

4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

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and Lewena Noorda, as Trustees of the Noorda
Family Trust; William Mustard; and Defendant-
Intervenor, The Canopy Group, Inc.

**IN THE FOURTH JUDICIAL DISTRICT COURT
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.

THE CANOPY GROUP, INC.,
Intervenor/Defendant.

**MEMORANDUM IN SUPPORT OF
MOTION TO CONSOLIDATE**

Case No. 050400205

Honorable Anthony W. Schofield

Defendants Raymond J. Noorda and Lewena Noorda, in their capacity as Trustees of the Noorda Family Trust, William Mustard, and Intervenor-Defendant, The Canopy Group, Inc. (collectively, the “Canopy Defendants”), through their counsel, hereby submit this Memorandum in support of their Motion requesting that the Court consolidate this action with a related civil action, *The Canopy Group, Inc. et al. v. Ralph J. Yarro III et al.*, Fourth Judicial District Court, Utah County, State of Utah, Civil No. 050400245 (the “Canopy Action”), which is also pending before the Honorable Anthony W. Schofield. For the reasons set forth below, the Canopy Defendants respectfully request that the Court enter an order granting this Motion and consolidating this action with the Canopy Action.

ARGUMENT

I. THIS COURT SHOULD CONSOLIDATE THE CANOPY ACTION WITH THIS ACTION BECAUSE THEY INVOLVE COMMON QUESTIONS OF LAW AND FACT PENDING BEFORE THE COURT.

Rule 42(a) of the Utah Rules of Civil Procedure provides that when “actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” Because there are common questions of law and fact pertaining to the claims alleged by the parties in this action and in the Canopy Action, this Court should consolidate the actions.

In this action, plaintiffs assert claims for, among other things, breach of contract relating to a certain Shareholder Agreement purportedly executed by Canopy, breach of fiduciary duty, a declaration that plaintiffs’ employment was not terminated, and tortious interference with

contract and economic relations relating to plaintiffs' employment with Canopy. The Complaint in the Canopy Action, which was filed by Canopy and the Noordas, as Trustees of the Noorda Family Trust, assert claims for, among other things, breach of fiduciary duty of loyalty, removal of Yarro as a director pursuant to *Utah Code Ann.* § 16-10(a)-809, constructive trust, and breach of the same Shareholder Agreement at issue in this action. The claims in both actions arise out of the business operations of Canopy and involve substantially the same individuals and entities as parties. Consolidating these actions will streamline discovery and other pretrial proceedings in both cases by avoiding duplicitous discovery requests, depositions, and other matters.¹ Further, consolidating the trial of both actions will promote judicial efficiency because the claims asserted in both actions constitute many of the defenses advanced by the respective parties in response to the Complaints. Thus, this Court should consolidate this action with the Canopy Action for all purposes, including all discovery, pretrial proceedings, and trial.

CONCLUSION

For the reasons set forth above, the Canopy Defendants respectfully request that the Court enter an order granting this Motion and consolidating this action with the Canopy Action, Civil No. 050400425.

¹ In the Canopy Action, Canopy and the Noordas, as Trustees, have filed a Motion seeking the removal of Yarro as a director of Canopy, pursuant to *Utah Code Ann.* § 16-10a-809, and have requested that the Motion be heard at the same time as the hearing on the Motion for Preliminary Injunction commencing on March 8, 2005, in this action. Consolidation will facilitate the Court's consideration of both Motions at the hearing scheduled to commence on March 8, 2005.

DATED this 14th day of February 2005.



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Intervenor/Defendant The Canopy Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE** was served on the following this 14th day of February 2005, in the manner set forth below:

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