

FILED IN  
 4TH DISTRICT COURT  
 STATE OF UTAH  
 UTAH COUNTY  
 TITLE Process Server  
 Date 2-9-05 Time 9:15  
 2005 FEB 16 P/S: 05

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

**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,

- and -

**THE CANOPY GROUP, INC.,**  
 Intervenor-Defendant.

**SUBPOENA TO ALLAN SMART**

Civil No. 050400205

Honorable Anthony W. Schofield

**TO:** Allan Smart  
1209 East 1040 North  
Orem, Utah 84097

YOU ARE HEREBY COMMANDED to produce or to permit for inspection and copying the documents set forth in the accompanying **Exhibit A**, and to appear for deposition on Thursday, February 17, 2005 in the Utah Room at Thanksgiving Point, 3003 North Thanksgiving Way, Lehi, Utah, Utah County, commencing at 9:00 a.m. and continuing from day to day until completed. The documents set forth in Exhibit A must be provided prior to or brought to your deposition. The deposition will be conducted pursuant to the *Utah Rules of Civil Procedure* before a notary public of the State of Utah or such other officer authorized by law to administer oaths and shall be recorded by stenographic means.

#### **DEFINITIONS**

The following definitions are to be used in interpreting this subpoena and Exhibit A hereto:

1. The term "Canopy" shall mean and refer to The Canopy Group, Inc.
2. The term "Portfolio Company" shall mean any entity in which the Canopy Group, Inc. previously had an ownership interest, currently has an ownership interest, or in the future has an ownership interest. Such entities include but are not limited to Altiris, Inc.; Center 7, Inc.; Cerberian, Inc.; Cogito, Inc.; Communitect, Inc.; Data Crystal, Inc.; deviceLogix (DR DOS,

Inc.); Direct Pointe, Inc.; Fat Pipe Networks, Inc.; Geolux Communications, Inc.; Helius, Inc.; iArchives, Inc.; ICON Development, Inc.; JLAC, Inc.; Learning Optics, Inc.; Linux Networkx, Inc.; Luxul, Inc.; MaxStream, Inc.; MTI, Inc.; MyFamily.com, Inc.; Power Innovations International, Inc.; Sabertooth Tools, Inc.; The SCO Group, Inc.; Smart Bomb Interactive, Inc.; Trolltech AS; Via West, Inc.; VCap, Inc.; and Vintela, Inc.

3. The term “Noordas” shall mean and refer to Mr. and Mrs. Raymond J. Noorda.

4. “You” shall mean and refer to the party named in this subpoena, as well as all agents, assigns, representatives, successors, predecessors and any other person or entity acting or purporting to act on behalf of the party named in this attached subpoena.

5. The conjunctions “and” and “or” as used herein shall be construed both conjunctively and disjunctively, and each shall include the other whenever such dual construction will serve to allow Plaintiff to more particularly answer an interrogatory.

6. The terms “regarding,” “referring,” or “relating” shall mean comprising, reflecting, containing, pertaining, indicating, showing, evidencing, describing, disclosing, mentioning, or bearing upon.

7. The term “document” shall mean written, printed, typed, graphic or photographic matter of any kind or nature, however produced or reproduced, and all mechanical, magnetic, electromagnetic and electronic sound recordings or written transcripts thereof, however produced or reproduced, and including without limitation, all originals no matter how or by whom prepared, all drafts of these whether used or not, and all copies of the original, including email stored in hard copy or electronically. The term “document” shall likewise include “writings,”

“recordings,” or “photographs” (original, drafts, and copies) as those terms are defined and used in Utah. R. Evid. 1001 and Utah R. Civ. P. 34.

**NOTICE TO PERSONS SERVED WITH A SUBPOENA**

*Subpoena to Appear at Trial, at Hearing, or at Deposition.*

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena:
  - a. imposes an undue burden or expense upon you;
  - b. does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or
  - c. commands you to appear at deposition at a place in violation of paragraph 2, above.

4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

*Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises.*

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you to appear to give testimony at trial, at a hearing, or at a deposition:

- a. you need not appear in person at the place of production or inspection;
- b. you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and
- c.. you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable cost of production and copying.

6. You have the right to object if the subpoena:

- a. imposes an undue burden or expense upon you;
- b. does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response;

- c. requires you to disclose a trade secret or other confidential research, development, or commercial information;
- d. requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or
- e. requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.

7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(c), 6(d), or 6(e), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.


8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel you to comply with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena

until the party serving the subpoena has served you with a court order that compels you to comply.

9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, *and* to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

**YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO OBEY THIS SUBPOENA AND APPEAR AS ORDERED MAY BE DEEMED CONTEMPT OF THE COURT.**

DATED this 9<sup>th</sup> day of February 2005.

  
David B. Watkiss, Esq.  
Anthony C. Kaye, Esq.  
James W. Stewart, Esq.  
Boyd L. Rogers, Esq.  
BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
Attorneys for Defendants

## EXHIBIT A

**YOU ARE COMMANDED** to produce or to permit for inspection and copying the following documents (including, without limitation, notes, drafts, and recordings, whether in hard copy form or electronic form such as email or electronically stored files), in your possession, custody or control, not later than 9:00 a.m. on February 17, 2005 in the Utah Room at Thanksgiving Point, 3003 North Thanksgiving Way, Lehi, Utah, Utah County.

1. All documents referring or relating to any communications you have had with Ralph J. Yarro, Darcy G. Mott, and Brent D. Christensen, including all phone records, cell phone records, and emails, from December 17, 2004 and thereafter.
2. All documents referring or relating to any Canopy stock, stock options or stock certificates allegedly held by you or any other present or former employee, officer, and/or director of Canopy.
3. All documents referring or relating to any communications you have had with any past or present employee, officer, and/or director of Canopy from December 17, 2004 and thereafter, including all phone records, cell phone records and emails.
4. All documents referring or relating to any communications you have had with any officer, director, or shareholder of any of the Portfolio Companies, from December 17, 2004 and thereafter.



