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

FILED IN
4th DISTRICT COURT
STATE OF UTAH
UTAH COUNTY
20 4 27 PM '95

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,

COMPLAINT AND JURY DEMAND

vs.

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

Defendants.

Civil No. 0504 00205

Honorable Schofield
DW.8

Plaintiffs Ralph J. Yarro III, Darcy G. Mott and Brent D. Christensen (hereafter referred to collectively as "plaintiffs") hereby complain of Defendants Val Noorda Kreidel, Terry Peterson, William Mustard, the Noorda Family Trust, Raymond J. Noorda and Lewena Noorda (in both their individual capacities and in their capacities as trustees of the Noorda Family Trust), and John Does 1-10; and allege as follows:

THE PARTIES

1. Plaintiff Ralph J. Yarro III ("Mr. Yarro") is an individual who is a resident of Utah County, Utah. Mr. Yarro is 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. Mr. Yarro began serving as Canopy's General Manager in 1996 and as its President and Chief Executive Officer in 1998.

2. Plaintiff Darcy G. Mott ("Mr. Mott") is an individual who is a resident of Utah County, Utah. Mr. Mott began serving as Canopy's Vice President, Chief Financial Officer and Treasurer in 1999.

3. Plaintiff Brent D. Christensen ("Mr. Christensen") is an individual who is a resident of Salt Lake County, Utah. Mr. Christensen began serving as Canopy's Vice President, Corporate Counsel and Assistant Secretary in 2001.

4. Defendant Val Noorda Kreidel ("Ms. Kreidel") is an individual who is a resident of Orange County, California. Ms. Kreidel is the daughter of Raymond J. and Lewena Noorda.

5. Defendant Terry Peterson ("Mr. Peterson") is an individual who is a resident of Utah County, Utah.

6. Defendant William Mustard ("Mr. Mustard") is an individual who is a resident of Westchester County, New York.

7. Upon information and belief, defendant the Noorda Family Trust ("the Trust") was created in California on October 8, 1980, and has been subsequently amended.

8. Defendants Raymond J. Noorda ("Mr. Noorda") and Lewena Noorda ("Mrs. Noorda") (collectively "Mr. and Mrs. Noorda") are residents of Utah County, Utah. Mr. and Mrs. Noorda are trustees of the Noorda Family Trust and are the other two members of the Board

of Directors of Canopy.

9. Defendants John Does 1 through 10 are persons assisting or otherwise acting in concert with defendants and others to deprive plaintiffs of their rights and interests with respect to Canopy and other related entities.

JURISDICTION AND VENUE

10. Jurisdiction is properly laid in the Fourth District Court in and for Utah County, Utah, pursuant to the provisions of Utah Code §§ 78-3-4 and 78-33-1 *et seq.*

11. Venue is properly laid in the Fourth District Court in and for Utah County, Utah, pursuant to the provisions of Utah Code §§ 78-13-4, 78-13-5, 78-13-6, and/or 78-13-7.

GENERAL ALLEGATIONS

12. In 1980, Mr. and Mrs. Noorda formed the Trust to hold certain of their assets, including cash and investments. Later, the Trust acquired common stock in Novell, Inc. ("Novell") and ownership of an entity known as NFT Transportation.

13. In 1992, NFT Ventures, Inc. ("NFT Ventures"), a corporation wholly owned by the Trust, was formed. The Trust 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. No Novell stock was ever contributed to NFT Ventures or to Canopy.

14. After Mr. Noorda retired as Director, President and Chief Executive Officer of Novell in 1994, Mr. Noorda devoted all of his time to the affairs of the Trust and NFT Ventures.

15. In 1995, Mr. Yarro was hired by NFT Ventures to assist Mr. Noorda in managing the holdings and investments of NFT Ventures. Mr. Noorda had previously become acquainted with Mr. Yarro when Mr. Noorda was President and Chief Executive Officer of Novell and Mr.

Yarro was an employee of Novell.

16. In 1996, the president of NFT Ventures left the company. At that time, Mr. Noorda appointed Mr. Yarro 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.

17. Mr. Yarro 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 Mr. Yarro's mentor. Mr. Noorda considered Mr. Yarro 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 Mr. Yarro's efforts, Mr. Noorda promised Mr. Yarro additional compensation and incentives, including, incentive bonuses when portfolio companies were sold. Mr. Noorda also told Mr. Yarro on several occasions over the years that Mr. Noorda would structure a compensation and ownership plan for Mr. Yarro.

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

19. Since at least 1994, Mr. Noorda placed Ms. Kreidel on the payroll of NFT Ventures with an annual salary of \$48,000, together with health insurance benefits for herself and her family. Notwithstanding the fact that Ms. Kreidel was paid a salary, she had no substantive

involvement in NFT Ventures or Canopy. At Mr. Noorda's behest, Ms. Kreidel was appointed to the Board of Directors of MTI, a portfolio company from whom she has received compensation since 1994 in the form of cash and stock options, consistent with MTI's board compensation program for its outside directors, and consistent with the compensation received by Mr. Noorda for his service on the MTI board.

20. Mr. Peterson has acted as a personal financial advisor and money manager to Mr. and Mrs. Noorda and the Trust for many years. Mr. Peterson also came to manage other accounts for Mr. and Mrs. Noorda, including accounts for certain charitable entities created by Mr. and Mrs. Noorda. Beginning in approximately 1996, Mr. Peterson convinced Mr. and Mrs. Noorda to consolidate Canopy's cash and place it, together with the MTI stock owned by Canopy, under his management. Mr. Peterson also convinced Mr. Yarro to allow him to manage Mr. Yarro's personal account.

21. Through the years, some of Canopy's monies were simply placed under Mr. Peterson's management and monies generated by the sale or liquidation of certain portfolio companies were also placed under Mr. Peterson's management. Other stock owned by Canopy was also held by Mr. Peterson. When Mr. Peterson moved to another firm, he prevailed on Mr. Noorda and Mr. Yarro to transfer the accounts he managed for them to this firm as well. On both occasions when Canopy portfolio companies went public, Mr. Peterson tried to persuade Mr. Noorda and Mr. Yarro to deposit Canopy's shares with him, even though the firm with whom he was associated had not participated in the Initial Public Offering ("IPO") and had not been a market maker in the stock. Mr. Peterson became irritated when Mr. Noorda and Mr. Yarro chose not to deposit Canopy's shares with him.

22. Despite the fact that Mr. Peterson's management of the parties' accounts was, at

best, marginal, Mr. Peterson came to manage a Canopy money market account totaling approximately \$40 to \$50 million. This money market account is used as Canopy's main operating account. Thus, Mr. Peterson has had the ability to watch Canopy's daily cash transactions and he has had access to confidential information regarding Canopy's operations.

23. In August 1998, Mr. Yarro 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 Mr. Yarro have comprised the only three members of the Board of Directors of Canopy.

