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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

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

Plaintiffs,

AFFIDAVIT OF ALLAN SMART

vs.

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

Civil No. 050400205

Honorable Anthony W. Schofield, Div. 8

Defendants.

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

ALLAN SMART, being first duly sworn, upon oath, deposes and says:

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

2. I received a Bachelor of Science degree in Computer Science from Utah State University in 1984, and an Executive Masters of Business Administration degree from Brigham Young University in 1989.

3. In January 2002, I was hired as the Director of Business Development for The Canopy Group, Inc. ("Canopy"). As part of my duties I reviewed new business opportunities and new business plans for Canopy and Canopy portfolio companies. I also provided business advice to Canopy and Canopy portfolio companies. From time to time, I have served as an officer and/or director for certain Canopy portfolio companies, such as Luxul, JLAC, Inc., and Embedix.

4. I worked at Caldera, Inc. ("Caldera"), a Canopy portfolio company, prior to my employment with Canopy. While working at Caldera, I saw Raymond J. Noorda ("Mr. Noorda") many times and became acquainted with him. I enjoyed my visits with Mr. Noorda and his keen sense of humor.

5. In 2002, Mr. Noorda would come into the Canopy office with Mrs. Lewena Noorda ("Mrs. Noorda"). Mr. Noorda would recognize me and sometimes stop and visit with me.

6. On or about May 15, 2003, I went to an open house at Scenic View Center. At the open house, Dan Baker ("Mr. Baker"), another Canopy employee well acquainted with Mr. Noorda, and I saw Mr. Noorda and went to speak with him. It was clear to me that Mr. Noorda had no idea who either of us were.

7. The last time I saw Mr. Noorda was approximately one year ago when he came to the Canopy office with Mrs. Noorda. Mr. Noorda did not engage in conversation and appeared

somewhat disoriented.

8. I have never heard Mr. or Mrs. Noorda criticize Ralph J. Yarro, III (“Mr. Yarro”), Canopy’s President and Chief Executive Officer, Darcy Mott (“Mr. Mott”), Canopy’s Vice President, Chief Financial Officer and Treasurer, nor Brent Christensen (“Mr. Christensen”), Canopy’s Vice President, Corporate Counsel and Assistant Secretary.

9. A few months ago, Nate Hatch, a member of the same church congregation as Mr. Noorda, told me that when Mr. Noorda comes to church he has a somewhat disheveled appearance (i.e., whiskers partially shaved, clothes not pressed) and appears lost.

10. It has been common knowledge at Canopy that over the last year or so, Mr. Noorda’s mental skills have been diminishing.

11. I have known Mr. Yarro for approximately nine years. During the period of time I worked at Caldera, Mr. Yarro provided Caldera with sound business advice and support. I have also worked closely with Mr. Yarro at Canopy. Mr. Yarro is a skilled businessman who has provided a tremendous amount of support and advice to his employees and the Canopy portfolio companies.

12. On December 17, 2004, a group of men entered Canopy’s offices. Shortly thereafter, I was told by an employee that the men had escorted Mr. Mott and Mr. Christensen out of the building. Then, David Watkiss (“Mr. Watkiss”), an attorney from the Law Firm of Ballard Spahr Andrews & Ingersoll, LLP (“Ballard Spahr”), asked to speak to Rob Penrose, a Canopy employee. Later, our computer system shut down or was password protected. The Canopy employees were directed to report to a conference room for a meeting.

13. At the meeting on December 17, 2004, William Mustard (“Mr. Mustard”), a man I

had never seen before, informed Canopy's employees that Mr. Yarro, Mr. Mott and Mr. Christensen were no longer employees of Canopy as a result of an action of Canopy's Board of Directors, and that he was now the President and Chief Executive Officer of Canopy. Mr. Watkiss spoke during the meeting. Val Noorda Kriedel came into the meeting after it had started.

14. After that meeting and during the next week, Canopy employees were worried about being seen talking together at work. There were times I wanted to discuss the situation with my fellow employees, including Rob Penrose, but was concerned that we were all being watched.

15. After the employee meeting on December 17, 2004, I waited to speak with Mr. Mustard to advise him of ongoing Canopy business operations and issues. I left Canopy after 5:30 p.m. on that date, without having met individually with Mr. Mustard.

16. On the morning of Monday, December 20, 2004, I told Mr. Mustard that there were some issues that I needed to apprise him of before Canopy closed down for the Christmas holidays. Instead of discussing those issues, Mr. Mustard engaged in a conversation about his personal trainer, and an Asian art of determining how energy flowed through one's body. During that discussion, Mark Cusick ("Mr. Cusick"), the President and Chief Executive Officer of VCap, a Canopy portfolio company, asked to speak to Mr. Mustard. Mr. Mustard told Mr. Cusick that he would likely speak to him after the Christmas break. Mr. Mustard then went back into his office, having never asked about the issues of which I said he should be informed. I didn't speak to Mr. Mustard again that day.

17. On December 21, 2004, I tried to talk to Mr. Mustard on several occasions and

was told that he was busy. At approximately 4 p.m., I was able to speak with Mr. Mustard. I asked him if he was aware of the lawsuits. He said yes, but I could tell by his responses that he was only aware of the litigation involving SCO. I proceeded to tell him about a lawsuit involving Embedix, a Canopy portfolio company, and a lawsuit involving EBIZ, a Canopy portfolio company. I also informed him regarding the status of potential investments in companies Canopy had previously conducted due diligence regarding. His response seemed odd to me, in that he began talking about what margin could be made on the ropes or tags that attach to identification badges.

