informed and believes and thereon alleges that DOLAN's wrongful	
9	conduct and actions as alleged herein was a substantial factor in causing MWG's harm.	
10	63. MWG is informed and believes and thereon alleges that, in committing the acts	
11	and undertaking the conduct alleged herein, DOLAN acted oppressively, maliciously, and/or	
12	fraudulently, with a conscious disregard of MWG's rights and with the intent of benefiting	
13	himself or others financially, and with the intent of causing, or recklessly disregarding the	
14	probability of causing, injury to cross complainant, thereby entitling MWG to exemplary and	
15	punitive damages.	
16	SEVENTH CAUSE OF ACTION	
17	(Intentional Interference with a Contractual Relations)	
18	64. MWG realleges and incorporates herein by reference, paragraphs 1-63.	
19	65. During all times herein mentioned MWG maintained valid contracts with third	
20	parties of which DOLAN was aware.	
21	66. MWG is informed and believes and thereon alleges that DOLAN's conduct and	
22	actions as alleged herein were intended or designed, and did, disrupt MWG's contractual	
23	relationships with third parties.	
24	67. As a direct and proximate result of DOLAN's conduct and actions as alleged	
25	herein, MWG was damaged in an amount according to proof.	
26	-16- UNVERIFIED <u>FIRST</u> 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	68. MWG is informed and believes and thereon alleges that, in committing the acts	
2	and undertaking the conduct alleged herein, DOLAN acted oppressively, maliciously, and/or	
3	fraudulently, with a conscious disregard of MWG's rights and with the intent of benefiting	
4	himself or others financially, and with the intent of causing, or recklessly disregarding the	
5	probability of causing, injury to cross complainant, thereby entitling MWG to exemplary and	
6	punitive damages.	
7 8	EIGHTH CAUSE OF ACTION (Misappropriation)	
9	69. MWG realleges and incorporates herein by reference, paragraphs 1-68.	1
10	70. MWG is informed and believes and thereon alleges that, as president of MWG	
11	prior to January 20, 2012, DOLAN had access to highly confidential trade secrets and	
12	proprietary information belonging to MWG.	
13	71. MWG is informed and believes and thereon alleges that DOLAN acquired	
14	through improper means, confidential and proprietary information and/or trade secrets belonging	
15	to MWG, within approximately one year of the date this action was filed, used or disclosed this	
16	information to third parties for his own benefit of for the benefit of third parties and, additionally,	
17	induced MWG employees to breach their duties to MWG in an effort to conceal his conduct.	
18	72. MWG is informed and believes and thereon alleges that DOLAN used this	
19	proprietary and confidential information illegally obtained for his own benefit and for the benefit	
20	of third parties, and to solicit new producers, on and off premise customers, as well as financial	
21	arrangements beneficial to DOLAN and third party businesses.	
22	73. As a result of DOLAN's conduct and actions, MWG was damaged in amount	
23	according to proof.	
24	74. As a direct and proximate result of the aforementioned wrongful conduct of	
25	DOLAN as herein set forth, MWG has suffered, and will continue to suffer in the future, direct	
26	-17- UNVERIFIED <u>FIRST</u> 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	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	NINTH CAUSE OF ACTION	
10	(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	TENTH CAUSE OF ACTION	
16	(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	
26	-18- UNVERIFIED <u>FIRST</u> 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	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	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	
26	-19- UNVERIFIED <u>FIRST</u> 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	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
25	
26	-20- UNVERIFIED <u>FIRST</u> 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	(the 'Enterprise Value')" (Operation	ting Agreement, Exhibit A, ¶ 8.8.a.),
2	emphasis added.); and,	
3	(2) Once the Arbitrator determines the "Enterprise Value," the Operating	
4	Agreement mandates that "The Fair Market Value of a Class A Unit will	
5	be an amount equal to (a) the less	er of (i) the Enterprise Value or (ii) the
6	total of all amounts which have n	ot yet been distributed to Class A
7	Members under Sections 7.1.a(ii)	,7.1.a(iv) and 7.1.b(iii) <u>divided by</u> (b)
8	the total number of outstanding C	lass [A] Units on the date
9	oftermination of Employment.'	' (Operating Agreement, Exhibit A, ¶
10	8.8.b., emphasis added.)	
11	2. Damages in an amount according to proo	ıf;
12	3. The imposition of a constructive trust to prevent unjust enrichment by DOLAN;	
13	4. An amount(s) by which DOLAN has bee	n unjustly enriched;
14	5. Exemplary or punitive damages;	
15	6. Attorney fees, costs, and expenses based	on the tort-of-another doctrine;
16	7. Costs of suit and attorney fees; and,	
17	8. For such other and further relief as the Co	ourt may deem just and proper.
18		
19	Dated: June 12, 2014	pectfully submitted,
20		\sum
21	DU	NCAN M. JAMES
22		
23		
24		
25		
26	-21- UNVERIFIED <u>FIRST</u> AMENDED CROSS-COMPLAINT FO FIDUCIARY DUTY; BREACH OF DUTY OF LOYALTY; FRA INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECO WITH CONTRACTUAL RELATIONSHIPS; MISAPPRO CONSTRUCTIVE TRUST; AND, FOR P	AUD; NEGLIGENT MISREPRESENTATION; ONOMIC ADVANTAGE; INTERFERENCE OPRIATION; UNJUST ENRICHMENT;

1	PROOF OF SERVICE	
2	I, Duncan M. James, declare that I am a citizen of the United States and a resident of the County of	
3	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.	
4	On June 12, 2014, I served the within:	
5	UNVERIFIED FIRST AMENDED CROSS COMPLAINT FOR DECLARATORY RELIEF;	
6	BREACH OF FIDUCIARY DUTY; BREACH OF DUTY OF LOYALTY; FRAUD; NEGLIGENT MISREPRESENTA-TION; INTENTIONAL INTERFERENCE WITH	
7	PROSPECTIVE ECONOMIC ADVANTAGE; INTERFERENCE WITH CONTRACTUAL	
8	RELATIONSHIPS; MISAPPROPRIATION; UNJUST ENRICHMENT; CONSTRUCTIVE TRUST; AND, FOR PUNITIVE DAMAGES	
9	on the parties in this action as follows:	
10	Gregory Spaulding, Esq.	
11	Spaulding, McCullough & Tansil LLP	
	90 South E Street, Ste. 200 P. O. Box 1867	
12	Santa Rosa, CA 95404 spaulding@smlaw.com	
13	<u>spaulungu/simaw.com</u>	
14	By Personal Delivery. I caused each such envelope to be personally delivered to the above named.	
15	By Mail. As follows: I am "readily familiar" with the firm's practice of collection and processing	
16	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.	
17	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	
18	date or postage meter date is more than one date after date of deposit for mailing in affidavit.	
19	X 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	
20	for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.	
21	X By Electronic Service - Based on an agreement of the parties to accept service by electronic transmission,	
22	I caused the documents to be sent to the persons at the electronic notification addresses listed above.	
23	By Fascimile. I caused each such document to be transmitted by facsimile to the number listed above.	
24	I declare under penalty of perjury that the foregoing is true and correct and that this declaration was	
25	executed on June 14, 2014.	
	Duncan M. James	
26		