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Attorneys for Defendants Raymond J. Noorda and Lewena Noorda, as Trustees of the Noorda Family Trust, William Mustard, and Intervenor The Canopy Group, Inc.

IN THE FOURTH JUDICIAL DISTRICT COURT

FOR UTAH COUNTY, STATE OF UTAH

RALPH J. YARRO III, an individual, DARCY G. MOTT, an individual, BRENT D. CHRISTENSEN, an individual **Plaintiffs,** **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 I THROUGH 10,** **Defendants.**	**AFFIDAVIT OF WILLIAM MUSTARD IN OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER** **Civil No. 050400205** **Honorable Anthony W. Schofield** **Division 8**

William Mustard, being duly sworn, deposes and says:

1. I am over the age of 21 and a resident of Westchester County, New York. I am fully competent to testify to the matters in this Affidavit. The matters contained herein are based on my personal knowledge, unless otherwise stated.

2. The Board of Directors of The Canopy Group, Inc. ("Canopy") retained me as the President and CEO of Canopy on December 17, 2004, immediately following the terminations of Ralph J. Yarro III, Darcy G. Mott and Brent D. Christensen ("Plaintiffs"). Canopy formerly was known as NFT Ventures.

3. Canopy is a holding company for a variety of companies in which it has an ownership interest. These companies collectively are referred to as the "Portfolio Companies".

4. By education I am an economist. By profession I am a Chartered Accountant of The Institute of Chartered Accountants of Scotland. By practice I am a seasoned financial and business executive.

5. Given my education, background and experience, I am well qualified to serve as the President and CEO of Canopy, as Canopy's Board of Directors has recognized. I am an experienced, commercially savvy, senior executive with strong analytical and management skills honed in high growth, dynamic, international environments, particularly in telecommunications, media and investment holdings — the latter of which is directly relevant to my position at Canopy.

6. I have extensive skills and capabilities in general management, accounting fundamentals, performance measurement, strategic and financial planning coupled with pragmatic financial management, business systems and processes, business risk management, financial investigation and corporate governance, raising finance and managing those relationships, reorganizations and restructurings, including integration, mergers and acquisitions, joint ventures and private equity, and tax planning and investor relations.

7. Specifically, I was the President and CEO of Great Universal Incorporated, a privately held investment holding company which acquired or started more than twenty companies in the areas of military electronics, computer network integration, customer relationship management, television and media, billing systems, telecommunications technology research and development, and telecommunications consulting. In my position at Great Universal I was responsible for growing sales to $200 million.

8. In addition, I was Managing Director of Société Internationale de Supervision Financière SA (SISF), an international professional services organization providing business risk management, financial investigation, corporate governance (including Sarbanes-Oxley matters), internal audit and account resolution services. SISF handled approximately 180 assignments annually for seven significant affiliated public companies doing business internationally in approximately fifty countries.

9. I also have acted as a member of the Board of Directors of a number of companies, both public and private. I also worked for Ernst & Young providing corporate advisory services to international private and public companies from 1976 to 1990.

10. A more detailed synopsis of my experience as President, CEO, Chief Financial Officer and other executive positions is set forth in my profile and resume, which is attached hereto as Exhibit **A**.

11. As the President and CEO of Canopy, I have access to the business records of Canopy, which are maintained at Canopy's place of business in Lindon, Utah, in the State of Utah.

12. Attached hereto is a copy of the following Canopy records: Canopy Bylaws (Exhibit **B**); Canopy Amended Articles (Exhibit **C**); Notice of Special Meeting of the Board of Directors of The Canopy Group, Inc., dated December 9, 2004 (Exhibit **D**); Canopy Board Resolutions, dated December 17, 2004 (Exhibit **E**); Canopy Board of Directors Minutes for December 17, 2004 Board meeting (Exhibit **F**); Incentive Bonus Plan Agreement for Canopy (Exhibit **G**); The Canopy Group, Inc. 2000 Stock Option Plan (the "Equity Plan") (Exhibit **H**); Stock Option Agreements regarding Yarro (Exhibit **I**); Shareholder Agreement (Exhibit **J**); Altiris Incentive Distribution, dated February 28, 2002 (Exhibit **K**); Traxxes Incentive Distribution, dated August 26, 2002 (Exhibit **L**); Altiris Incentive Distribution, dated December 2, 2002 (Exhibit **M**); Altiris Incentive Distribution, dated April 4, 2003 (Exhibit **N**); Altiris

Incentive Distribution, dated on or about June 3, 2003 (Exhibit **O**); Altiris Incentive Distribution, dated on or about August 20, 2003 (Exhibit **P**).

13. Based on Canopy records, between 1999 and 2004, Yarro took a total of at least $19,535,602 in excessive cash compensation pursuant to the Incentive Plan and exercises of resale rights acquired pursuant to the Equity Plan. This amount does not include the value of options and stock improperly acquired by Yarro pursuant to the Equity Plan. Nor does it include amounts received by Yarro from Canopy as base compensation and annual bonuses, which totaled approximately $275,000 to $300,000 per year, or compensation received by Yarro directly from Portfolio Companies.

14. Based on Canopy records, between 1999 and 2004, Mott took a total of at least $2,557,727 in excessive cash compensation pursuant to the Incentive Plan and exercises of resale rights acquired pursuant to the Equity Plan. This amount does not include the value of options and stock improperly acquired by Mott pursuant to the Equity Plan. Nor does it include amounts received by Mott from Canopy as base compensation and annual bonuses, which totaled approximately $115,000 to $180,000 per year, or compensation received by Mott directly from Portfolio Companies.

