

COPY

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15 Attorneys for Plaintiffs

16 SUPERIOR COURT OF ARIZONA
17 MARICOPA COUNTY

18 DAVID ROBERTS, SAM DALEMBERT, and
19 HETAL SHAH, M.D., derivatively on behalf of
20 Cheyenne Mountain Games, Inc., a Nevada
21 corporation,

22 Plaintiffs,

23 vs.

24 DARK COMET GAMES, LLC, an Arizona
25 limited liability company; FRESH START
26 STUDIOS, LLC, an Arizona limited liability
27 company; KARL and JANE DOE HIATT,
28 husband and wife; MARK and JANE DOE
RENNBERG, husband and wife; CHRIS and
JANE DOE LOMBARDO, husband and wife;
HARLAN JAMES BROWN, II and JANE DOE
BROWN, husband and wife; and TIMOTHY
and JANE DOE JENSON, husband and wife,

Defendants.

No. CV2010-025559

FIRST AMENDED VERIFIED
COMPLAINT

- Declaratory Judgment
- Fraudulent Transfer
- Breach of Contract
- Breach of Fiduciary Duties
- Aiding and Abetting a Tort (Breach of Fiduciary Duties and Fraudulent Transfer)
- Civil Conspiracy
- Unjust Enrichment
- Tortious Interference
- Injunctive Relief

David Roberts, Samuel Dalembert, and Hetal Shah, M.D. (collectively, "Derivative Plaintiffs"), for their Verified Complaint, allege as follows:

GALLAGHER & KENNEDY, P.A.
2575 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
(602) 530-8000

- 1 1. Cheyenne Mountain Entertainment, Inc. (“CME”) is a Nevada corporation
2 with its headquarters and principal offices in Maricopa County, Arizona.
- 3 2. Cheyenne Mountain Games, Inc. (“CMG”) is a Nevada corporation with
4 its headquarters and principal offices in Maricopa County, Arizona.
- 5 3. CME is the parent and majority shareholder of CMG.
- 6 4. Stargate Worlds, LLC is a manager-managed Nevada limited liability
7 company, with its headquarters and principal place of business in Maricopa County,
8 AZ.
- 9 5. CMG owns a majority of the membership units in Stargate Worlds, LLC
10 and is the Manager of Stargate Worlds, LLC.
- 11 6. Firesky, LCC (“Firesky”) is a manager-managed Nevada limited liability
12 company, with its headquarters and principal place of business in Maricopa County,
13 AZ.
- 14 7. CMG owns a majority of the membership units in Firesky, LLC and is the
15 Manager of Firesky, LLC.
- 16 8. Stargate Worlds, LLC and Firesky, LLC are referred to as subsidiaries of
17 CMG by CMG’s officers and directors.
- 18 9. Collectively, CME, CMG, Firesky, LLC, and Stargate Worlds, LLC are
19 referred to herein as the “Cheyenne Entities.”
- 20 10. Derivative Plaintiff David Roberts (“Roberts”) is a resident of Kansas
21 City, Missouri and presently a shareholder and creditor of CMG and was a shareholder
22 of CMG at all relevant times during which the complained-of events occurred.
- 23 11. Derivative Plaintiff Samuel Dalembert (“Dalembert”) is a resident of Bala
24 Clwyd, Pennsylvania and presently a shareholder of CMG and was a shareholder of
25 CMG at all relevant times during which the complained-of events occurred.

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1 12. Derivative Plaintiff Hetal Shah, M.D. (“Shah”) is a resident of Phoenix,
2 Arizona and presently a shareholder and creditor of CMG and was a shareholder of
3 CMG at all relevant times during which the complained-of events occurred.

4 13. Dalembert, Roberts, and Shah (collectively, “Derivative Plaintiffs”) fairly
5 and adequately represent the interests of similarly situated shareholders of CMG in
6 enforcing the rights of CMG and its subsidiaries against the Defendants.

7 14. Defendant Dark Comet Games, LLC (“Dark Comet”) is an Arizona
8 limited liability company with its headquarters and principal place of business located in
9 Maricopa County, Arizona at 3850 E. Baseline, Suite 126, Mesa, Arizona. Dark Comet
10 may be served through its registered agent, Mark Renberg, at 3421 E. Clark Street,
11 Gilbert, Arizona.

12 15. Defendant Fresh Start Studios, LLC (“Fresh Start”) is an Arizona limited
13 liability company with its headquarters and principal place of business located in
14 Maricopa County, Arizona. Fresh Start may be served through its registered agent,
15 Mark Renberg, at 3421 E. Clark Street, Gilbert, Arizona.

16 16. Defendants Karl and Jane Doe Hiatt (“Hiatt”) are husband and wife and
17 were at all times acting for and on behalf of their marital community and are residents
18 of Maricopa County, Arizona. The Hiatts may be served at 3418 E. Encanto, Mesa,
19 Arizona 85213. Dr. Karl Hiatt is a principal and manager of both Dark Comet and
20 Fresh Start.

21 17. Defendant Mark Renberg (“Renberg”) is a principal and manager of both
22 Dark Comet and Fresh Start and is a resident of Maricopa County, Arizona. On
23 information and belief, Defendant Jane Doe Renberg is, and at all times relevant was,
24 Renberg’s spouse and a resident of Maricopa County, Arizona. Renberg’s actions as
25 alleged in this Complaint were for the benefit of and in furtherance of the marital
26 community. As such, the Renbergs’ marital community is liable for the actions
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1 described in this Complaint. The Renbergs may be served at 3421 E. Clark Street,
2 Gilbert, Arizona 85297 or at 176 E. Calderwood, Suite 125, Meridian, ID 83642.

3 18. Defendant Chris Lombardo ("Lombardo") is a principal and manager of
4 both Dark Comet and Fresh Start and is a resident of Idaho. On information and belief,
5 Defendant Jane Doe Lombardo is, and at all times relevant was, Lombardo's spouse and
6 a resident of Maricopa County, Arizona. Lombardo's actions as alleged in this
7 Complaint were for the benefit of and in furtherance of the marital community. As
8 such, the Lombardos' marital community is liable for the actions described in this
9 Complaint. The Lombardos may be served at 4255 W. Braveheart, Eagle, Idaho 83616
10 or at 209 E. Knoll Court, Eagle, Idaho 83616.

11 19. Defendant Harlan "Jim" Brown ("Brown") is the Studio Head and
12 Creative Director for Dark Comet and Fresh Start and is a resident of Maricopa County,
13 Arizona. On information and belief, Defendant Jane Doe Brown is, and at all times
14 relevant was, Brown's spouse and a resident of Maricopa County, Arizona. Brown's
15 actions as alleged in this Complaint were for the benefit of and in furtherance of the
16 marital community. As such, the Browns' marital community is liable for the actions
17 described in this Complaint. The Browns may be served at 1797 W. 28th Ave., Apache
18 Junction, Arizona 85210 or at 1179 East Frances Lane, Gilbert, Arizona. Brown
19 describes himself as a "cross between President and General Manager of Dark Comet."

20 20. Defendant Timothy Jenson ("Jenson") is a resident of California. On
21 information and belief, Defendant Jane Doe Jenson is, and at all times relevant was,
22 Jenson's spouse and a resident of California. Jenson's actions as alleged in this
23 Complaint were for the benefit of and in furtherance of the marital community. As
24 such, the Jensons' marital community is liable for the actions described in this
25 Complaint. The Jensons may be served at 11491 Harrisburg Road, Los Alamitos, CA
26 90720.

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1 21. Defendants Dark Comet, Fresh Start, Hiatt, Renberg, Lombardo, Brown,
2 and Jenson caused events to occur in Maricopa, County, Arizona, out of which
3 Derivative Plaintiffs' claims arise.