24. As a mentor, Mr. Noorda provided instruction and direction to Mr. Yarro in nearly every facet of Mr. Yarro's responsibilities, first as General Manager and then as President and Chief Executive Officer of Canopy. Mr. Noorda used his own experience to illustrate the advice and direction he gave Mr. Yarro. In this context, on numerous occasions, Mr. Noorda told Mr. Yarro that he did not want his children to be substantively involved with Canopy. In numerous communications both with Mr. Noorda and Mrs. Noorda, Mr. Yarro and others were informed that Mr. and Mrs. Noorda did not want to bequeath or devise to their children any interest in Canopy, and that they did not want their children to participate in the management of Canopy. Mr. Yarro was specifically instructed by the Noordas on numerous occasions that he should not provide information about Canopy to Mr. and Mrs. Noorda's children.

25. In early 1999, Mr. Noorda hired Mr. Mott as Chief Financial Officer for Canopy. Mr. Noorda had known Mr. Mott since 1986, when he hired Mr. Mott to work for Novell, where they worked together over many years in Mr. Mott's capacity as Vice President and Treasurer of Novell.

26. Mr. Mott agreed to employment with Canopy in reliance upon Mr. Noorda's

assurances that Mr. Mott's compensation would include incentive bonuses to be achieved upon the successful sales of Canopy portfolio companies, as well as annual bonuses. Mr. Noorda also promised that Canopy would put in place a plan which would provide Canopy employees with an equity ownership interest in the company. Mr. Noorda told Mr. Mott that one of his assignments would be to work on the development of such a plan, with the help of outside consultants, which would then be presented to Canopy's Board of Directors.

27. On or about February 29, 2000, Mr. and Mrs. Noorda put in place an equity ownership plan for Mr. Yarro (the "February 2000 Option Agreement"). 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. Mr. Yarro's involvement with the February 2000 Option Agreement was limited to group discussions in which the outside advisors and Mr. and Mrs. Noorda were present. Mr. Mott's involvement in the February 2000 Option Agreement was only to verify Canopy's investment basis in the various portfolio companies.

28. The February 2000 Option Agreement gave Mr. Yarro the right to purchase one-half of the Canopy owned shares in all Canopy portfolio companies (except MTI) at a price equal to Canopy's basis and it also provided for Mr. Yarro to realize profits and proceeds upon the sale of any Canopy portfolio company. The February 2000 Option Agreement was consistent with Mr. Noorda's repeated statements to Mr. Yarro and others that he wanted to recognize Mr. Yarro as an equal in Canopy, and provide for Mr. Yarro to obtain an equal interest in Canopy upon Mr. Yarro paying one-half of the amount that the Trust paid for its ownership interest in Canopy.

29. Shortly after the February 2000 Option Agreement became effective, it was determined during an SEC review process in connection with the IPO of Caldera Systems (a

portfolio company) that, under the February 2000 Option Agreement, Canopy portfolio companies would incur and have to disclose a compensation charge for the difference between the IPO stock price and the underlying Canopy basis for Mr. Yarro's option shares. Under the February 2000 Option Agreement, this charge approximated \$70 million for Caldera Systems. Since this charge would have a negative impact on any Canopy portfolio company IPO, Mr. Yarro voluntarily agreed to rescind the February 2000 Option Agreement. Thereafter, Mr. Noorda told Mr. Yarro and others that he was committed to come up with a new equity ownership plan that would benefit Mr. Yarro in a fashion similar to the February 2000 Option Agreement but which would eliminate the detrimental impact on Canopy portfolio companies.

30. Mr. Noorda subsequently tasked several persons, including Mr. Noorda's personal legal, accounting and financial advisors, as well as Mr. Mott, 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. Based upon the work of such 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 at Tab 1 and incorporated herein.

(b) On or about November 7, 2000, Canopy's Board of Directors, consisting of Mr. and Mrs. Noorda and Mr. Yarro, 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, Mr. Yarro 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 at Tab 2 and incorporated herein.

(c) On or about November 8, 2000, Canopy, Mr. and Mrs. Noorda as trustees of the Trust, and Mr. Yarro entered into a Shareholder Agreement. This Shareholder Agreement contains provisions assuring that the three signatories (Mr. and Mrs. Noorda and Mr. Yarro) would serve as directors of Canopy and it contains other provisions consistent with the intention previously stated that Mr. Yarro 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 at Tab 3 and incorporated herein.

31. Mr. Yarro, Mr. Mott and other employees have exercised their Class A Voting Common Stock options, but have not exercised all of their Class B Non-Voting Common Stock options. After Mr. Yarro exercised his Class A Voting Common Stock options, he held and owned the same amount of Class A Voting Common Stock (10,000 shares) as the Trust.

32. On several occasions, Mr. Noorda stated that he was satisfied with the Canopy 2000 Recapitalization Plan because it fulfilled his direction to provide Canopy employees, and in particular Mr. Yarro, with incentives to stay with Canopy for a long time, to work hard, and to add value to Canopy and its portfolio companies.

33. Concurrent with the development of the February 2000 Option Agreement and the Canopy 2000 Recapitalization Plan, Mr. and Mrs. Noorda caused their personal advisors to amend and finalize an estate plan with Mr. and Mrs. Noorda as trustees of the Trust.

34. Mr. and Mrs. Noorda stated that they wanted the Trust, among other things, to avoid double taxation on the proceeds of the Novell shares owned by the Trust, to provide for an adult son with special needs, and to make large charitable donations.

35. Upon information and belief, Mr. and Mrs. Noorda did not make provisions in the Trust for any inheritance of Canopy for their children but, to the extent they wished to do so, intended to provide for them through other assets or life insurance policies held by the Trust, or other assets. This belief is consistent with the numerous statements made to Mr. Yarro and others by Mr. and Mrs. Noorda that they did not want their children to have an interest in Canopy, or to participate in Canopy or its management.

36. During and after this estate-planning process, Mr. Peterson participated as an

advisor to Mr. and Mrs. Noorda. Over the years, Mr. Peterson sold over \$100 million of life insurance to the Trust to provide for the children and grandchildren of Mr. and Mrs. Noorda upon their death, which, upon information and belief, resulted in significant commissions to Mr. Peterson. After a couple of years, Mr. and Mrs. Noorda cancelled these policies apparently because of the extremely high annual premiums required to keep them in force.

37. In 2001, Mr. Christensen, who had previously been in private law practice and had represented Canopy as outside legal counsel on certain matters, agreed to employment with Canopy, and appointment as an officer, at a substantial salary reduction from his prior employment. Mr. Christensen accepted these positions in reliance on assurances that his compensation would include incentive bonuses to be achieved upon the successful sales of Canopy portfolio companies, as well as annual bonuses and the opportunity to participate in the Canopy 2000 Recapitalization Plan.