15. Based on Canopy records, between 2001 and 2004, Christensen took a total of at least $1,759,370 in excessive cash compensation pursuant to the Incentive Plan and the exercise of resale rights acquired pursuant to the Equity Plan. Such amount does not include the value of options and stock improperly acquired by Christensen pursuant to the Equity Plan. Nor does it

include amounts received by Christensen from Canopy as base compensation and annual bonuses, which totaled approximately $165,000 to $173,000 per year, or compensation received by Christensen directly from Portfolio Companies

16. Based on Canopy records, under Plaintiffs' control, Canopy has never distributed a dividend to the Trust.

17. Based on Canopy records, Mrs. Noorda has never been paid for her services as an officer and director of Canopy.

18. Based on Canopy records, Mr. Noorda has received only nominal compensation for his services as an officer and director, ranging from $40,000 per year in 2000 to $60,000 per year in 2001, 2002 and 2003.

19. Based on Canopy records, at the December 17, 2004 meeting of Canopy's Board of Directors, the Noordas proposed and voted in favor of a corporate resolution retaining me as Canopy's Chief Executive Officer.

20. Since my retention, I have managed Canopy's day-to-day affairs exercising my own independent business judgment. I was not hired by Val Noorda Kreidel ("Kreidel"), who I understand to be the Noordas' daughter, and I was not hired by Terry Peterson ("Peterson"), who I understand to be the Noorda's financial advisor.

21. To the contrary, I was hired as CEO by a majority vote of Canopy's Board of Directors. I had no prior relationship with either Kreidel or Peterson, and I am not part of any "conspiracy" to operate Canopy for the benefit of Kreidel or Peterson. I am operating Canopy for the benefit of its shareholders, including the Trust. I intend to continue to operate Canopy in a way that should enhance shareholder value. I have no present intention of liquidating Canopy.

22. Following my retention as CEO of Canopy, one valued Canopy employee passed away in a very tragic manner. Five other Canopy employees voluntarily have terminated their employment. In my experience, employee resignations following significant management changes is not uncommon.

23. Despite the inflammatory and baseless accusations contained in Plaintiffs' Complaint and in the affidavits of some of those former Canopy employees, the employees who have left Canopy have done so voluntarily or, on information and belief, at Plaintiffs' suggestion or under Plaintiffs' influence. I believe this because, for instance, Plaintiffs allege that "key and valuable Canopy employees . . . are considering terminating, their employment with Canopy." (Complaint, ¶ 114.) Plaintiffs would not know this unless they have communicated with these employees.

24. In any event, Canopy is a relatively small holding company with minimal staffing needs. Despite their statements to the contrary, none of the employees who voluntarily have left Canopy is irreplaceable. Under my management, Canopy is in the process of retaining replacement employees at compensation levels commensurate with their experience and skills, in

stark contrast to the wasteful compensation levels set by prior management. I already have met with and determined appropriate replacements for four of the currently vacant positions, and the process of replacing the other two vacant positions is well underway.

25. On information and belief, Plaintiffs seek to be reinstated to their former positions at Canopy in part to: (i) enable those employees whose "Service" with Canopy has ceased to elect "Cashless Exercises" of their purported options in accordance with Article 2, Section I, of the Equity Plan, and (ii) enable themselves and others to exercise purported resale rights in accordance with Article 2, Section II, of the Equity Plan. Based on Canopy's records, each of the foregoing purported rights must be exercised during the month of February and, in the case of resale rights, terminate the February following an employee's termination for any reason other than cause. (*Id.* at Art. 2(I)(H) and Art. 2(II)(B).)

26. Plaintiffs suggest in the papers filed in support of their motion that failing to reinstate them to their former positions adversely will affect the so-called Helius transaction, currently in process. To the contrary, Canopy and I are well in control of this transaction. Moreover, as Plaintiffs well know, Canopy and the Plaintiffs both have committed in writing to diligently pursue the Helius transaction to make sure that it takes place. See emails attached hereto as Exhibit **Q**.

27. In addition, if the Plaintiffs' request to be reinstated to the positions from which they were terminated over six weeks ago is granted, Plaintiffs will be able to further dissipate Canopy's assets, which would result in more harm to Canopy. Among other things, two

Portfolio Company transactions are currently in play, each of which would purportedly result in significant "Triggering Events." Given the fractious nature of this dispute, I am concerned that Plaintiffs will attempt to use those events to pay themselves additional extraordinary compensation.

28. On behalf of Canopy, I am further concerned that Plaintiffs would use this opportunity to exercise their purported options, the validity of which are the subject of a lawsuit brought by Canopy against the Plaintiffs.

29. Attached hereto as Exhibit **R** is a copy of the Unanimous Written Consent of the Shareholders of The Canopy Group, Inc., dated February 20, 2004. Attached hereto as Exhibit **S** is a copy of the Minutes of Board of Directors of The Canopy Group, Inc., dated March 15, 2004.

[remainder of page intentionally left blank]

DATED this 30th day of January, 2005.

William Mustard

SUBSCRIBED AND SWORN to before me this 30th day of January 2005.

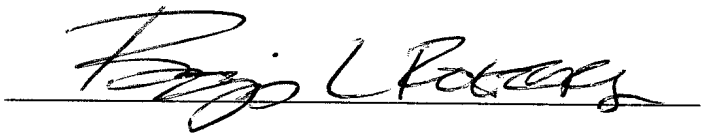
NOTARY PUBLIC
Residing at: Salt Lake County, Ut

My Commission Expires:

2-20-2006

NOTARY PUBLIC
TIFFANY PARKER
201 South Main Ste. 600
Salt Lake City, Utah 84111
My Commission Expires
February 20, 2006
STATE OF UTAH

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January 2005, I caused a true and correct copy of the foregoing **AFFIDAVIT OF WILLIAM MUSTARD IN OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER** to be hand-delivered to:

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