4 22. Defendants Renberg and Lombardo are themselves derivative plaintiffs in
5 an action styled *Deering, Renberg, and Lombardo v. Whiting, et al*, Case No. CV2010-
6 003106, filed in Maricopa County Superior Court on or about February 2, 2010 (the
7 "Deering-Renberg-Lombardo Litigation"). Defendant Brown is also a defendant in the
8 Deering-Renberg-Lombardo Litigation. Renberg and Lombardo purport to represent
9 the interests of CME and CMG for alleged misconduct which occurred prior to
10 February 2, 2010.

11 23. Derivative Plaintiffs in this action allege claims all of which arose after
12 February 2, 2010 and all of which are related to and arise out of a single transaction that
13 occurred after the Deering-Renberg-Lombardo Litigation was initiated.

14 24. Through a series of licensing agreements with MGM Interactive, Inc.
15 ("MGM"), CME has acquired the right to develop, market, and publish a massively
16 multi-player on-line role playing game ("MMORPG") based upon MGM's "Stargate"
17 television and movie franchise as well as the right to develop more limited shooter
18 games based on the Stargate franchise.

19 25. CMG, directly and through its subsidiary Stargate Worlds, LLC, has
20 pursued the development of the MMORPG in connection with the MGM license
21 including, but not limited to, software development and launch of the Stargate
22 Resistance Game ("SRG") and the software development for the MMORPG referred to
23 as "Stargate Worlds."

24 26. The Cheyenne Entities have raised and expended *tens of millions of*
25 *dollars* in connection with the development of Stargate Resistance and Stargate Worlds.

26 27. Stargate Resistance was launched in February 2010.
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1 28. At the time the Deering-Renberg-Lombardo Litigation commenced, the
2 MMORPG, Stargate Worlds, was believed to be nearing completion.

3 29. Prior to February 11, 2010, Defendant Jenson was the President of CME
4 and CMG.

5 30. On or about February 6, 2010, Defendant Jenson wrote a letter to the
6 attorneys representing Defendants Renberg and Lombardo in the Deering-Renberg-
7 Lombardo Litigation, in which he expressed support for that litigation and joined them
8 in seeking to oust Chairman Gary Whiting.

9 31. On or about February 11, 2010, Gary Whiting, then-Chairman of both
10 CME and CMG, following a Board meeting, purportedly fired Jenson "with cause" as
11 President and installed Dale Grabois as President and CEO of CME and CMG.

12 32. Notwithstanding this action, Defendant Jenson continued to publicly
13 assert that he was still the President of CME and CMG after February 11, 2010.

14 33. On February 12, 2010, ten days after the Deering-Renberg-Lombardo
15 Litigation was filed, CME filed a voluntary Chapter 11 bankruptcy petition in the
16 District of Arizona, Case No. 2:10-bk-03632, automatically staying the former
17 litigation.

18 34. By operation of law, the effect of CME's bankruptcy filing was to create a
19 new legal entity, the debtor's estate, for the benefit of shareholders and creditors.

20 35. Except in the ordinary course of business, upon any bankruptcy filing, the
21 Debtor (CME) could not dispose of any of the assets in the debtor's estate without
22 approval of the Bankruptcy Court.

23 36. The assets of the debtor's estate included its holdings and assets in
24 subsidiaries CMG and Stargate Worlds, LLC.

25 37. On or about February 24, 2010, under the direction of Defendant Jenson,
26 individuals acting on behalf of Defendant Jenson and/or the other individual Defendants
27 attempted to remove all the assets of CME and CMG from their corporate offices.

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1 38. Due to the objections of Dale Grabois (and his calling the police to the
2 corporate offices), Defendants' attempts to physically take the assets of CME and CMG
3 were foiled on February 24, 2010.

4 39. The other Defendants, apparently at Jenson's urging, also began to
5 surreptitiously negotiate a transfer and sale of substantially all of the assets of the
6 Cheyenne Entities to Fresh Start Studios, LLC and eventually, to Dark Comet Games,
7 LLC, companies controlled by Defendants Hiatt, Renberg, Lombardo, and Brown.

8 40. The agreement negotiated by Jenson and the individual Defendants is
9 called a Joint Venture Agreement, under which the Cheyenne Entities were to
10 *"contribute, sell, assign, transfer and convey to [Fresh Start Studios, LLC] all the*
11 *computers, servers and other assets and software related to the development of*
12 *[Stargate Resistance] and running the Cheyenne corporate email servers and websites*
13 *(the 'Assets')."*

14 41. The Joint Venture Agreement states that all the assets "will be owned by"
15 Fresh Start Studios and "all title shall pass to" Fresh Start.

16 42. On information and belief, Defendant Jenson negotiated the terms of the
17 Joint Venture Agreement on behalf of the Cheyenne Entities, despite having been
18 informed by the Chairman of CME and CMG that he, Jenson, was terminated on
19 February 11, 2010 and that he had been replaced by Grabois as President of CME and
20 CMG.

21 43. The Joint Venture Agreement is dated March 2, 2010 and asserts that it
22 was executed on that date.

23 44. Fresh Start Studios, LLC was not officially incorporated or formed until
24 March 4, 2010, according to records with the Arizona Corporation Commission.

25 45. Consequently, the actual date on which the Joint Venture Agreement was
26 signed may be a date other than March 2, 2010, since Fresh Start Studios did not exist
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1 on March 2, 2010 and the Joint Venture Agreement dated March 2, 2010 recites that
2 “Karl Hiatt and others *have formed* Fresh Start Studios, LLC.”

3 46. The Joint Venture Agreement was signed by Hiatt and Renberg on behalf
4 of Fresh Start Studios.

5 47. Dana Stanton signed the Joint Venture Agreement, purportedly on behalf
6 of all the Cheyenne Entities.

7 48. Dana Stanton is described on the Joint Venture Agreement as the
8 “Director of Corporate Services” for CME, CMG, Firesky, LLC, and Stargate Worlds,
9 LLC.

10 49. Dana Stanton has never been the President of, or an officer of, CME or
11 CMG. Dana Stanton is believed to have been Jenson’s executive assistant/secretary.

12 50. On March 2, 2010, when the Joint Venture Agreement was purportedly
13 executed, the President of CME and CMG was either Dale Grabois or Jenson.

14 51. Dale Grabois did not negotiate or approve of the Joint Venture Agreement
15 on behalf of CME or CMG or Stargate Worlds, LLC or Firesky, LLC.

16 52. The Joint Venture Agreement, by its terms, transferred ownership and title
17 of all, or substantially all, of the assets of the Cheyenne Entities to Fresh Start Studios.

18 53. The Joint Venture Agreement was not signed by the President or any
19 officer of CME.

20 54. The Joint Venture Agreement was not signed by the President or any
21 officer of CMG.

22 55. The Joint Venture Agreement was not signed by the Manager of Stargate
23 Worlds, LLC.

24 56. The Joint Venture Agreement was not signed by the Manager of Firesky,
25 LLC.

26 57. No shareholder vote was undertaken by CME approving the Joint Venture
27 Agreement or the sale of all or substantially all of CME’s assets.

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1 58. No shareholder vote was undertaken by CMG approving the Joint Venture
2 Agreement or the sale of all or substantially all of CMG's assets.

3 59. No member vote was undertaken by Stargate Worlds, LLC approving the
4 Joint Venture Agreement or the sale of all or substantially all of Stargate World's assets.

5 60. No member vote was undertaken by Firesky, LLC approving the Joint
6 Venture Agreement or the sale of all or substantially all of Firesky's assets

7 61. No CME Board meeting was held to approve the Joint Venture
8 Agreement or the sale of all or substantially all of CME's assets.

9 62. No CMG Board meeting was held to approve the Joint Venture
10 Agreement or the sale of all or substantially all of CMG's assets.