38. As a Canopy employee, Mr. Christensen was granted options on Class A Voting Common Stock and Class B Non-Voting Common Stock, and he has exercised his Class A Voting Common Stock options, to the extent they have vested, but has not presently exercised all of his Class B Non-Voting Common Stock options.

39. On numerous occasions, Ms. Kreidel contacted Mr. Yarro seeking information concerning Canopy, as well as information regarding Mr. Noorda's health, Mr. and Mrs. Noorda's holdings and their estate. Mr. Yarro politely provided general information, similar to what could be obtained by visiting the Canopy website. Because of the persistent nature of Mr. Kreidel's inquiries, Mr. Yarro asked Mr. and Mrs. Noorda how he should respond to Ms. Kreidel's inquiries. Mr. and Mrs. Noorda both emphatically instructed him that they did not want Mr. Yarro to discuss Canopy or their other holdings with Ms. Kreidel, or to provide Ms.

Kreidel with any substantive information about Canopy or their other holdings. They otherwise reinforced their prior statements to Mr. Yarro that they did not want her involved with Canopy.

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

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

42. 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 Mr. Yarro.

43. After Mr. Noorda proceeded 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 Mr. Yarro with respect to the management and business of Canopy. In the Board and other meetings, Mr. and Mrs. Noorda consistently directed Mr. Yarro to continue to follow the same course of management and to continue running the affairs of Canopy as he had in the past, which course of management followed the manner in which Mr. Noorda had previously operated Canopy.

44. The direction received from Mr. Noorda's mentorship of Mr. Yarro, and Mr. Yarro's adherence to the principles taught him by Mr. Noorda, are principle reasons why Canopy, under Mr. Yarro's management, has been a highly successful company. 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 Mr. Yarro was appointed General Manager.

45. At some point after 2002, but prior to December 17, 2004, Mr. Noorda's memory and health deteriorated to the extent that he became incapacitated and/or subject to undue influences. As a consequence, Mr. Noorda was rendered incapable of making sound business and financial decisions, and was no longer able to sufficiently comprehend business documents, and the nature of business decisions and their probable consequences, to the extent required for management of one's own affairs or to participate in deciding the business affairs of a company. Mrs. Noorda, Ms. Kreidel, Mr. Peterson, and, upon information and belief, Mr. Mustard as well as John Does 1 through 10, all knew prior to December 17, 2004, that Mr. Noorda was incapacitated and incompetent to make sound business and/or financial decisions, and was otherwise susceptible to being unduly influenced in making decisions.

46. At some point after 2002, but prior to December 17, 2004, Mrs. Noorda's health also deteriorated to the point where she may be unduly influenced and, upon information and belief, may be incompetent to make sound business and financial decisions.

47. Prior to the Fall of 2003, Mr. Peterson acted as the primary money manager of Canopy's funds. In the Fall of 2003, Canopy, through its officers, determined that it would be beneficial for Canopy to diversify its money management. Mr. Peterson became extremely upset at the decision.

48. Upon information and belief, sometime in 2004 and prior to December 17, 2004, Ms. Kreidel became aware of the extent of Canopy's assets and value, the ownership structure at

Canopy, and the plan by which the Trust's shares of Canopy would be donated to specific charities, such that she and her siblings did not stand to inherit anything from Canopy.

49. Upon information and belief, prior to December 17, 2004, Ms. Kreidel, knowing of Mr. and Mrs. Noorda's dependent conditions, deteriorating health, incompetence and/or incapacity, and having discovered the extent of Canopy's assets and value, its ownership structure and the fact that she did not stand to inherit anything from Canopy, began formulating and actively participating in a wrongful scheme and course of conduct to disparage plaintiffs and to exercise undue influence over Mr. and Mrs. Noorda. Ms. Kreidel did so in a malicious and wrongful attempt to harm plaintiffs and others by, among other things, removing plaintiffs from Canopy's management so that she might gain control of Canopy for her own personal benefit.

50. Upon information and belief, Ms. Kreidel enlisted the aid and assistance of Mr. Peterson to assist her in this wrongful scheme and course of conduct. Mr. Peterson did so in a malicious and wrongful attempt to harm plaintiffs and to insure that he would continue to obtain commissions from managing the substantial accounts of Canopy and the Trust.

51. In March 2004, Canopy's Board of Directors (consisting of Mr. and Mrs. Noorda and Mr. Yarro) met to approve the 2003 financial results and to approve the 2004 annual operating budget. Mr. Peterson, acting as Mr. and Mrs. Noorda's personal financial advisor, also attended the meeting. During the 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, requiring 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, Mr. Yarro suggested that, if they wished, Canopy would redeem the Trust's shares at fair market value

under negotiated terms that Canopy could bear. Mr. Yarro 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.

52. Shortly thereafter, Mr. Peterson, and then other persons purporting to be Mr. and Mrs. Noorda's personal attorneys and financial advisors, began requesting extensive documentation regarding the business activities of Canopy and the various portfolio companies. Upon information and belief, Ms. Kreidel, Mr. Peterson, and John Does 1 through 10, as part of their wrongful scheme and course of conduct, seized upon the unfortunate condition of Mr. Noorda and commenced directing decisions for him, and also began to exercise undue and improper influence on Mrs. Noorda, prior to and throughout this process. Further, Mr. Peterson monitored the day-to-day cash transactions of Canopy and, upon information and belief, made reports about the same to Ms. Kreidel and others.

53. Canopy, through plaintiffs, provided the persons who purported to be Mr. and Mrs. Noorda's personal attorneys and financial advisors all of the requested information. During this process in 2004, Mr. Jerold Oldroyd, an attorney at Ballard Spahr Andrews and Ingersoll, LLP, ("Ballard Spahr"), who purported to represent Mr. and Mrs. Noorda personally, communicated with Mr. Yarro on behalf of Mr. and Mrs. Noorda, and directed Mr. Noorda to continue to direct the affairs of Canopy in the same manner as he had in the past.

54. On or about December 9, 2004, Mr. Yarro was notified of a purported meeting of Canopy's Board of Directors to be held on December 17, 2004 (the "December 17th meeting"). Mr. Yarro was instructed that no one other than Mr. and Mrs. Noorda and Mr. Yarro would and should attend this meeting.

55. Contrary to the understanding communicated to Mr. Yarro, Mr. and Mrs. Noorda

did not personally attend the December 17th meeting. Instead, Mr. Yarro was met by two Ballard Spahr attorneys who purported to represent Mr. and Mrs. Noorda as well as Canopy. Mr. Yarro was told that Mr. and Mrs. Noorda, as well as Ms. Kriedel and another Ballard Spahr attorney, who also claimed to represent Mr. and Mrs. Noorda and Canopy, were at a separate location and were going to participate in the meeting over a speaker phone. The physical arrangements for this meeting were set up by Mr. Peterson.