18. On December 22, 2004, I was told that Mr. Mustard wanted to have another meeting with all Canopy employees. At that meeting, Mr. Mustard gave each Canopy employee a document and told each of us to read and sign it. The document handed us was purportedly signed by Mr. and Mrs. Noorda. I have seen Mr. Noorda's signature on several occasions and I do not think that the signature purporting to be that of Mr. Noorda's was his actual signature. After Mr. Mustard handed out the document, he acted as if he wanted us to read and sign the document quickly. In fact, Mr. Mustard sternly asked one employee who was taking a little longer than others to read the document why it was taking her so long. The document I was given to sign was dated December 17, 2004. I added the date December 22, 2004. Mr. Mustard then asked Mr. Baker why he had crossed off the date of December 17, 2004. When Mr. Baker started to explain, the meeting quickly became contentious with Mr. Mustard verbally attacking Mr. Baker. Mr. Mustard repeatedly asked Mr. Baker, in an angry voice, whether Mr. Baker had spoken to others about what had occurred on December 17, 2004. When Mr. Baker tried to answer, Mr. Mustard interrupted him and repeatedly told him, with an increasingly raised voice,

that he wanted a “yes” or “no” answer. Mr. Baker finally replied “no.” I was bothered by Mr. Mustard’s conduct. Other employees were visibly upset by Mr. Mustard’s conduct. The employees did not say anything to Mr. Mustard after that heated exchange. The employees left the meeting, cleaned off their desks as Mr. Mustard had directed them to, and left for the Canopy Christmas luncheon.

19. I have been told that Mr. Mustard met with Rob Penrose individually after the employee meeting and that when Rob Penrose left Mr. Mustard’s office, Rob Penrose appeared very distraught.

20. Mr. Mustard did not attend the Canopy Christmas luncheon. At the Canopy Christmas luncheon, the employees were clearly upset. Rob Penrose, in particular, seemed very distraught. He kept saying, “I shouldn’t have signed that paper.” The other employees tried to reassure him, stating that they had all been coerced to sign the document. Rob Penrose was the first person to leave the Christmas luncheon.

21. After the Christmas luncheon, Canopy’s offices were scheduled to be closed until January 3, 2005.

22. Two days after the Christmas luncheon, I found out that Rob Penrose had committed suicide. I was devastated by this news.

23. On Monday, January 3, 2005, the first day Canopy’s offices were open after the Christmas break, Mr. Mustard did not speak to Canopy’s employees about the death of Rob Penrose. I had no conversations or meetings with Mr. Mustard on that date.

24. On January 11, 2005, I was working in my office. I heard Mr. Baker go into Mr. Mustard’s office. Shortly thereafter I heard voices in a heated discussion. I then heard Mr.

Mustard yell “NO!” at the top of his lungs. I jumped up and started towards Mr. Mustard’s office because I thought a physical altercation may be occurring. I saw Mr. Baker walk out of Mr. Mustard’s office. Mr. Mustard told Mr. Baker to come back into his office and to shut the door. Mr. Baker did so, and I went back to my office.

25. I resigned my employment with Canopy on January 18, 2005. I considered the work environment to be intolerable and it did not appear to me that Mr. Mustard had a “going forward” strategy.

26. I have not obtained other employment. To my knowledge, Canopy has not hired someone to fill my position. If Mr. Yarro, Darcy Mott, and Brent Christensen are permitted to continue as officers of Canopy, I would gladly resume my employment with Canopy.

27. My resignation from Canopy will adversely affect Canopy and Canopy portfolio companies. For example, a meeting of the Board of Directors of Luxul was held on January 21, 2005. I was not told of the meeting, and consequently, did not attend. Also, several of the Canopy portfolio companies relied upon me for business advice and to assist them in finding ways to implement their business plans.

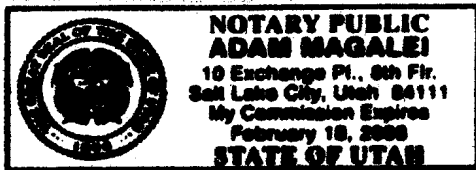
28. Canopy and certain of Canopy’s portfolio companies have also been adversely affected by the events of December 17, 2004, because they are not receiving the support, funding and advice they had received in the past from Mr. Yarro, Mr. Mott and Mr. Christensen. After December 17, 2004, several members of management of Canopy portfolio companies expressed their concern to me that Mr. Mustard does not understand their businesses. I was told by an officer of a Canopy portfolio company that Mr. Mustard instructed him that the portfolio company must use Ballard Spahr to handle all of the legal work associated with a pending major

transaction. Other officers of portfolio companies have expressed concern to me that Mr. Mustard may not provide the support they need and that he may be trying to liquidate or sell Canopy.

29. I have exercised my options for Class A Voting stocks in Canopy, to the extent they have vested. To my knowledge there have been no Canopy shareholders meetings or shareholders consent resolutions since February 2004. I am not aware of any Canopy shareholders meetings set to be held in 2005.

Allan Smart
ALLAN SMART

SUBSCRIBED AND SWORN TO before me this 26 day of January, 2005.



Adam Magalei
Notary Public
Residing in Davis County

My Commission Expires:

18 February 2008

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