11 63. No corporate resolution was passed by the CME Board approving the
12 Joint Venture Agreement or the sale of all or substantially all of CME's assets.

13 64. No corporate resolution was passed by the CMG Board approving the
14 Joint Venture Agreement or the sale of all or substantially all of CMG's assets.

15 65. No resolution was passed by Stargate Worlds, LLC approving the Joint
16 Venture Agreement or the sale of all or substantially all of Stargate World's assets.

17 66. No resolution was passed by Firesky, LLC approving the Joint Venture
18 Agreement or the sale of all or substantially all of Firesky's assets.

19 67. At the time of the alleged execution of the Joint Venture Agreement,
20 CME was still in bankruptcy, and could not dispose of any assets without Bankruptcy
21 Court approval.

22 68. Fresh Start Studios, Hiatt, Renberg, Lombardo, Brown, and Jenson knew
23 that CME was in bankruptcy at the time the Joint Venture Agreement was being
24 "negotiated" and at the time of its execution. The Joint Venture Agreement includes a
25 statement that Fresh Start "is aware of . . . the bankruptcy of CME."

26 69. Fresh Start Studios, Hiatt, Renberg, Lombardo, Brown, and Jenson knew
27 of the dispute with Whiting and knew Whiting's assertion that Jenson had been replaced
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1 by Grabois at the time the Joint Venture Agreement was being negotiated and at the
2 time of its execution.

3 70. No approval was sought or obtained from the Bankruptcy Court
4 permitting CME to dispose of all or substantially all of its assets or to dispose of all or
5 substantially all of the assets of CME's subsidiaries (CMG, Firesky, LLC, and Stargate
6 Worlds, LLC).

7 71. Defendants Hiatt, Renberg, Lombardo, and Brown are each shareholders
8 of CME and/or CMG.

9 72. At the time the Joint Venture Agreement was being negotiated and
10 executed, Defendants Fresh Start, Hiatt, Renberg, Lombardo, Brown, and Jenson knew
11 that no CME or CMG shareholder approval had been sought or obtained for the Joint
12 Venture Agreement and that shareholder approval had not been sought or obtained for
13 the sale of all or substantially all of the assets of any of the Cheyenne Entities.

14 73. At the time the Joint Venture Agreement was being negotiated and
15 executed, Defendants Fresh Start, Hiatt, Renberg, Lombardo, Brown, and Jenson knew
16 that the Cheyenne Entities had spent tens of millions of dollars developing Stargate
17 Resistance and the MMORPG, Stargate Worlds.

18 74. Fresh Start Studios purportedly paid the Cheyenne Entities a total of only
19 \$100,000 to purchase all or substantially all of their assets.

20 75. The purchase price represented a fraction of 1% of the cost of developing
21 the assets transferred to Dark Comet/Fresh Start.

22 76. Defendants knew or should have known, at the time the Joint Venture
23 Agreement was executed, that there was a substantial risk that the validity of that
24 agreement would be subject to a legal challenge because of (a) CME's bankruptcy, (b)
25 the lack of approval by the appropriate shareholders, (c) the lack of approval by the
26 Boards of CME or CMG, (d) the lack of any authorizing resolution(s), and (e) the lack
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1 of any signature by the President of CME or CMG or the Manager of Stargate Worlds,
2 LLC or the Manager of Firesky, LLC.

3 77. In furtherance of the Defendants' secret scheme, and to minimize the risk
4 of an immediate legal challenge, the Joint Venture Agreement included a confidentiality
5 provision that it was to "be maintained in strict confidence" and that none of the terms,
6 contents, or "any negotiations that led to the [Joint Venture] Agreement" were to be
7 disclosed without written consent of the parties.

8 78. Under the terms of the Joint Venture Agreement, Fresh Start Studios
9 promised to provide "*full support* for [Stargate Resistance] and for marketing and
10 promoting [Stargate Resistance] and any future games related to Stargate." All such
11 costs were to be borne solely by Fresh Start.

12 79. Under the terms of the Joint Venture Agreement, Fresh Start could not
13 assign any of its rights or obligations without the written consent of the Cheyenne
14 Entities.

15 80. Under the terms of the Joint Venture Agreement, Fresh Start agreed to pay
16 attorneys fees incurred by the Cheyenne Entities if Fresh Start breached the agreement
17 and agreed to pay the Cheyenne Entities' fees and expenses "resulting from anything
18 else related to the transactions contemplated under this [Joint Venture] Agreement."

19 81. Under the terms of the Joint Venture Agreement, Fresh Start was
20 supposed to create an independent board of directors to oversee Fresh Start Studios.
21 CME and CMG were entitled to appoint one of those independent directors.

22 82. On or about March 15, 2010, the presiding judge in the Deering-Renberg-
23 Lombardo Litigation (Judge Myers) appointed Edward Burr as the Receiver for CME
24 and CMG, with full executive authority for the companies and instructions to "take over
25 the assets, affairs, management, operation and control of CMG and CME."

26 83. On or about March 25, 2010, the bankruptcy judge appointed Edward
27 Burr as the Receiver for CME, with control over the debtor's estate.

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1 84. On or about April 14, 2010, CME's bankruptcy petition was dismissed for
2 failing to file required debtors' schedules.

3 85. On information and belief, Defendant Fresh Start Studios, LLC and its
4 principals learned that its chosen name was confusingly similar to another unrelated
5 Phoenix-based internet company called "Fresh Start Studio, LLC," which had been in
6 operation for several years before Defendant Fresh Start Studios, LLC was formed.

7 86. On information and belief, to avoid confusion with "Fresh Start Studio,
8 LLC," Defendants Hiatt, Renberg, and Lombardo formed another limited liability
9 company, Dark Comet Games, LLC, on or about April 6, 2010, according to the
10 Arizona Corporation Commission.

11 87. Thereafter, Defendants ceased operations under the name "Fresh Start
12 Studios" and began conducting all their operations under the "Dark Comet" name.

13 88. On information and belief, Fresh Start Studios has transferred or assigned
14 all the assets that it obtained under the Joint Venture Agreement to Dark Comet.

15 89. For example, in an April press release, Dark Comet referred to having
16 entered into an agreement "in March 2010" giving it development rights over Stargate
17 Resistance. This was a reference to Fresh Start's Joint Venture Agreement -- Dark
18 Comet Games, LLC did not exist in March 2010.

19 90. Neither Fresh Start nor Dark Comet has sought or obtained written
20 consent from the Cheyenne Entities allowing Fresh Start to assign the Joint Venture
21 Agreement or the underlying assets to Dark Comet, as required by the Joint Venture
22 Agreement.

23 91. In all respects, Fresh Start is either doing business as Dark Comet, or Dark
24 Comet is the successor-in-interest to Fresh Start.

25 92. To the public, Fresh Start and Dark Comet hold themselves out to be one
26 and the same. Derivative Plaintiffs will hereinafter refer to this organization as Dark
27 Comet/Fresh Start.

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1 93. Dark Comet/Fresh Start has not formed an independent board of directors
2 nor has it permitted CME and CMG to appoint a director to any such board, as required
3 by the Joint Venture Agreement.

4 94. On or about April 6, 2010, the Receiver filed a motion styled "Receiver's
5 Request for Expedited Status Conference and Determination of the Validity of Pre-
6 Receivership Joint Venture Agreement" in the Deering-Renberg-Lombardo Litigation.

7 95. The Receiver's filings in relation to that motion indicate that the Receiver
8 had "not taken a position as to the validity of the JV Agreement."

9 96. The Receiver's filings in relation to that motion admit the Receiver's
10 representative had contact with the parties to the Joint Venture Agreement prior to the
11 Receiver's appointment on March 15, 2010. In carefully-worded statements, the
12 Receiver claims he did not "participate" in the negotiations.

