

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY
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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.**

**ANSWER OF DEFENDANT WILLIAM
MUSTARD**

JURY TRIAL DEMANDED

Civil No. 050400205

Honorable Anthony W. Schofield

Defendant William Mustard (“**Mr. Mustard**”), by and through counsel, Ballard Spahr Andrews & Ingersoll, LLP, hereby responds to the Amended Complaint and Jury Demand (“**Complaint**”) of Plaintiffs Ralph J. Yarro III (“**Yarro**”), Darcy G. Mott (“**Mott**”), and Brent D. Christensen (“**Christensen**”) (collectively, “**Plaintiffs**”) as follows:

FIRST DEFENSE

The Complaint fails to state a claim against Mr. Mustard upon which relief can be granted.

SECOND DEFENSE

Mr. Mustard responds to the specific allegations of the Complaint as follows:

The Parties

1. Mr. Mustard admits that Yarro served as President and Chief Executive Officer of the Canopy Group, Inc. (“**Canopy**”), that Yarro’s employment was at-will, that Yarro’s employment was terminated on December 17, 2004, and that such termination was for cause. Mr. Mustard further admits that Yarro is one of the three members of the Board of Directors (“**Board**”) of Canopy. Mr. Mustard lacks sufficient information to state the truth or falsity of the remaining allegations of this paragraph, and therefore denies the same (hereinafter “**Denied for lack of information**”).

2. Mr. Mustard admits that Mott served as Canopy’s Vice President, Chief Financial Officer, and Treasurer, that Mott’s employment was at-will, that Mott’s employment was terminated on December 17, 2004, and that such termination was for cause. Mr. Mustard denies the remaining allegations of ¶ 2 for lack of information.

3. Mr. Mustard admits that Christensen served as Canopy's Vice President, Corporate Counsel, and Assistant Secretary, that Christensen's employment was at-will, that Christensen's employment was terminated on December 17, 2004, and that such termination was for cause. Mr. Mustard denies the remaining allegations of ¶ 3 for lack of information.

4. Admitted.
5. Denied for lack of information.
6. Admitted.
7. Admitted.
8. Admitted.
9. Denied.

Jurisdiction and Venue

10. Mr. Mustard states that insofar as the allegations of ¶ 10 state a legal conclusion, no response is necessary.

11. Mr. Mustard states that insofar as the allegations of ¶ 11 state a legal conclusion, no response is necessary.

General Allegations

12. Denied for lack of information.
13. Denied for lack of information.
14. Denied for lack of information.
15. Denied for lack of information.
16. Denied for lack of information.

17. Denied for lack of information.

18. Denied for lack of information.

19. Denied for lack of information.

20. Denied for lack of information.

21. Denied for lack of information.

22. Denied for lack of information.

23. Mr. Mustard admits that Yarro accepted appointment as President and Chief Executive Officer of Canopy in or about August 1998, and states that such employment was at-will and was terminated for cause on December 17, 2004. Mr. Mustard denies the remaining allegations of ¶ 23.

24. Denied for lack of information.

25. Mr. Mustard admits that Mott served as Chief Financial Officer of Canopy, and states that such employment was at-will and was terminated for cause on December 17, 2004. Mr. Mustard denies the remaining allegations of ¶ 25 for lack of information.

26. Denied for lack of information.

27. Denied for lack of information.

28. Denied for lack of information.

29. Denied for lack of information.

30. Denied for lack of information.

(a) Mr. Mustard states that insofar as the allegations of ¶ 30(a) refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 30(a) for lack of information.

(b) Mr. Mustard states that insofar as the allegations of ¶ 30(b) refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 30(b) for lack of information.

(c) Mr. Mustard states that insofar as the allegations of ¶ 30(c) refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 30(c) for lack of information.

31. Denied for lack of information.

32. Denied for lack of information.

33. Denied for lack of information.

34. Denied for lack of information.

35. Denied for lack of information.

36. Denied for lack of information.

37. Mr. Mustard admits that Mr. Christensen served as an officer of Canopy, and states that Christensen's employment was at-will and was terminated for cause on December 17, 2004. Mr. Mustard denies the remaining allegations of ¶ 27 for lack of information.

38. Denied for lack of information.

39. Denied for lack of information.

40. Denied for lack of information.

41. Denied for lack of information.

42. Mr. Mustard admits that during 2002, 2003, and 2004 Canopy's Board was comprised of Mr. Noorda, Mrs. Noorda, and Yarro. Mr. Mustard denies the remaining allegations of ¶ 42 for lack of information.

43. Denied for lack of information.

44. Denied for lack of information.

45. Mr. Mustard denies Plaintiffs' allegation that he "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." Mr. Mustard denies the remaining allegations of ¶ 45 for lack of information.