56. During the December 17th meeting, Mrs. Noorda, apparently reading from a script, moved to adopt a resolution which purportedly:

(a) 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) terminated Mr. Yarro's, Mr. Mott's and Mr. Christensen's employment as officers of Canopy, purportedly for cause;

(c) elected Mr. Mustard as the President and Chief Executive Officer of Canopy; and

(d) enacted certain "enabling resolutions."

After more than one request for a "second," long pauses after each such request, and, upon information and belief after being directed as to what to say and being unable to independently comprehend the import of what was occurring, Mr. Noorda seconded the motion. Said resolution, and the actions set forth therein, did not follow appropriate corporate procedure in that there was not an informed and competent vote of a majority of Canopy's Board of Directors. Said resolution, and the actions set forth therein, also constituted a wrongful, unauthorized and

unlawful attempt to gain control of a majority of Canopy's Class A Voting Common Stock, as well as a flagrant breach of the Shareholder Agreement entered into between Mr. Yarro and Mr. and Mrs. Noorda over four years earlier.

57. In purporting to terminate plaintiff's employment as officers of Canopy for cause, defendants have inflicted additional damage on plaintiffs by, among other things, attempting to cut off any further vesting of Class A Voting Common Stock by Mr. Christensen, attempting to cut off plaintiffs' ability to extend the time to exercise their vested options, and attempting to terminate plaintiffs' rights to engage in the Cashless Exercise of their options pursuant to Article 2(I)(C) of The Canopy Group, Inc. 2000 Stock Option Plan, as detailed below.

58. Upon information and belief, Ms. Kreidel and John Does 1 through 10 caused Mr. and Mrs. Noorda to take the above-referenced actions against plaintiffs by exerting undue influence on Mr. and Mrs. Noorda by improper means and/or for an improper purpose in an effort to thwart Mr. and Mrs. Noorda's long-held desire not to allow their children to inherit or participate in any way in the management or ownership of Canopy.

59. Upon information and belief, Mr. Peterson assisted, aided and abetted Ms. Kreidel and John Does 1 through 10, in this wrongful scheme and course of conduct and also exerted undue influence on Mr. and Mrs. Noorda prior to and after the December 17th meeting. Mr. Peterson has stated that he was the person who helped bring down Canopy's management. Upon information and belief, Mr. Peterson engaged in these actions to, among other things, curry the favor of Ms. Kreidel so that he might continue to manage Canopy's, the Trust's and Mr. and Mrs. Noorda's money.

60. Mr. Mustard, upon information and belief, had been recruited by Ms. Kreidel, Mr. Peterson, and/or John Does 1 through 10, to, in effect, assist in the attempted take-over of

Canopy and to manage Canopy after the December 17th meeting. Mr. Mustard is a consultant specializing in pre-liquidation event services, asset redeployment, implementation of strategies for deployment of corporate assets, and the leverage of personal relationships to drive redistribution of business assets through corporate action or otherwise. Mr. Mustard also consults regarding corporate disposals and liquidations, and spin-outs of corporate assets.

61. Subsequent to the December 17th meeting, Ms. Kreidel, assisted by Mr. Mustard, met with the then remaining Canopy employees, as well as with the presidents of Canopy's portfolio companies.

62. Plaintiffs are informed and believe that Ms. Kreidel is now "running the show" at Canopy, in that she is managing Canopy through Mr. Mustard, and Mr. Mustard must obtain Ms. Kreidel's approval before making any significant or substantial decision regarding Canopy.

63. Subsequent to the December 17th meeting, Ms. Kreidel directly and/or indirectly through her agents, including Mr. Mustard, all of whom have acted under her direction, have threatened, intimidated and harassed Canopy employees, causing them great distress. One Canopy employee, who told family members about how distraught he was, tragically took his life a few days following the December 17th meeting.

64. Plaintiffs have been informed that Ms. Kreidel and/or her agents, including Mr. Mustard, have required Canopy employees to sign, under duress, documents back-dated to December 17, 2004.

65. 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 gone to work for Canopy portfolio companies. Following principles taught to him by Mr. Noorda, Mr. Yarro created a wonderful work environment at Canopy such that all of the employees feel like they belong to

the Canopy family. Now, as a result of the heavy-handed termination of plaintiffs and the threatening and demeaning treatment of the remaining employees, one long-time employee has taken his own life, and four 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 plaintiffs.

66. Upon information and belief, defendants, or some of them, acting indirectly through their representatives and/or agents, have threatened to file a lawsuit against plaintiffs in an effort to intimidate them and force them to give up, among other things, their ownership of Canopy stock and options which have a value in excess of \$100 million. This lawsuit is based on an unfiled Complaint which contains false accusations and allegations against plaintiffs, and which purports to assert various claims against plaintiffs, all of which are without merit.

FIRST CLAIM FOR RELIEF
(Invalid Actions Purportedly Taken at the December 17th Meeting and Thereafter)

67. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 66 above, and 73 through 156 below.

68. On or before the December 17th meeting, Mr. Noorda and/or Mrs. Noorda had become unable to serve as a director of Canopy by reason of incapacity, incompetency or otherwise.

69. Despite their inability to serve as directors of Canopy, and despite their incapacity and incompetency, Mr. and Mrs. Noorda purported to take certain actions at the December 17th meeting, including, without limitation, the purported grant of Canopy Class A Voting Common Stock options and Class B Non-Voting Common Stock options to Mr. and Mrs. Noorda; the purported for cause termination of plaintiffs' employment as officers of Canopy; the purported appointment of Mr. Mustard as the President and Chief Executive Officer of Canopy; and the

purported enactment of certain "enabling resolutions."

70. The actions taken at the December 17th meeting failed to follow appropriate corporate procedure because these actions were undertaken without obtaining the informed and competent vote of a majority of the members of Canopy's Board of Directors. Therefore, at the time of the December 17th meeting, at least one and possibly two vacancies existed on the Canopy Board, and all actions taken at the December 17th meeting were without appropriate Board approval, without an appropriately constituted Board, and without the necessary votes to pass the subject resolutions and actions taken.

71. Accordingly, the purported granting of additional Class A Voting Common Stock options and Class B Non-Voting Common Stock options to Mr. and Mrs. Noorda is *void ab initio*, is invalid, and is of no effect. Similarly, the purported termination of plaintiffs' employment as officers of Canopy is *void ab initio*, is invalid, and is of no effect, and plaintiffs remain officers of Canopy. Further, the subsequent actions by those purporting to be officers and/or authorized agents of Canopy are also *void ab initio*, invalid, and of no effect.