13 97. In response to the Receiver's motion, counsel for Derivative Plaintiff
14 Roberts, Jared Simmons, filed an Objection to the Joint Venture Agreement on or about
15 May 4, 2010.

16 98. In response to the Receiver's motion, Whiting-appointed "President" Dale
17 Grabois submitted an affidavit describing the Joint Venture Agreement as an illegal side
18 agreement designed to permit these Defendants to take over the assets and control of
19 CME and CMG.

20 99. "President" Dale Grabois's affidavit also states that he complained to the
21 Receiver about the Joint Venture Agreement in March 2010.

22 100. Although the Receiver's motion requesting a determination of the validity
23 of the Joint Venture Agreement was initially set for hearing May 12, 2010, no ruling
24 was made thereon because the Court noted that Dark Comet/Fresh Start was not a party
25 to the Deering-Renberg-Lombardo Litigation.

26 101. On information and belief, prior to his formal appointment as Receiver,
27 the Receiver, directly or through his representatives, was apprised of the negotiations
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1 involving the transfer of the Cheyenne Entities' assets, out of the bankruptcy estate, to
2 Dark Comet/Fresh Start, and provided input regarding the structure of the Joint Venture
3 Agreement and encouraged the transaction to be completed before the formal
4 appointment of the Receiver so that the Receiver could characterize it as a "pre-
5 receivership transaction."

6 102. On information and belief, the Receiver's representative, Mr. Belt,
7 suggested one or more terms to be included in the Joint Venture Agreement. At a time
8 when the Receiver was anticipating appointment by the Court, the Receiver was aware
9 of the joint venture negotiations, his representatives communicated with the signatories
10 before the agreement was signed, and his representative's suggestions were
11 incorporated into the Joint Venture Agreement.

12 103. Throughout May and June 2010, the Receiver indicated that the Cheyenne
13 Entities had "no assets" and called for various stakeholders to raise or loan money to
14 support the receivership.

15 104. On June 8, 2010, the Receiver, acting through his appointed
16 representatives, sponsored a meeting in which the Receiver acknowledged to Derivative
17 Plaintiffs and others present that all of the Cheyenne Entities assets had been transferred
18 to Dark Comet/Fresh Start and that, as a result, the Cheyenne Entities lacked any
19 reasonable means or prospect of internally generating revenues.

20 105. Representatives of Dark Comet/Fresh Start, including Defendant Jane Doe
21 Hiatt, were in attendance at the June 8, 2010 meeting with the Receiver.

22 106. On June 8, 2010, the Receiver, acting through his appointed
23 representatives, acknowledged to Derivative Plaintiffs that the Cheyenne Entities
24 needed additional cash in order to operate in the short term or long term.

25 107. At the June 8, 2010 meeting, Dark Comet/Fresh Start also acknowledged
26 to Derivative Plaintiffs that it was out of money and could not continue to maintain,
27 develop, support, and market Stargate Resistance.

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1 108. The Dark Comet/Fresh Start representative, Defendant Jane Doe Hiatt,
2 stated that Dark Comet/Fresh Start lacked money to meet the next payroll and had no
3 funds available to properly market the Stargate Resistance game, which it conceded was
4 critical to generating revenues.

5 109. On June 8, 2010, the Receiver, acting through his appointed
6 representatives, acknowledged to Derivative Plaintiffs that the Cheyenne Entities could
7 not raise additional capital or borrow money unless and until the Cheyenne Entities
8 recovered the assets that had been transferred to Dark Comet/Fresh Start under the Joint
9 Venture Agreement.

10 110. On or after June 8, 2010, the Receiver, acting through his appointed
11 representatives, acknowledged to Derivative Plaintiffs that the transfer of the Cheyenne
12 Entities' assets to Dark Comet/Fresh Start was improper and that Dark Comet/Fresh
13 Start should either return them voluntarily or litigation should be undertaken to force the
14 return of those assets.

15 111. Derivative Plaintiffs, at the same meeting, stated that the Joint Venture
16 Agreement was invalid the moment it was signed and that the assets should be
17 immediately returned to the Receiver for the Cheyenne Entities.

18 112. Defendant Jane Doe Hiatt, representing Dark Comet/Fresh Start, did not
19 deny the claims of Derivative Plaintiffs at the June 8, 2010 meeting that the Joint
20 Venture Agreement was illegal and void.

21 113. Rather, Dark Comet/Fresh Start, in fact, appeared to concede the Joint
22 Venture Agreement was improper from the beginning and tentatively agreed to return
23 the assets to the Receiver if the Receiver agreed to give Dark Comet/Fresh Start a note
24 promising to repay it for the expenses incurred and gave Dark Comet/Fresh Start a
25 "second lien" security interest against the returned assets.

26 114. After June 8, 2010, the Receiver, acting through his appointed
27 representatives, informed Derivative Plaintiffs that Dark Comet/Fresh Start had changed
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1 its mind and now refused to voluntarily return the joint venture assets without the
2 imposition of unreasonable terms and conditions on the Cheyenne Entities, including
3 the grant of future valuable rights and royalties to Dark Comet/Fresh Start, a cash
4 payment, and a first lien on those assets.

5 115. After June 8, 2010, upon learning of Dark Comet/Fresh Start's change of
6 heart about returning these assets to the Cheyenne Entities, the Receiver initially
7 indicated a willingness to pursue litigation against Dark Comet/Fresh Start to have the
8 Joint Venture Agreement declared void and to have the assets returned to the Cheyenne
9 Entities.

10 116. The Receiver noted, however, that without any assets and without any
11 significant funds on hand, he could not pursue and pay for such litigation against Dark
12 Comet/Fresh Start.

13 117. Derivative Plaintiffs proposed a Litigation Funding Agreement to finance
14 the Receiver's litigation against Dark Comet/Fresh Start.

15 118. The Receiver unexpectedly rejected the Litigation Funding Agreement
16 and failed to initiate any litigation to obtain a return of the assets to the Cheyenne
17 Entities that were illegally transferred to Dark Comet/Fresh Start in the Joint Venture
18 Agreement. Instead, the Receiver insisted that Derivative Plaintiffs provide the
19 Receiver with \$ 2 million in unsecured funding as a condition for pursuing litigation
20 against Dark Comet/Fresh Start.

21 119. Derivative Plaintiffs rejected the Receiver's demand for \$ 2 million as a
22 precondition for bringing an action against Dark Comet/Fresh Start.

23 120. Soon thereafter, on July 19, 2010, the Receiver filed a motion in the
24 Deering-Renberg-Lombardo Litigation seeking to be discharged from his duties,
25 requesting that virtually all remaining funds held by the Cheyenne Entities be paid over
26 to the Receiver and his counsel.

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1 121. Since May 2010, Derivative Plaintiffs have repeatedly sought, through the
2 Receiver, to have the Joint Venture Agreement voided and declared ineffective and to
3 have the assets of the Cheyenne Entities returned. Those efforts have been rejected by
4 the Receiver.

5 122. Any further efforts to demand that the Receiver or Cheyenne Entities take
6 action against Dark Comet/Fresh Start would be futile, since there is no functioning
7 management at either CME or CMG and the Receiver is seeking to withdraw, taking the
8 last available corporate funds with him.

9 123. Additionally, Defendant Jenson claims to be the current CEO for CME
10 and CMG and he was one of the driving forces behind the illegal transfer of all or
11 substantially all of the Cheyenne Entities' assets to Dark Comet/Fresh Start. It would
12 be futile to make demand to "President/CEO" Timothy Jenson to sue Dark Comet/Fresh
13 Start and to sue those responsible – including himself!

14 124. Likewise, there is an ongoing dispute as to the composition of the Board
15 of Directors for CME and CMG. In the Deering-Renberg-Lombardo Litigation, there is
16 an allegation that CME and CMG foreclosed on stock shares owned or controlled by
17 Gary Whiting on or about February 17, 2010, depriving him of the majority voting
18 interest in these companies, and after said stock foreclosure, a new Board, without Gary
19 Whiting, has been installed.