46. Denied.

47. Denied for lack of information.

48. Denied for lack of information.

49. Denied for lack of information.

50. Denied for lack of information.

51. Denied for lack of information.

52. Denied for lack of information.

53. Denied for lack of information.

54. Denied for lack of information.

55. Denied for lack of information.

56. Mr. Mustard admits that during a meeting of Canopy's Board held on December 17, 2004, the Board passed resolutions which terminated the at-will employment of Yarro, Mott, and Christensen as officers of Canopy, each for cause, and also passed a resolution which elected Mr. Mustard as the President, Chief Executive Officer, and Treasurer of Canopy. Mr. Mustard further admits that one of the six resolutions adopted during the December 17th Meeting was a resolution granting Mr. Noorda and Mrs. Noorda options to purchase additional Class A Voting Common Stock and Class B Non-Voting Common Stock in Canopy, and that an additional enabling resolution was passed during that meeting. Mr. Mustard states that the last sentence of ¶ 56 is a legal conclusion and thus requires no response. Mr. Mustard denies the remaining allegations of ¶ 56 for lack of information.

57. Denied.

58. Denied.

59. Denied.

60. Mr. Mustard denies that he was recruited by Ms. Kreidel or Mr. Peterson to "assist in the attempted take-over of Canopy." Mr. Mustard admits that he was hired to manage Canopy after the terminations for cause of Yarro, Mott, and Christensen on December 17, 2004. Mr. Mustard admits that he has performed services for entities other than Canopy with respect to pre-liquidation event services, asset redeployment, implementation of strategies for deployment of corporate assets, the leveraging of personal relationships to drive redistribution of business assets through corporate action and otherwise, corporate disposals, liquidations, and spin-outs of corporate assets. Mr. Mustard denies the remaining allegations of ¶ 60.

61. Mr. Mustard admits that he met with Canopy employees and presidents of Canopy's portfolio companies after he was appointed as Canopy's President, Chief Executive Officer, and Treasurer on December 17, 2004. Mr. Mustard admits that Ms. Val Noorda Kreidel ("Ms. Kreidel") attended certain of such meetings in her capacity as an employee of Canopy. Mr. Mustard denies the remaining allegations of ¶ 61.

62. Denied.

63. Mr. Mustard denies Plaintiffs allegation that he has in any way "threatened, intimidated and harassed Canopy employees." Mr. Mustard further denies that is currently or has ever been an agent of or acted at the direction of Ms. Kreidel. Mr. Mustard denies that any actions taken by him played any role in the suicide of Robert Penrose. Mr. Mustard further asserts that Plaintiffs have made this baseless accusation in bad faith and in violation of Utah R. Civ. P. 11. Mr. Mustard denies the remaining allegations of ¶ 63.

64. Mr. Mustard denies that is currently or has ever been an agent of or acted at the direction of Ms. Kreidel. Mr. Mustard further denies Plaintiffs' allegation that he has "required Canopy employees to sign, under duress, documents back-dated to December 17, 2004," and states that on December 22, 2004 he asked Canopy employees to sign and thereby acknowledge that they had read a letter from Mr. and Mrs. Noorda dated December 17, 2004 which advised Canopy employees, among other things, that Yarro, Mott, and Christensen had been terminated for cause and that Mr. Mustard was the President and Chief Executive Officer of Canopy. Mr. Mustard denies the remaining allegations of ¶ 64.

65. Mr. Mustard admits that as of December 16, 2004 Canopy had twelve full-time employees. Mr. Mustard further admits that following Plaintiffs' terminations, one Canopy employee died and five others voluntarily terminated their own employment. Mr. Mustard denies that any actions taken by him played any role in the suicide of Robert Penrose. Mr. Mustard further asserts that Plaintiffs have made this baseless accusation in bad faith and in violation of Utah R. Civ. P. 11. Mr. Mustard asserts that those employees who terminated their own employment following December 17, 2004 did so voluntarily and/or as a result of Plaintiffs' influence and/or encouragement. Mr. Mustard denies the remaining allegations of ¶ 65.

66. Mr. Mustard admits that Canopy and the Trust filed a Complaint (the "**Canopy Complaint**") against Plaintiffs in this Court (Case No. 050400245) on January 25, 2005 which speaks for itself. Mr. Mustard denies the remaining allegations of ¶ 66.

First Claim for Relief
(Invalid Actions Purportedly Taken at the December 17th Meeting and Thereafter)

67. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-66 above, and 73 to 156 below.

68. Denied for lack of information.

69. Mr. Mustard admits that on December 17, 2004 a resolution was passed by Canopy's Board appointing him as President and Chief Executive Officer of Canopy. Mr. Mustard further admits that three separate resolutions were passed on December 17, 2004 which terminated the at-will employment of Yarro, Mott, and Christensen as officers of Canopy. Mr. Mustard further admits that an enabling resolution and a resolution granting Mr. and Mrs.