72. Plaintiffs are entitled to a judicial declaration and judgment declaring that all actions purportedly taken at the December 17th meeting, as well as all subsequent actions by those purporting to be officers and/or agents of Canopy, are *void ab initio*, are invalid, and are of no effect, including, without limitation, (a) the action purporting to grant additional Class A Voting Common Stock options and Class B Non-Voting Common Stock options to Mr. and Mrs. Noorda; (b) the action purporting to terminate plaintiffs' employment as officers of Canopy; (c) the action purporting to name Mr. Mustard as President and Chief Executive Officer of Canopy; and (d) any and all purported enabling resolutions.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

73. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 72 above, and 84 through 156 below.
74. As alleged herein, Mr. and Mrs. Noorda entered into certain written and oral agreements with plaintiffs and/or for the benefit of plaintiffs, which were valid and enforceable, including, without limitation, the Shareholder Agreement.
75. The Shareholder Agreement includes contractual provisions which prohibit Mr. and Mrs. Noorda from taking any action that adversely affects the rights of Mr. Yarro.
76. The Shareholder Agreement also contains contractual provisions which set forth the procedure that must be followed when Mr. and Mrs. Noorda became unwilling or unable to serve as directors of Canopy (by reason of death, incapacity, resignation or otherwise).

Specifically, Section 1 of the Shareholder Agreement provides:

Management of the Corporation. The Shareholders shall take such action, as shareholders, directors and officers of [Canopy], as may be necessary, required or appropriate to accomplish the following:

- (a) For so long as all of them are willing and able to serve as directors of [Canopy], each of the Noordas and Yarro shall be elected as directors of [Canopy].
- (b) If any member of the group consisting of the Noordas and Yarro shall, during the term of this Agreement, be unwilling or unable to serve as a director of [Canopy] (by reason of death, incapacity, resignation or otherwise), then the three directors of [Canopy] shall be appointed as follows:
 - (i) The Noordas (if both of them are then living and are not incapacitated) shall appoint two of the three directors of [Canopy].
 - (ii) The Noordas (if either of them has died or become incapacitated) shall appoint one of the three directors of [Canopy].

(iii) Yarro (or the rightful successor to Yarro's shares of Class A Common Stock) shall appoint one of the three directors of [Canopy].

(iv) The third director shall be appointed by mutual agreement of the two directors who are appointed under paragraphs (ii) and (iii) above.

77. The provisions in the Shareholder Agreement set forth how extraordinary matters shall be handled. Specifically, Section 2(b) of the Shareholder Agreement provides, in part:

Extraordinary Matters. [Canopy] shall not proceed with any of the following matters unless each of the Shareholders holding Class A Common Stock has approved the matter:

... (ii) ... enter into any voting or management agreement regarding governance of [Canopy] that would be inconsistent with the terms of this Agreement;

... (iv) ... take any action that adversely affects the rights of any of the Shareholders set forth in this Agreement.

78. On or before the December 17th meeting, Mr. Noorda and/or Mrs. Noorda had become unwilling and/or unable to serve as a director of Canopy by reason of incapacity, incompetency or otherwise. Despite these facts, the provisions in the Shareholder Agreement for appointing a new director for Canopy were not followed.

79. Pursuant to the Shareholder Agreement, any extraordinary matters and actions, such as those taken at the December 17th meeting, could not be taken unless Mr. and Mrs. Noorda and Mr. Yarro approved the matters and actions. Mr. Yarro did not approve of the extraordinary matters and actions taken at the December 17th meeting.

80. All actions purportedly taken at the December 17th meeting by Mr. and Mrs. Noorda constituted a breach of the Shareholder Agreement, including, without limitation, the purported grant of Canopy Class A Voting Common Stock options and Class B Non-Voting

Common Stock options to Mr. and Mrs. Noorda; the purported termination of plaintiffs' employment as officers of Canopy, with cause; the purported appointment of Mr. Mustard as the President and Chief Executive Officer of Canopy; and the purported enactment of certain "enabling resolutions."

81. By the conduct alleged herein, Mr. and Mrs. Noorda have materially breached, or caused the material breach of, the agreements with plaintiffs.

82. As a direct and proximate cause of Mr. and Mrs. Noorda's breaches, as alleged herein, plaintiffs have suffered and will continue to suffer damages. Plaintiffs are entitled to an award of damages in an amount to be proven at trial, which amount exceeds \$100 million.

83. Plaintiffs are also entitled to a judgment declaring that all actions purportedly taken at the December 17th meeting, as well as all subsequent actions by those purporting to be officers and/or agents of Canopy, are *void ab initio*, are invalid, and are of no effect, including, without limitation, (a) the action purporting to grant additional Class A Voting Common Stock options and Class B Non-Voting Common Stock options to Mr. and Mrs. Noorda; (b) the action purporting to terminate plaintiffs' employment as officers of Canopy; (c) the action purporting to name Mr. Mustard as President and Chief Executive Officer of Canopy; and (d) the purported enactment of any and all enabling resolutions.

THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty - Joint Shareholders
and Directors of Closely Held Business)

84. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 83 above, and 90 through 156 below.

85. Canopy is a closely held company with a limited number of persons who have been shareholders, officers and directors.

86. As joint shareholders, officers and/or directors of Canopy, Mr. and Mrs. Noorda owed plaintiffs a fiduciary duty analogous to that owed by partners in a partnership to act with the utmost good faith and loyalty with respect to each other's interests in Canopy.

87. Mr. and/or Mrs. Noorda, to the extent either or both of them had competency and capacity, breached their fiduciary duties to plaintiffs by, among other things, failing to act in good faith toward plaintiffs and engaging in willful, intentional, and malicious acts to force plaintiffs out of the management of Canopy without cause and not for any valid corporate purpose, and to deprive plaintiffs of financial and other benefits of owning shares and/or options for shares of Canopy.

88. As a direct and proximate result of these willful and intentional breaches of fiduciary duty, plaintiffs have been damaged in an amount to be proven at trial, which amount exceeds \$100 million.

89. To the extent either or both of them had competency and capacity, Mr. and/or Mrs. Noorda's above-described acts were the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of plaintiffs. As a result, plaintiffs also are entitled to recover punitive damages from Mr and/or Mrs. Noorda in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Breach of Directors and Officers Statutory Standard
of Conduct - Utah Code § 16-10a-840)

90. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 89 above, and 97 through 156 below.

91. By the acts alleged herein, and to the extent Mr. and/or Mrs. Noorda have competency and capacity, Mr. and/or Mrs. Noorda have engaged in gross abuse of authority and

discretion with respect to Canopy. Mr. and Mrs. Noorda's removal as directors of Canopy is in the best interests of Canopy and, therefore, plaintiffs.

92. Mr. and/or Mrs. Noorda, to the extent either or both of them have competency and capacity, have caused the breach of the Canopy 2000 Recapitalization Plan, in particular the Shareholder Agreement, and other agreements, and have allowed and encouraged the mistreatment of Canopy employees, not for any valid corporate purpose. Mr. and/or Mrs. Noorda, to the extent either or both of them have competency and capacity, have not acted in good faith as directors of Canopy in causing the breaches of the Canopy 2000 Recapitalization Plan and other agreements, and in allowing and encouraging the mistreatment of Canopy employees.