20 125. The Receiver has stated that the resolution of that issue (whether Whiting-
21 controlled shares were effectively foreclosed upon) determines whether Jensen was
22 properly terminated and whether Grabois was properly appointed President.

23 126. Those claims and allegations and the ultimate determination of whether
24 Whiting-controlled shares were foreclosed upon, who constitutes the duly elected Board
25 for CME and CMG, and who are the duly appointed Presidents for the companies are all
26 matters to eventually be resolved in the Deering-Renberg-Lombardo Litigation.

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1 127. In the meantime, there is no one upon whom Derivative Plaintiffs can
2 effectively make demand to sue Dark Comet/Fresh Start and invalidate the Joint
3 Venture Agreement (other than the Receiver, who has rejected that demand, and who is
4 seeking to withdraw in any event). Jenson and the so-called new Board allegedly
5 installed by the Defendants are not disinterested and it would be futile to make such a
6 demand upon any of them.

7 128. The Receiver, too, has acknowledged that there is “significant dissension”
8 and confusion between and among “past and present officers, directors and
9 shareholders, resulting in ongoing questions related to the validity of the Receiver Order
10 and the authority of the Receiver.”

11 129. Further, even absent the unresolved issues of “whom” Derivative
12 Plaintiffs could make demand upon, the simple fact remains that none of the Cheyenne
13 Entities has the resources to pursue litigation against Dark Comet/Fresh Start. The
14 Receiver’s motion for discharge indicates that the Cheyenne Entities collectively had
15 approximately \$29,000 in cash and, after the fees requested by the Receiver, would be
16 left with a mere \$4,000 cash on hand (and no assets against which they could borrow
17 funds or generate income). Consequently, only Derivative Plaintiffs are in a position to
18 bring an action on behalf of CMG to protect the rights of shareholders and creditors of
19 the Cheyenne Entities.

20 130. Indeed, the Receiver has noted that the Cheyenne Entities “have little cash
21 on hand” and “no present revenue stream to generate cash flow.” In April 2010, the
22 Receiver declared the business of CME and CMG “is effectively over,” absent
23 immediate funding. Since that time, the Receiver has been unable to raise or borrow
24 any money for the Cheyenne Entities – due to the very Joint Venture Agreement that is
25 the subject of this derivative action.

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1 138. The assets of the Cheyenne Entities which were the subject of the Joint
2 Venture Agreement constitute all or substantially all of the assets of the Cheyenne
3 Entities and could not be sold, transferred, or disposed of without the signature of the
4 President of CME and CMG.

5 139. Neither the Bankruptcy Court, nor any trustee or receiver for CME,
6 approved the Joint Venture Agreement.

7 140. The Boards for CME and CMG did not approve the Joint Venture
8 Agreement.

9 141. The shareholders for CME and CMG did not approve the Joint Venture
10 Agreement.

11 142. The Managers for Firesky, LLC and Stargate, LLC did not approve the
12 Joint Venture agreement.

13 143. The members of Firesky, LLC and Stargate, LLC did not approve the
14 Joint Venture agreement.

15 144. The President for CME or CMG did not sign the Joint Venture
16 Agreement.

17 145. Jenson lacked authority to unilaterally approve the Joint Venture
18 Agreement on behalf of any of the Cheyenne Entities.

19 146. The amount paid to the Cheyenne Entities for all of their assets
20 (\$100,000) is grossly less than the tens of millions of dollars spent by the Cheyenne
21 Entities in acquiring and developing these assets and is far below the market value for
22 the assets.

23 147. Defendant Dark Comet/Fresh Start knew or should have known each of
24 the foregoing facts.

25 148. Derivative Plaintiffs seek a declaration, pursuant to A.R.S. § 12-1831, that
26 the Joint Venture Agreement is invalid, unenforceable, and void *ab initio* or otherwise
27 voidable at the election of the Cheyenne Entities.

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1 149. A current controversy exists regarding the validity of the Joint Venture
2 Agreement.

3 150. Declaratory judgment is necessary due to the uncertainty regarding the
4 ownership of the assets purportedly transferred to Dark Comet/Fresh Start in the Joint
5 Venture Agreement.

6 151. A prompt and definitive declaration of the status of the Joint Venture
7 Agreement is necessary to protect the investing public, who is being constantly solicited
8 by Dark Comet/Fresh Start and Defendant Brown to purchase unregistered securities on
9 the strength of Defendants' claims to ownership of these assets and without disclosure
10 of the legal uncertainties and challenges to the validity of the Joint Venture Agreement
11 at least since April 6, 2010.

12 152. A prompt and definitive declaration of the status of the Joint Venture
13 Agreement is necessary to protect the shareholders and creditors of the Cheyenne
14 Entities, whose survival is dependent upon recapitalization through new borrowings or
15 raising equity. Without any assets, the Cheyenne Entities will be unable to raise any
16 money, as the Receiver has repeatedly stated.

17 153. A prompt and definitive declaration of the status of the Joint Venture
18 Agreement is necessary to protect MGM and the Stargate franchise by ensuring that the
19 assets are developed and marketed by the person(s)/entity(ies) who have the legal rights
20 to do so.

21 154. Under the circumstances surrounding the Joint Venture Agreement and
22 the wrongful and tortious manner in which the agreement was procured and the manner
23 in which Dark Comet/Fresh Start has conducted itself since seizing control of the assets,
24 no Defendants are entitled to any restitution or reimbursement of any funds expended
25 by them in connection with the Joint Venture Agreement or Stargate Resistance.
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1 159. All or substantially all of the Cheyenne Entities' assets were transferred,
2 through the actions of Jenson and the Defendants, to Dark Comet/Fresh Start without
3 providing reasonably equivalent value for the transfer or obligation.

4 160. The transfer was to an entity, Dark Comet/Fresh Start, owned by some but
5 not all of the shareholders of the Cheyenne Entities.

6 161. The transfer was concealed.

7 162. At the time of the transfer, litigation existed or was threatened involving
8 one or more of the Cheyenne Entities.

9 163. Such actions violate A.R.S. § 44-1004 et seq and have caused damages to
10 Derivative Plaintiffs and the Cheyenne Entities in excess of \$10 million, with the actual
11 sum to be determined at trial.

12 164. On information and believe, Defendants' conduct was deliberate,
13 fraudulent, willful, and malicious, indicative of an evil hand guided by an evil mind,
14 with intent to harm Derivative Plaintiffs and the Cheyenne Entities and their creditors
15 and to deprive them of these assets, entitling Derivative Plaintiffs to an award of
16 punitive damages.

17 165. Defendants have wrongfully and fraudulently acquired possession and
18 control over the assets of the Cheyenne Entities.

19 166. This cause of action arises out of contract, and Derivative Plaintiffs are
20 entitled to an award of their reasonable attorneys' fees pursuant to A.R.S. § 12-341.01
21 or, in the alternative, pursuant to the terms of the pertinent contract documents.

22 167. WHEREFORE, Derivative Plaintiffs pray for a finding and judgment that
23 the joint venture assets were fraudulently transferred to Dark Comet/Fresh Start, for an
24 order returning these assets to the Cheyenne Entities, and for a judgment that
25 Defendants are liable to Derivative Plaintiffs and the Cheyenne Entities for both
26 compensatory and punitive damages for this fraudulent transfer and for their costs and
27 reasonable attorneys' fees.

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**COUNT III: BREACH OF CONTRACT
(VERSUS DARK COMET/FRESH START)**

168. Derivative Plaintiffs incorporate by reference all previous allegations herein.

169. This claim is pled in the alternative, in the event the Court declares the Joint Venture Agreement to be valid and enforceable and not void *ab initio*.