Noorda options to purchase additional Class A Voting Common Stock and Class B Nonvoting Common Stock was passed during the December 17th Meeting. Mr. Mustard denies the remaining allegations of ¶ 69.

70. Denied.

71. Denied.

72. Denied.

Second Claim for Relief
(Breach of Contract)

73. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-72 above, and 84 to 156 below.

74. Denied for lack of information.

75. Mr. Mustard states that insofar as the allegations of ¶ 75 refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 75 for lack of information.

76. Mr. Mustard states that insofar as the allegations of ¶ 76 refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 76 for lack of information.

77. Mr. Mustard states that insofar as the allegations of ¶ 77 refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 77 for lack of information.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

Third Claim for Relief

(Breach of Fiduciary Duty—Joint Shareholders and Directors of Closely Held Business)

84. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-84 above, and 90 to 156 below.

85. Admitted.

86. Mr. Mustard states that insofar as the allegations of ¶ 86 appear to be directed at parties other than Mr. Mustard and state a legal conclusion, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 86 for lack of information.

87. Mr. Mustard states that insofar as the allegations of ¶ 87 appear to be directed at parties other than Mr. Mustard, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 87 for lack of information.

88. Denied.

89. Denied.

Fourth Claim for Relief

**(Breach of Directors and Officers Statutory Standard
of Conduct—Utah Code § 16-10a-840)**

90. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-89 above, and 97 to 156 below.

91. Mr. Mustard states that insofar as the allegations of ¶ 91 appear to be directed at parties other than Mr. Mustard, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 91 for lack of information.

92. Mr. Mustard states that insofar as the allegations of ¶ 92 appear to be directed at parties other than Mr. Mustard, no response is necessary. Mr. Mustard denies Plaintiffs' allegation that current or former Canopy employees have been mistreated in any manner after December 17, 2004. Mr. Mustard denies the remaining allegations of ¶ 92 for lack of information.

93. Mr. Mustard states that insofar as the allegations of ¶ 93 appear to be directed at parties other than Mr. Mustard, no response is necessary. Mr. Mustard denies Plaintiffs' allegation that current or former Canopy employees have been mistreated in any manner after December 17, 2004. Mr. Mustard denies the remaining allegations of ¶ 93 for lack of information.

94. Denied.

95. Denied.

96. Denied.

Fifth Claim for Relief
(Breach of Fiduciary Duties and Standards of Conduct—By Arrogated Directors)

97. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-96 above, and 106 to 156 below.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

Sixth Claim for Relief
(Temporary Restraining Order/Preliminary and Permanent Injunction)

106. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-105 above, and 118 to 156 below.

107. Denied for lack of information.

108. Denied.

109. Mr. Mustard admits that subsequent to the terminations of Plaintiffs on December 17, 2004 he advised Canopy employees both orally and in writing that Plaintiffs had been terminated as officers of Canopy for cause and that Canopy employees were not to take direction from Plaintiffs respecting Canopy.

110. Admitted.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Mr. Mustard states that insofar as the allegations of ¶ 116 appear to be directed at parties other than Mr. Mustard, no response is necessary.

117. Mr. Mustard states that insofar as the allegations of ¶ 117 appear to be directed at parties other than Mr. Mustard, no response is necessary.

Seventh Claim for Relief
(Breach of Covenant of Good Faith and Fair Dealing)

118. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-117 above, and 123 to 156 below.

119. Mr. Mustard states that insofar as the allegations of ¶ 119 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 119.

120. Mr. Mustard states that insofar as the allegations of ¶ 120 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 120.

121. Mr. Mustard states that insofar as the allegations of ¶ 121 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 121.

122. Denied.

Eighth Claim for Relief
(Promissory Estoppel)

123. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-122 above, and 128 to 156 below.

124. Denied for lack of information.

125. Denied for lack of information.

126. Denied.

127. Denied.

Ninth Claim for Relief
(Constructive/Resulting Trust)

128. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-127 above, and 131 to 156 below.

129. Denied.

130. Denied

Tenth Claim for Relief
(Declaration that Plaintiffs' Employment Was not Terminated)

131. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-130 above, and 138 to 156 below.

132. Mr. Mustard states that insofar as the allegations of ¶ 132 refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 132.

133. Mr. Mustard states that insofar as the allegations of ¶ 133 refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 133.

134. Mr. Mustard states that insofar as the allegations of ¶ 134 refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 134.

135. Mr. Mustard states that insofar as the allegations of ¶ 135 refer to a written document which speaks for itself, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 135.

136. Denied.

137. Denied.

Eleventh Claim for Relief
**(Tortious Interference With Contract and Existing Economic Relations,
and Tortious Interference with Prospective Economic Relations)**

138. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-137 above, and 148 to 156 below.