93. Mr. and/or Mrs. Noorda, to the extent either or both of them have competency and capacity, have not acted with the care of ordinarily prudent persons in like positions and under similar circumstances as directors of Canopy in causing the breaches of the Canopy 2000 Recapitalization Plan and other agreements, and in allowing and encouraging the mistreatment of Canopy employees.

94. Mr. and/or Mrs. Noorda, to the extent either or both of them have competency and capacity, have not acted with a reasonable belief that their actions are in the best interests of Canopy.

95. To the extent they have competency and capacity, Mr. and/or Mrs. Noorda's acts and failures to act as directors of Canopy constitute gross negligence, willful misconduct, or intentional infliction of harm plaintiffs.

96. As a direct and proximate result of Mr. and/or Mrs. Noorda's failure to adhere to the statutory standard of conduct for corporate directors, plaintiffs have been damaged in an

amount to be proven at trial, which amount exceeds \$100 million.

FIFTH CLAIM FOR RELIEF
(Breach of Fiduciary Duties and Standards of
Conduct - By Arrogated Directors)

97. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 96 above, and 106 through 156 below.

98. Alternatively, because Mr. and/or Mrs. Noorda lacked competency and capacity, which plaintiffs have alleged herein, then, as a consequence of said incapacity and incompetence, Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10, are acting as agents for, or otherwise in, the place of Mr. and/or Mrs. Noorda with respect to the discharge of Mr. and/or Mrs. Noorda's fiduciary duties as directors of Canopy.

99. By so acting, Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10 have arrogated and assumed the fiduciary duties of directors of Canopy, and are liable for the breach of those duties and applicable standards of conduct as if they were validly elected directors themselves.

100. Said arrogation and usurpation of Mr. and/or Mrs. Noorda's duties as directors of Canopy by Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10, was wrongful.

101. Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10, breached their fiduciary duties to plaintiffs by, among other things, failing to act in good faith toward plaintiffs and engaging in willful, intentional, and malicious acts to force plaintiffs out of the management of Canopy without cause and not for any valid corporate purpose, and to deprive plaintiffs of financial and other benefits of owning shares and/or options for shares of Canopy.

102. Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10, have caused the breach of the Canopy 2000 Recapitalization Plan, in particular the Shareholder

Agreement, and other agreements, and have allowed and encouraged the mistreatment of Canopy employees, not for any valid corporate purpose. Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10, have not acted in good faith as arrogated directors of Canopy in breaching the Canopy 2000 Recapitalization Plan and other agreements, and in engaging in, allowing and encouraging the mistreatment of Canopy employees.

103. Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10, have not acted with the care of ordinarily prudent persons in like positions and under similar circumstances as directors of Canopy in breaching the Canopy 2000 Recapitalization Plan and other agreements, and in engaging in, allowing and encouraging the mistreatment of Canopy employees.

104. As a direct and proximate result of these willful and intentional breaches of fiduciary duty, and failures to adhere to the statutory standard of conduct for corporate directors, plaintiffs have been damaged in an amount to be proven at trial, which amount exceeds \$100 million.

105. Ms. Kreidel's, Mr. Peterson's, Mr. Mustard's, and John Does 1 through 10's, above-described acts constitute gross negligence, were the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of plaintiffs. As a result, plaintiffs also are entitled to recover punitive damages from Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10, in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
(Temporary Restraining Order/Preliminary and Permanent Injunction)

106. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 105 above, and 118 through 156 below.

107. On or before the December 17th meeting, Mr. Noorda had become unable to serve as a director of Canopy by reason of incapacity, incompetency or otherwise.

108. At the December 17th meeting, Mr. and Mrs. Noorda purported to take certain actions that were *void ab initio*, *ultra vires*, and ineffective, including, without limitation, the purported grant of Canopy Class A Voting Common Stock options and Class B Non-Voting Common Stock options to Mr. and Mrs. Noorda; the purported termination of plaintiffs' employment as officers of Canopy, with cause; the purported appointment of Mr. Mustard as the President and Chief Executive Officer of Canopy; and the purported enactment of certain "enabling resolutions."

109. Subsequent to the December 17th meeting, defendants caused a notice to be given to each Canopy employee informing them not to take any direction from plaintiffs.

110. Subsequent to the December 17th meeting, locks and access codes were changed on and in the Canopy office building, and computer passcodes were changed, so that plaintiffs could no longer have access to the Canopy office building, Canopy offices, Canopy documents, and/or Canopy resources.

111. Prior to the December 17th meeting, Canopy was heavily involved in and working on a number of confidential projects, including projects regarding Canopy's portfolio companies. Some of these projects have the capacity to be highly beneficial to Canopy and could result in millions of dollars of income to Canopy, which would increase the value of Canopy's Common Stock. As a result of the purported removal of plaintiffs as officers of Canopy, as well as defendants' mismanagement of Canopy and their lack of knowledge regarding these projects, these projects have been severely jeopardized, and Canopy stands to lose millions of dollars and valuable corporate opportunities which may never present themselves again, all of which is

causing irreparable harm to the portfolio companies, Canopy and plaintiffs.

112. Subsequent to the December 17th meeting, defendants and/or those purporting to be officers and/or agents of Canopy, are improperly attempting to remove plaintiffs from the boards of various portfolio companies, all of which is causing irreparable harm to the portfolio companies and, therefore, plaintiffs.

113. In addition, the purported removal of plaintiffs as officers of Canopy, as well as defendants' mismanagement of Canopy, has had a very negative impact on the morale of employees of the portfolio companies. Certain of these employees are now looking for other jobs, which will also cause irreparable harm to the portfolio companies, Canopy and plaintiffs.

114. Subsequent to the December 17th meeting, Canopy employees have been mistreated and placed under great stress, all of which has destroyed the morale of Canopy employees. As a result, key and valuable Canopy employees have terminated, or are considering terminating, their employment with Canopy. The loss of these employees will cause irreparable harm to Canopy and plaintiffs.

115. Plaintiffs will be injured in an amount which cannot be adequately measured or compensated in damages, and plaintiffs have been and continue to be immediately and irreparably harmed by the wrongful actions undertaken by defendants at the December 17th meeting and thereafter. Accordingly, plaintiffs are entitled to an injunction, both pending this action, as well as after the entry of judgment, ordering that plaintiffs remain as officers and employees of Canopy, and enjoining defendants and their purported agents from: (a) restricting plaintiffs' access to Canopy buildings, offices, documents, records and computer resources; (b) hindering or restricting plaintiffs from exercising their duties and using their control as officers and employees, and for Mr. Yarro also as a director, of Canopy to continue managing Canopy's

business; (c) causing the liquidation or material distribution, disposal or dissipation of Canopy's assets except for in the normal course of business; (d) distributing any stock to Mr. and Mrs. Noorda or allowing them to exercise any stock options; (e) making any statements that create uncertainty as to the authority of plaintiffs to act as officers of Canopy; and (f) mistreating Canopy employees.