5. All documents referring or relating to stock, stock options or stock certificates in any of the Portfolio Companies allegedly held by you or any past or present employee, officer, and/or director of Canopy.

6. All documents referring to or relating to any communications you have had, from December 17, 2004 and thereafter, with any member of the news media or press

7. All documents referring to or relating to any communications you have had, from December 17, 2004 and thereafter, with any person regarding your former employment with Canopy.

8. All documents referring to or relating to any communications you have had, from December 17, 2004 and thereafter, with any person regarding the terminations of Ralph J. Yarro, Darcy G. Mott, and/or Brent D. Christensen.

9. All documents referring to or relating to any communications you have had, from December 17, 2004 and thereafter, with any person regarding this lawsuit or the lawsuit filed by The Canopy Group, the Noordas and the Noorda Family Trust against Ralph J. Yarro, Darcy G. Mott and Brent D. Christensen.

10. All documents referring to or relating to any communications you have had, from December 17, 2004 and thereafter, with any person regarding the management of Canopy or its Portfolio Companies.

11. All documents referring to or relating to any communications you have had, from December 17, 2004 and thereafter, with any person regarding the employment, resignation or termination of any other past or present employee of Canopy.

12. All documents referring to or relating to any communications you have had, from December 17, 2004 and thereafter, with any person regarding any communication you have had with any officer, director or shareholder of any Portfolio Company.

13. All documents concerning the termination of your employment with Canopy, including but not limited to, any notes prepared by you concerning the basis, pros and cons, grounds and/or decision.

14. All documents concerning the termination of any other employee's employment at Canopy, including but not limited to, any notes prepared by you or anyone else concerning the basis, pros and cons, grounds and/or reasons for such termination.

15. All documents referring or relating to the health or medical condition of either of the Noordas.

16. All documents concerning the Noorda's service on Canopy's board of directors or actions taken by them as directors.

17. All documents regarding any arrangement for any third party to pay all or part of your legal fees in connection with this lawsuit or any related factual matters, including your stock options, resignation from Canopy Group employment, or other matters.

18. All documents regarding any possibility of your re-employment (and/or the re-employment) of other Canopy employees.

**AFFIDAVIT OF SERVICE**

State of UTAH

County of UTAH

Fourth District Court

Case Number: 050400205 Court Date: 2/15/2005

Plaintiff:

**RALPH J. YARRO III**

vs.

Defendant:

**VAL NOORDA KREIDELL**

For:

James W. Stewart  
BALLARD, SPAHR, ANDREWS & INGERSOLL, LLP  
201 So. Main St.  
Suite 600  
Salt Lake City, UT 84111-2221

Received by ANDERSON PROCESS SERVICES, L.C. on the 9th day of February, 2005 at 4:48 am to be served on **ALLAN SMART. 1209 EAST 1040 SOUTH, OREM, UTAH 84097.**

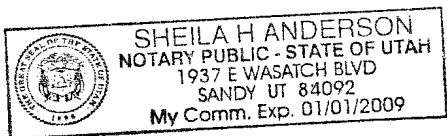
I, Heidi A. Anderson, being duly sworn, depose and say that on the **9th day of February, 2005 at 9:15 pm, I:**

**Individually Served** the within named person with a true copy of the **SUBPOENA, CHECK** with the date and hour endorsed thereon by me, pursuant to state statutes.

**Additional Information pertaining to this Service:**

2/9/2005 10:50 pm ATTEMPTS: 2-9, 7:30P, N/A, 2-9, 9:15P SERVED

I am over the age of 18 and have no interest in the above action.



*Heidi Anderson*

Heidi A. Anderson  
Process Server

Subscribed and Sworn to before me on the 10th day of February, 2005 by the affiant who is personally known to me.

*Sheila Anderson*  
\_\_\_\_\_  
NOTARY PUBLIC

ANDERSON PROCESS SERVICES, L.C.  
230 West 200 South  
Suite 2302  
Salt Lake City, UT 84101  
(801) 619-1110  
Our Job Serial Number: 2005000404

Service Fee: \$102.00

**BALLARD SPAHR ANDREWS & INGERSOLL, LLP**

201 S. MAIN STREET - SUITE 600  
SALT LAKE CITY, UTAH 84111-2221

ZIONS FIRST NATIONAL BANK  
SALT LAKE CITY, UTAH

31-5  
1240

DATE | CHECK NO.

02-09-2005 | 008432

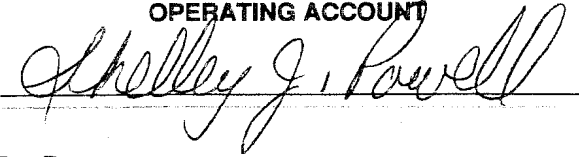
PAY-----THIRTY-FIVE AND NO/100ths DOLLARS-----

AMOUNT

\*\*35.00\*\*

TO THE ORDER OF  
Allan Smart

OPERATING ACCOUNT



⑈008432⑈ ⑆124000054⑆ 03 14102 5⑈

PLEASE DETACH BEFORE DEPOSITING

ENDOR NO. | CUSTOMER NO. | CHECK NO. 008432

INVOICE NO.	DATE	PACK NO.	INV. AMOUNT	G. L. NO.	CLIENT NO.	DESCRIPTION
	02-09-05		35.00		093034	Witness fee & mileage Noorda Audit

MEMO:

BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
201 S. MAIN STREET - SUITE 600, SALT LAKE CITY, UTAH 84111-2221