170. The Joint Venture Agreement states that Dark Comet/Fresh Start “shall be responsible for providing *full support* for [Stargate Resistance] and for marketing and promoting [Stargate Resistance] and any future games related to Stargate. . . . All costs related to these services shall be borne solely by Dark Comet/Fresh Start.”

171. Dark Comet/Fresh Start was undercapitalized from the beginning and incapable of providing “full support” to Stargate Resistance and Stargate Worlds.

172. Almost immediately after signing the Joint Venture Agreement, Dark Comet/Fresh Start ceased all development on the MMORPG, Stargate Worlds, despite a promise of “full support” for future games related to Stargate and despite the fact that Stargate Worlds has always been the game which held the most promise for financial success for the Cheyenne Entities.

173. Almost immediately after signing the Joint Venture Agreement, Defendants Dark Comet/Fresh Start and Brown complained of a shortage of funds and inability to make its payroll and provide the necessary marketing and promotional support for Stargate Resistance.

174. Defendants Dark Comet/Fresh Start and Brown have asserted that with appropriate levels of marketing support, Stargate Resistance would be successful and profitable.

175. Defendant Dark Comet/Fresh Start has been unable and/or unwilling to provide the necessary levels of funding for marketing and promoting Stargate Resistance.

1 176. By May 28, 2010, Dark Comet/Fresh Start, through Defendant Brown,
2 was telling the public that “without immediate [financial] assistance, Dark Comet will
3 be forced to close down.”

4 177. Dark Comet/Fresh Start estimated in May 2010 that appropriate marketing
5 and support for Stargate Resistance through the end of July would cost \$450,000 and
6 that an additional \$600,000 would be needed to support, market, and promote the
7 Stargate products through November 2010.

8 178. On June 3, 2010, Dark Comet/Fresh Start and Brown admitted that its
9 team was working unpaid and reiterated its threat to “close its doors” if it could not raise
10 \$150,000. It also admitted that it was no longer developing any products.

11 179. As of August 9, 2010, Dark Comet/Fresh Start admitted it still had not
12 raised the marketing funds that it said it needed in May and June to market and promote
13 Stargate Resistance.

14 180. The Joint Venture Agreement specifically requires Dark Comet/Fresh
15 Start to “maintain[] and update[] the Cheyenne websites, VPN, servers, email, financial
16 programs and system and other technology systems.” As of August 9, 2010, Dark
17 Comet/Fresh Start admitted it “lacked the bandwidth or finances” to support the
18 websites for the Cheyenne Entities.

19 181. Dark Comet/Fresh Start failed to raise funds needed to fulfill its
20 obligations under the Joint Venture Agreement and has failed to provide the “full
21 support” for Stargate Resistance and Stargate Worlds and the maintenance of the
22 websites and technology systems for the Cheyenne Entities, which support Dark
23 Comet/Fresh Start promised in the Joint Venture Agreement.

24 182. Neither Dark Comet Games, LLC nor Fresh Start, LLC has sought or
25 obtained the written consent of the Cheyenne Entities to assign or transfer any of the
26 rights, obligations, or assets of the Joint Venture Agreement from Fresh Start to Dark
27 Comet as required in the agreement.

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1 183. On information and belief, Dark Comet/Fresh Start has not provided
2 “daily reporting on sale of products” to the Cheyenne Entities as required under the
3 Joint Venture Agreement.

4 184. On information and belief, Dark Comet/Fresh Start has not appointed a
5 “board of independent directors” or allowed the Cheyenne Entities to appoint one of the
6 directors on such board, as required by the Joint Venture Agreement.

7 185. Dark Comet/Fresh Start has thereby materially breached the Joint Venture
8 Agreement in a myriad of ways.

9 186. The Derivative Plaintiffs and the Cheyenne Entities have been damaged
10 by Dark Comet/Fresh Start’s breach of contract.

11 187. The precise amount of damages will be determined at trial but are
12 believed to exceed \$10 million.

13 188. This cause of action arises out of contract, and Derivative Plaintiffs are
14 entitled to an award of their reasonable attorneys’ fees pursuant to A.R.S. § 12-341.01
15 or, in the alternative, pursuant to the terms of the pertinent contract documents.

16 189. WHEREFORE, Derivative Plaintiffs pray for a finding and judgment that
17 Defendant Dark Comet/Fresh Start breached the Joint Venture Agreement, an order
18 directing that the joint venture assets be returned to the Cheyenne Entities, actual
19 damages in excess of \$10 million, costs and attorneys fees; and such other legal and
20 equitable relief as the Court may deem just and proper.

21 **COUNT IV: BREACH OF FIDUCIARY DUTIES**
22 **(VERSUS DEFENDANT JENSON)**

23 190. Derivative Plaintiffs incorporate by reference all previous allegations
24 herein.

25 191. This claim is argued in the alternative, assuming that Defendant Jenson was not
26 properly terminated on February 11, 2010 and was still President of CME and CMG in March
27 2010 when the Joint Venture Agreement was negotiated and executed.
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192. As President of CME and/or CMG, Jenson owes fiduciary duties, including a duty of care, good faith and loyalty to the shareholders and members of the Cheyenne Entities under Nev. R. Stat. § 78.138.

193. Defendant Jenson breached his fiduciary duty by allowing all or substantially all of the assets of the Cheyenne Entities to be transferred to Dark Comet/Fresh Start for nominal consideration in the Joint Venture Agreement.

194. Defendant Jenson breached his fiduciary duty by allowing all or substantially all of the assets of the Cheyenne Entities to be secretly transferred to Dark Comet/Fresh Start without informing the Board, seeking its approval or informing the shareholders and members of the Cheyenne Entities and seeking their approval of the Joint Venture Agreement.

195. Defendant Jenson breached his fiduciary duty by conspiring with the other Defendants to affect a fraudulent transfer all or substantially all of the assets of the Cheyenne Entities to Dark Comet/Fresh Start in the Joint Venture Agreement.

196. Defendant Jenson breached his fiduciary duty by depriving the Cheyenne Entities of the opportunity to recapitalize through new borrowings or new equity raises by transferring all or substantially all of the assets of the Cheyenne Entities to Dark Comet/Fresh Start through the Joint Venture Agreement.

197. The Cheyenne Entities and Derivative Plaintiffs have been damaged by Jenson's breach of fiduciary duties.

198. The precise amount of damages will be determined at trial but are believed to exceed \$10 million.

1 200. Defendant Jenson realized that imminent harm would befall the Cheyenne
2 Entities if he breached his fiduciary duties and recklessly disregarded those dangers or acted
3 with complete indifference to the rights of Derivative Plaintiffs and the Cheyenne Entities.

4 200. On information and believe, Defendant Jenson's breaches of fiduciary duties
5 were done deliberately, fraudulently, willfully and maliciously, intending to harm Derivative
6 Plaintiffs and the Cheyenne Entities and deprive them of these assets.

7 201. Defendant Jenson is liable to Derivative Plaintiffs and the Cheyenne Entities for
8 both compensatory and punitive damages.

9 202. Dark Comet/Fresh Start now holds these joint venture assets in constructive trust
10 for the benefit of Derivative Plaintiffs and the Cheyenne Entities.

11 203. WHEREFORE, Derivative Plaintiffs pray for a finding and judgment that
12 Defendant Jenson breached the duty of care and duty of loyalty by causing the transfer of all or
13 substantially all, of the Cheyenne Entities' assets to Dark Comet/Fresh Start for nominal
14 consideration and without first gaining approval of the Boards for CME and CMG as well as
15 approval by the shareholders, including Derivative Plaintiffs, actual damages in excess of \$10
16 million, punitive damages of at least \$ 30 million, attorneys fees, a declaration that the assets of
17 Dark Comet/Fresh Start are held in constructive trust for the benefit of Plaintiffs, an injunction
18 preventing Defendants from disposing of or encumbering these assets, and such other legal and
19 equitable relief as the Court may deem just and proper
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24 **COUNT V: AIDING AND ABETTING TORTS (BREACH OF FIDUCIARY**
25 **DUTIES AND FRAUDULENT TRANSFER)**
26 **(VERSUS INDIVIDUAL DEFENDANTS)**

27 204. Derivative Plaintiffs incorporate by reference all previous allegations
28 herein.