116. In the alternative, plaintiffs hereby ask the Court to appoint a neutral custodian to manage the business and affairs of Canopy, until such time as this litigation is resolved or by further order of the Court. The neutral custodian should be allowed to exercise all of the powers of Canopy to the extent necessary to manage the affairs of Canopy in the best interests of its shareholders and creditors, if any. The Court should further order that reasonable compensation and expenses are to be paid to the neutral custodian from the assets of Canopy.

117. Plaintiffs also hereby ask the Court, pursuant to Rule 35 of the Utah Rules of Civil Procedure, for an order requiring Mr. and Mrs. Noorda to present themselves for an immediate competency examination, performed by qualified physicians chosen by plaintiffs and approved by the Court.

SEVENTH CLAIM FOR RELIEF
(Breach of Covenant of Good Faith and Fair Dealing)

118. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 117 above, and 123 through 156 below.

119. Mr. and Mrs. Noorda have a duty to act in good faith and deal fairly with plaintiffs, including the duty to act consistently with the purposes of the agreements they had entered into with and/or for the benefit of plaintiffs.

120. Mr. and Mrs. Noorda breached the duty of good faith and fair dealing implied in said agreements.

121. As a direct and proximate result of Mr. and Mrs. Noorda's breaches of the covenant of good faith and fair dealing, plaintiffs have suffered and will continue to suffer damages.

122. Plaintiffs are therefore entitled to an award of damages in an amount to be proven at trial, which amount exceeds \$100 million.

EIGHTH CLAIM FOR RELIEF
(Promissory Estoppel)

123. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 122 above, and 128 through 156 below.

124. Mr. Noorda made promises to plaintiffs that were reasonably expected to induce reliance.

125. Plaintiffs' reasonable reliance upon Mr. Noorda's promises induced action and/or forbearance by plaintiffs.

126. Plaintiffs suffered detriment because of their reliance upon Mr. Noorda's promises.

127. Plaintiffs are entitled to an award of damages in an amount to be proven at trial, which amount exceeds \$100 million.

NINTH CLAIM FOR RELIEF
(Constructive/Resulting Trust)

128. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 127 above, and 131 through 156 below.

129. Defendants have wrongfully acquired possession of or title to plaintiffs' property, including, without limitation, plaintiffs' stocks and/or vested and unvested stock options, with actual or constructive knowledge that such acquisition was wrongful.

130. Plaintiffs are entitled to conveyance of such property from defendants.

TENTH CLAIM FOR RELIEF
(Declaration That Plaintiffs' Employment
Was Not Terminated)

131. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 130 above, and 138 through 156 below.
132. The Canopy Group, Inc. 2000 Stock Option Plan governs the exercise of Class A Voting Common Stock and Class B Non-Voting Common Stock by persons whose employment with Canopy has terminated for cause or without cause.

133. Pursuant to Article 2(I)(C) of The Canopy Group, Inc. 2000 Stock Option Plan,

- (i) Should the Optionee cease to remain in Service for any reason other than Cause, Disability or death, then the Optionee shall have a period beginning on the date of cessation of Service and ending on the later of (1) the date that is three (3) months following the date of such cessation of Service, or (2) the last day of the next February following the date of such cessation of Service, during which it may exercise each outstanding vested Option held by such Optionee.
- (ii) Should the Optionee cease to remain in Service for Cause, then the Optionee shall have a period beginning on the date of cessation of Service and the ending on the date that is one (1) month following the date of such cessation of Service during which it may exercise each outstanding vested Option held by such Optionee. As provided below, however, an Optionee whose Service ceases for Cause shall not have any right to elect a Cashless Exercise.

134. A Cashless Exercise under the equity plan allows a person holding Class B Non-Voting Common Stock options to elect to receive a reduced number of shares in lieu of paying the cash exercise price and withholding taxes.

135. Pursuant to The Canopy Group, Inc. 2000 Stock Option Plan,
Cause shall mean any of the following: (i) Optionee's material

breach of any employee, confidentiality or other employment-related agreement with [Canopy], (ii) Optionee's violation of [Canopy]'s Policies and Procedure Manual, as amended from time to time, or (iii) Optionee's conviction of or entrance of a plea of nolo contendere to a felony or to any other crime punishable by incarceration.

Tab 2 at Appendix.

136. The determination as to whether plaintiffs' employment with Canopy has terminated and if so, whether there was cause, as defined in The Canopy Group, Inc. 2000 Stock Option Plan, for the termination of plaintiffs' employment, will affect plaintiffs' rights.

137. As alleged herein, plaintiffs are entitled to a judicial declaration by this Court: (1) that plaintiffs' employment as officers of Canopy has not terminated; or, in the alternative, (2) that plaintiff's employment as officers of Canopy terminated without cause.

ELEVENTH CLAIM FOR RELIEF
(Tortious Interference With Contract and Existing Economic Relations,
and Tortious Interference With Prospective Economic Relations)

138. Plaintiffs re-allege and incorporate herein by this reference the allegations of paragraphs 1 through 139, above, and 148 through 156 below.

139. As a result of their relationships and agreements with Canopy, plaintiffs were entitled to certain compensation, bonuses and benefits, including voting stock ownership and options, as well as vested but unexercised non-voting stock options. Plaintiffs also had substantial and lucrative prospective economic relations as a result of their relationships and agreements with Canopy, as well as because of their education, reputations and experience.

140. Ms. Kreidel, Mr. Peterson and John Does 1 through 10, knew of plaintiffs' existing contractual agreements and relations with Canopy.

141. Ms. Kreidel, Mr. Peterson and John Does 1 through 10, knew of plaintiffs' prospective economic relations.

142. Ms. Kreidel, Mr. Peterson and John Does 1 through 10, intentionally and maliciously interfered with plaintiffs' existing contracts and economic relations, as well as with their prospective economic relations, for the improper purposes of enriching themselves to plaintiffs' disadvantage and/or otherwise injuring plaintiffs. Ms. Kreidel's, Mr. Peterson's and John Does 1 through 10's, improper purposes predominated over any legitimate business interest.

143. Ms. Kreidel, Mr. Peterson and John Does 1 through 10, utilized improper means to intentionally interfere with plaintiffs' existing contracts and economic relations, and their prospective economic relations by, among other things, falsely disparaging plaintiffs' integrity, and exerting undue influence over Mr. and Mrs. Noorda to wrongfully and unlawfully distribute additional Canopy shares to themselves, to threaten the filing of a false and malicious Complaint, and to otherwise act in a manner that was contrary to Mr. and Mrs. Noorda's expressed desires and contrary to plaintiffs' contractual rights.