139. Mr. Mustard states that insofar as the allegations of ¶ 139 refer to written documents which speak for themselves, no response is necessary. Mr. Mustard denies the remaining allegations of ¶ 139.

140. Denied for lack of information.

141. Denied for lack of information.

142. Mr. Mustard states that insofar as the allegations of ¶ 142 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 142.

143. Mr. Mustard states that insofar as the allegations of ¶ 143 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 143.

144. Mr. Mustard states that insofar as the allegations of ¶ 144 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 144.

145. Denied.

146. Denied.

147. Denied.

Twelfth Claim for Relief
(Undue Influence)

148. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-147 above, and 153 to 156 below.

149. Mr. Mustard states that insofar as the allegations of ¶ 149 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies Plaintiffs' allegation that Ms. Kreidel, Mr. Peterson, and John Does 1-10 "knew of Mr. and Mrs. Noorda's dependant conditions and deteriorating health" for lack of information and denies the remaining allegations of ¶ 149.

150. Mr. Mustard states that insofar as the allegations of ¶ 150 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 150.

151. Mr. Mustard states that insofar as the allegations of ¶ 151 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 151.

152. Mr. Mustard states that insofar as the allegations of ¶ 152 appear to be directed at parties other than Mr. Mustard, no response is necessary. Nonetheless, Mr. Mustard denies the allegations of ¶ 152.

Thirteenth Claim for Relief
(Aiding and Abetting Breach of Fiduciary Duty)

153. Mr. Mustard restates and incorporates by reference his responses to ¶¶ 1-152 above.

154. Denied.

155. Denied.

156. Denied.

157. Mr. Mustard specifically denies each and every allegation of the Complaint not specifically admitted in ¶¶ 1-156 above.

THIRD DEFENSE

The Complaint is barred, in whole or in part, to the extent Plaintiffs have waived or are estopped from asserting the claims asserted therein.

FOURTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, and/or acquiescence.

FIFTH DEFENSE

The allegations and claims asserted in the Complaint, in each purported cause of action alleged therein, have always been and continue to be frivolous, unreasonable, and groundless. Plaintiffs brought this action in bad faith. *See Utah Code Ann. § 78-27-56.*

SIXTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they are not asserted by the real party in interest.

SEVENTH DEFENSE

The Complaint is barred, in whole or in part, to the extent that the claims asserted therein are claims that belong to Canopy.

EIGHTH DEFENSE

Plaintiffs have suffered no damages because their employment at Canopy was at-will and was therefore terminable by Canopy at any time for any reason or no reason.

NINTH DEFENSE

Plaintiffs have failed to mitigate their damages, if any, and to the extent of such failure to mitigate, any damages awarded to Plaintiffs should be reduced accordingly.

TENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, based on the doctrine of unclean hands.

ELEVENTH DEFENSE

Plaintiffs' request for a preliminary injunction is improper because Plaintiffs have failed to show that they have suffered, or will continue to suffer, irreparable harm in the absence of their requested injunction.

TWELFTH DEFENSE

Plaintiffs' request for a preliminary injunction is improper because Plaintiffs' purported options are invalid and do not give them any substantive rights with regard to the management and/or control of Canopy.

THIRTEENTH DEFENSE

Plaintiffs' request for a preliminary injunction is improper because the proposed injunction is contrary to the public interest.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the actions taken by Mr. Mustard were proper and/or protected by the business judgment rule.

FIFTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing.

SIXTEENTH DEFENSE

Mr. Mustard asserts and allege that he has, or may have, additional affirmative defenses which are not yet known but which may become known through future discovery. Mr. Mustard asserts each and every defense as may be ascertained through future discovery herein.

DEMAND FOR JURY TRIAL

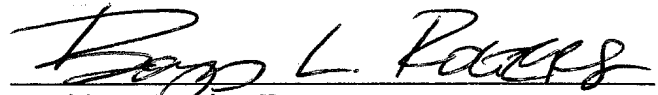
Pursuant to Utah R. Civ. P. 38, Mr. Mustard demands a trial by jury on all issues raised by the pleadings and so triable.

WHEREFORE, Mr. Mustard respectfully requests that the Complaint be dismissed with prejudice and that Plaintiffs take nothing thereby; that he be awarded his attorney's fees and

costs as provided by law; and that he be awarded such other and further relief as the Court deems warranted.

DATED this 24th day of February 2005.

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

A handwritten signature in black ink, appearing to read "Boyd L. Rogers", is written over a horizontal line.

David B. Watkiss, Esq.

Anthony C. Kaye, Esq.

James W. Stewart, Esq.

Boyd L. Rogers, Esq.

Attorneys for Defendant William Mustard

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **Answer of Defendant William Mustard** was served to the following this 24th day of February 2005, in the manner set forth below:

- Hand Delivery
- U.S. Mail, postage prepaid
- Federal Express
- Certified Mail, Receipt No. _____, return receipt requested

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