1 205. This claim is pled in the alternative, assuming that Jenson was not
2 properly terminated on February 11, 2010 and was still President of CME and CMG in
3 March 2010 when the Joint Venture Agreement was negotiated and executed.

4 206. As President of CME and/or CMG, Jenson would have owed fiduciary
5 duties, including a duty of care, good faith, and loyalty to the shareholders and members
6 of the Cheyenne Entities under Nev. R. Stat. § 78.138.

7 207. Defendant Jenson breached such fiduciary duty by causing, inducing,
8 and/or allowing all or substantially all of the assets of the Cheyenne Entities to be
9 transferred to Dark Comet/Fresh Start for nominal consideration in the Joint Venture
10 Agreement.

11 208. Defendant Jenson breached such fiduciary duty by causing, inducing,
12 and/or allowing all or substantially all of the assets of the Cheyenne Entities to be
13 secretly transferred to Dark Comet/Fresh Start without informing the Boards, without
14 seeking their approval or informing the shareholders and members of the Cheyenne
15 Entities and seeking their approval of the Joint Venture Agreement.

16 209. Defendant Jenson breached such fiduciary duty by conspiring with the
17 other Defendants to effect a fraudulent transfer of all or substantially all of the assets of
18 the Cheyenne Entities to Dark Comet/Fresh Start in the Joint Venture Agreement.

19 210. Defendant Jenson breached such fiduciary duty by depriving the
20 Cheyenne Entities of the opportunity to recapitalize through new borrowings or new
21 equity raises by causing, inducing, and/or allowing the transfer of all or substantially all
22 of the assets of the Cheyenne Entities to Dark Comet/Fresh Start through the Joint
23 Venture Agreement.

24 211. The Cheyenne Entities and Derivative Plaintiffs have been damaged by
25 Jenson's breach of such fiduciary duties and the fraudulent transfer of their assets to
26 Dark Comet/Fresh Start.

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1 212. Dark Comet/Fresh Start now holds these joint venture assets in
2 constructive trust for the benefit of Derivative Plaintiffs and the Cheyenne Entities.

3 213. Defendants Dark Comet/Fresh Start, Hiatt, Renberg, Lombardo, and
4 Brown each believed Defendant Jenson to be the President of CME and CMG.

5 214. On information and belief, Defendants Dark Comet/Fresh Start, Hiatt,
6 Renberg, Lombardo, and Brown were each aware of and understood that the President
7 of CME and CMG owed fiduciary duties to the Cheyenne Entities and the Derivative
8 Plaintiffs.

9 215. Defendants were aware and had knowledge that the Joint Venture
10 Agreement was not approved by the shareholders of CME or CMG.

11 216. On information and belief, Defendants were aware and had knowledge
12 that the Joint Venture Agreement was not approved by the members of Firesky, LLC or
13 Stargate Worlds, LLC.

14 217. On information and belief, Defendants were aware and had knowledge
15 that the Joint Venture Agreement was not approved by the Board of Directors for CME
16 or CMG.

17 218. On information and belief, Defendants Dark Comet/Fresh Start, Hiatt,
18 Renberg, Lombardo, Brown and Jenson actively participated in the negotiation and
19 consummation of the Joint Venture Agreement which caused, induced, aided, and
20 abetted Jenson to breach his fiduciary duties.

21 219. On information and belief, each of the Defendants actively participated in
22 the fraudulent transfer of the assets from the Cheyenne Entities to Dark Comet/Fresh
23 Start.

24 220. On information and belief, Defendants Dark Comet/Fresh Start, Hiatt,
25 Renberg, Lombardo, and Brown provided substantial assistance to Defendant Jenson
26 that aided and abetted the breach of his fiduciary duties by negotiating with and
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1 encouraging him to oversee the transfer of all or substantially all of the Cheyenne
2 Entities' assets to Dark Comet/Fresh Start for nominal consideration.

3 221. On information and belief, each of the Defendants provided substantial
4 assistance in effecting, aiding, and abetting the fraudulent transfer of the assets from the
5 Cheyenne Entities to Dark Comet/Fresh Start.

6 222. Defendant Renberg signed the Joint Venture Agreement on behalf of
7 Defendant Dark Comet/Fresh Start.

8 223. Defendant Hiatt, too, signed the Joint Venture Agreement on behalf of
9 Dark Comet/Fresh Start and provided the funding, minimal though it was, for Dark
10 Comet/Fresh Start to fraudulently acquire all or substantially all of the Cheyenne
11 Entities' assets.

12 224. Defendants Karl Hiatt, Renberg, and Lombardo served as managers of
13 Dark Comet/Fresh Start when the Joint Venture Agreement was being consummated
14 and the assets were being transferred to it.

15 225. Defendants aided, abetted, and encouraged Jenson to breach his fiduciary
16 duties owed to the Cheyenne Entities and Derivative Plaintiffs.

17 226. Defendants aided, abetted, and encouraged the fraudulent transfer of the
18 Cheyenne Entities' assets to Dark Comet/Fresh Start.

19 227. Derivative Plaintiffs and the Cheyenne Entities have suffered and continue
20 to suffer damages in excess of \$10 million as a result of Defendants' aiding and abetting
21 Jenson's breach of fiduciary duties and the fraudulent transfer of assets.

22 228. All individual Defendants are jointly and severally liable for these
23 damages.

24 229. On information and belief, Defendants' acts in aiding and abetting
25 Jenson's breaches of fiduciary duty and the fraudulent transfer of assets were done
26 intentionally, fraudulently, and/or maliciously for personal gain, indicative of an evil
27 hand guided by an evil mind, with intent to harm Derivative Plaintiffs and the Cheyenne
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1 Entities and their creditors and to deprive them of these assets, entitling Derivative
2 Plaintiffs to an award of punitive damages.

3 230. This cause of action arises out of contract, and Derivative Plaintiffs are
4 entitled to an award of their reasonable attorneys' fees pursuant to A.R.S. § 12-341.01
5 or, in the alternative, pursuant to the terms of the pertinent contract documents.

6 231. WHEREFORE, Derivative Plaintiffs pray for a finding and judgment that
7 the individual Defendants aided and abetted the fraudulent transfer of all or substantially
8 all of the Cheyenne Entities' assets to Dark Comet/Fresh Start for nominal
9 consideration, and aided and abetted Jenson's breaches of the fiduciary duty of care and
10 duty of loyalty in connection with the Joint Venture Agreement which was undertaken
11 without first gaining requisite approvals, including approvals from Derivative Plaintiffs;
12 for an award of actual damages in excess of \$10 million, in an amount to be proved at
13 trial; for an award of punitive damages; for an award of costs and attorneys fees; for a
14 declaration that the assets of Dark Comet/Fresh Start are held in constructive trust for
15 the benefit of Derivative Plaintiffs; for an injunction preventing Defendants from
16 disposing of or encumbering these assets; and for such other legal and equitable relief as
17 the Court may deem just and proper.

18 **COUNT VI: CIVIL CONSPIRACY**
19 **(VERSUS ALL DEFENDANTS)**

20 232. Derivative Plaintiffs incorporate by reference all previous allegations
21 herein.

22 233. Defendants devised and conspired in a plan whose goal was to ultimately
23 wrongfully and unlawfully acquire, divert, or fraudulently transfer all or substantially all
24 of the assets of the Cheyenne Entities to Dark Comet/Fresh Start.