144. The wrongful conduct of Ms. Kreidel, Mr. Peterson and John Does 1 through 10, in intentionally interfering with plaintiffs' existing contracts and economic relations, and their prospective economic relations, actually and proximately caused injury to plaintiffs.

145. As a result of Ms. Kreidel's, Mr. Peterson's and John Does 1 through 10's intentional interference with plaintiffs' existing contracts and economic relations, and their prospective economic relations, plaintiffs have been damaged in an amount to be proven at trial, which amount exceeds \$100 million.

146. As a result of the above-described wrongful conduct, plaintiffs are entitled to recover from Ms. Kreidel, Mr. Peterson and John Does 1 through 10, actual, special and consequential damages resulting from their wrongful conduct, and Ms. Kreidel, Mr. Peterson and John Does 1 through 10, must be required to disgorge any benefit they obtained as a result of

their wrongful conduct.

147. Ms. Kreidel's, Mr. Peterson's and John Does 1 through 10's above-described acts were the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of plaintiffs. As a result, plaintiffs also are entitled to recover punitive damages from Ms. Kreidel, Mr. Peterson and John Does 1 through 10, in an amount to be proven at trial.

TWELFTH CLAIM FOR RELIEF
(Undue Influence)

148. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 149 above, and 153 through 156 below.

149. Ms. Kreidel, Mr. Peterson and John Does 1 through 10, knew of Mr. and Mrs. Noorda's dependent conditions and deteriorating health and actively participated in a wrongful scheme to exercise undue influence over Mr. and Mrs. Noorda.

150. Ms. Kreidel, Mr. Peterson and John Does 1 through 10 exercised undue influence over Mr. and Mrs. Noorda in a willful, malicious and wrongful attempt to harm plaintiffs.

151. Ms. Kreidel, Mr. Peterson and John Does 1 through 10 were able to overcome the will of Mr. and Mrs. Noorda through undue influence, causing plaintiffs to suffer damages in an amount to be proven at trial, which amount exceeds \$100 million.

152. Ms. Kreidel's, Mr. Peterson's and John Does 1 through 10's above-described acts were the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of plaintiffs. As a result, plaintiffs also are entitled to recover punitive damages from Ms. Kreidel, Mr. Peterson and John Does 1 through 10, in an amount to be proven at trial.

THIRTEENTH CLAIM FOR RELIEF
(Aiding and Abetting Breach of Fiduciary Duty)

153. Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 152 above.

154. By the acts alleged herein, Ms. Kreidel, Mr. Peterson, Mr. Mustard and John Does 1 through 10 intentionally, knowingly, maliciously, and with reckless indifference towards plaintiffs' rights, aided and abetted Mr. and Mrs. Noorda's breaches of their fiduciary duties to plaintiffs.

155. As a direct and proximate result of these wrongful acts, plaintiffs have suffered and will continue to suffer damages in an amount to be proven at trial, which amount exceeds \$100 million.

156. Ms. Kreidel's, Mr. Peterson's, Mr. Mustard's, and John Does 1 through 10's above-described acts were the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of plaintiffs. As a result, plaintiffs also are entitled to recover punitive damages from Ms. Kreidel, Mr. Peterson, Mr. Mustard, and John Does 1 through 10 in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

1. A judgment declaring that all actions purportedly taken at the December 17th meeting, as well as all subsequent actions by those purporting to be officers and/or agents of Canopy, are *void ab initio*, *ultra vires*, and of no effect, including, without limitation, that (a) the action purporting to distribute additional Class A Voting Common Stock options and Class B Non-Voting Common Stock options to Mr. and Mrs. Noorda; (b) the action purporting to

terminate plaintiffs' employment as officers of Canopy with cause; (c) the action purporting to name Mr. Mustard as President and Chief Executive Officer of Canopy; and (d) the purported enactment of any and all enabling resolutions;

2. A judgment against defendants and for plaintiffs for damages suffered by plaintiffs in an amount to be proven at trial, which amount exceeds \$100 million;

3. An order removing Mr. and Mrs. Noorda as directors of Canopy pursuant to Utah Code § 16-10a-809;

4. An injunction and order, both pending this action, as well as after the entry of judgment, ordering that plaintiffs remain as officers and employees of Canopy, and enjoining defendants and their purported agents from: (a) restricting plaintiffs' access to Canopy buildings, offices, documents, records and computer resources; (b) hindering or restricting plaintiffs from exercising their duties and using their control as officers and employees, and for Mr. Yarro also as a director, of Canopy to continue managing Canopy's business; (c) causing the liquidation or material distribution, disposal or dissipation of Canopy's assets except for in the normal course of business; (d) distributing any stock to Mr. and Mrs. Noorda or allowing them to exercise any stock options; (e) making any statements that create uncertainty as to the authority of plaintiffs to act as officers of Canopy; and (f) mistreating Canopy employees.

5. Alternatively, an order appointing a neutral custodian to manage the business and affairs of Canopy, until such time as this litigation is resolved or by further order of the Court, granting the neutral custodian the right to exercise all of the powers of Canopy to the extent necessary to manage the affairs of Canopy in the best interests of its shareholders and creditors, if any, and providing that reasonable compensation and expenses are to be paid to the neutral custodian from the assets of Canopy;

6. An order, pursuant to Rule 35 of the Utah Rules of Civil Procedure, requiring Mr. and Mrs. Noorda to present themselves for an immediate competency examination, performed by qualified physicians chosen by plaintiffs and approved by the Court.
7. A judgment ordering the conveyance of the constructive and/or resulting trust from defendants to plaintiffs;
8. A judgment awarding plaintiffs punitive damages in an amount to be proven at trial;
9. A judgement declaring (1) that plaintiffs' employment as officers of Canopy has not terminated; or in the alternative, (2) that plaintiff's employment as officers of Canopy terminated without cause;
10. An award for plaintiffs' costs and reasonable attorneys' fees incurred in this lawsuit; and
11. For such other and further relief deemed appropriate by this Court.

DATED this 20th day of January 2005.

SNOW, CHRISTENSEN & MARTINEAU

By: 

Stanley J. Preston
Michael B. Carlston
Maralyn M. Reger
Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable in this action.

DATED this 20th day of January, 2005.

SNOW, CHRISTENSEN & MARTINEAU

By: 

Stanley J. Preston
Michael R. Carlston
Maralyn M. Reger
Attorneys for Plaintiffs

Plaintiffs' Addresses:

Ralph Yarro
4526 Vintage Drive
Provo, Utah 84604

Darcy Mott
764 High Ridge Drive
Alpine, Utah 84004

Brent Christensen
2890 Newmans Lane
Salt Lake City, Utah 84121

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