25 234. On information and belief, Defendants agreed that this would be their
26 objective and agreed upon one or more courses of action to effectuate it:
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- 1 a. using Jenson's position of trust as President of CME and CMG to
- 2 secretly and fraudulently transfer the Cheyenne Entities' asserts
- 3 through a Joint Venture Agreement that was never approved by the
- 4 Bankruptcy Court, never approved by any shareholder or member
- 5 vote, never approved by any Board action, and never signed by any
- 6 purported President of CME or CMG;
- 7 b. relying on and inducing Jenson's breach of fiduciary duties;
- 8 c. using the Deering-Renberg-Lombardo Litigation in furtherance of this
- 9 plan and conspiracy by diverting the attention of the management and
- 10 shareholders of CME and CMG away from Defendants, installing a
- 11 "friendly" receiver, and acquiring possession and control over the
- 12 assets of the Cheyenne Entities via the Joint Venture Agreement when
- 13 no one was paying attention due to the chaos Defendants created; and
- 14 d. including secrecy provisions in the Joint Venture Agreement to
- 15 prevent the Chairman of CME and CMG, and the Derivative Plaintiffs,
- 16 from even learning about the agreement until after it occurred.

17 235. The many details of this conspiracy are alleged elsewhere in this
18 Complaint. Conspiratorial conduct can be inferred from the facts that (a) the Joint
19 Venture Agreement was negotiated secretly and not revealed to the Boards, the
20 shareholders, or the Bankruptcy Court; (b) the amount paid for the assets was a fraction
21 of 1% of the amounts expended on them by the Cheyenne Entities; (c) no effort was
22 undertaken for competitive bidding for the assets; (d) all of this was accomplished due
23 to the chaos created by the Deering-Renberg-Lombardo Litigation that was instigated
24 and supported by Defendants Renberg and Lombardo, which served as a ruse to their
25 efforts to fraudulently transfer asserts under the guise of the Joint Venture Agreement;
26 (e) even Jenson refused to sign the Joint Venture Agreement and instead delegated it to
27 someone without proper authority; (f) the Dark Comet/Fresh Start entity included two of
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1 the Deering-Renberg-Lombardo plaintiffs as member-managers; (f) one of the Deering-
2 Renberg-Lombardo plaintiffs signed the Joint Venture Agreement. In short, the Joint
3 Venture Agreement does not pass the “smell test.”

4 236. The circumstances surrounding the Joint Venture Agreement evidence
5 that Defendants acted as part of a conspiracy to seize control of all or substantially all of
6 the assets of the Cheyenne Entities. Only a conspiracy to assist Dark Comet/Fresh Start
7 take control of the Cheyenne Entities’ assets explains Jenson’s breaches of fiduciary
8 duties and the surreptitious manner in which it was accomplished and the minimal
9 consideration paid.

10 237. Derivative Plaintiffs and the Cheyenne Entities have suffered and continue
11 to suffer damages in excess of \$10 million as a result of these Defendants’ civil
12 conspiracy to deprive the Cheyenne Entities of all their assets.

13 238. The Defendant co-conspirators are jointly and severally liable for these
14 damages.

15 239. On information and belief, Defendants’ conspiratorial acts were done
16 intentionally, fraudulently, and/or maliciously for personal gain, indicative of an evil
17 hand guided by an evil mind, with intent to harm Derivative Plaintiffs and the Cheyenne
18 Entities and their creditors and to deprive them of these assets, entitling Derivative
19 Plaintiffs to an award of punitive damages.

20 240. This cause of action arises out of contract, and Derivative Plaintiffs are
21 entitled to an award of their reasonable attorneys’ fees pursuant to A.R.S. § 12-341.01
22 or, in the alternative, pursuant to the terms of the pertinent contract documents.

23 241. WHEREFORE, Derivative Plaintiffs and the Cheyenne Entities pray for a
24 finding and judgment that Defendants jointly and severally engaged in civil conspiracy
25 to injure the Cheyenne Entities and Derivative Plaintiffs, with actual damages in excess
26 of \$10 million, an order to return all joint venture assets, a declaration that the assets of
27 Dark Comet/Fresh Start are held in construct trust for the benefit of the Cheyenne
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1 Entities, an injunction preventing Defendants from using, exploiting, transferring,
2 selling, disposing of, or encumbering these assets, punitive damages, costs, attorneys
3 fees, and such other legal and equitable relief as the Court may deem just and proper.

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5 **COUNT VII: UNJUST ENRICHMENT**
6 **(VERSUS ALL DEFENDANTS EXCEPT JENSON)**

7 242. Derivative Plaintiffs incorporate by reference all previous allegations
8 herein.

9 243. This claim is pled in the alternative, in the event the Court declares that
10 the Joint Venture Agreement is valid and enforceable and is not void *ab initio*.

11 244. The Cheyenne Entities conferred benefits (joint venture assets) upon Dark
12 Comet/Fresh Start and its principals and owners/members through the Joint Venture
13 Agreement.

14 245. Defendant Brown obtained benefits from the Joint Venture Agreement,
15 including employment.

16 246. Defendants understood and appreciated the benefits conferred upon them
17 by the Cheyenne Entities.

18 247. Under the circumstances outlined above, it would be inequitable for Dark
19 Comet/Fresh Start to retain the joint venture assets or any of the revenues from Stargate
20 Resistance.

21 248. Under the circumstances outlined above, it would be inequitable for
22 Defendants Hiatt, Renberg, Lombardo, and Brown to reap any benefits arising from the
23 Joint Venture Agreement, as all such benefits derive from the fraudulent transfer of
24 assets and breaches of fiduciary duties by Jenson, aided and abetted by the other
25 Defendants.

26 249. Derivative Plaintiffs and the Cheyenne Entities have suffered and continue
27 to suffer damages as a result of this unjust enrichment including, but not limited to, the
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1 loss of all or substantially all of the assets, which has cost the Cheyenne Entities
2 damages in excess of \$10 million, in an amount to be proved at trial.

3 250. This cause of action arises out of contract, and Derivative Plaintiffs are
4 entitled to an award of their reasonable attorneys' fees pursuant to A.R.S. § 12-341.01
5 or, in the alternative, pursuant to the terms of the pertinent contract documents.

6 251. WHEREFORE Derivative Plaintiffs pray for a finding and judgment that
7 Defendants have been and continue to be unjustly enriched; an order requiring
8 Defendants to return all the joint venture assets, including without limitation all
9 derivative work and intellectual property, and to disgorge all revenues from Stargate
10 Resistance; injunctive relief; compensatory damages, costs, and attorney fees; and such
11 other legal and equitable relief as the Court may deem just and proper.

12 **COUNT VIII: TORTIOUS INTERFERENCE**
13 **(VERSUS ALL DEFENDANTS)**

14 252. Derivative Plaintiffs incorporate by reference all previous allegations
15 herein.

16 253. CME and/or Firesky, LLC possess valuable licensing agreements with
17 MGM to exploit the Stargate franchise through online games.

18 254. CMG and Stargate Worlds, LLC are intended beneficiaries of these
19 agreements.

20 255. CME, CMG, Firesky, LLC, and Stargate Worlds, LLC had a reasonable
21 business expectancy of exploiting other business opportunities and relationships with
22 MGM.

23 256. Defendants, through their fraudulent transfer, aiding and abetting breaches
24 of fiduciary duties and fraudulent transfer, and other conspiratorial, wrongful, and
25 unlawful conduct, have intentionally, wrongfully, and improperly interfered, without
26 justification, with the Cheyenne Entities' existing and prospective business relationships
27 with MGM.

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1 257. Defendants, through their false and misleading statements and their failure
2 to “fully support” Stargate Resistance, are injuring, endangering, and intentionally,
3 improperly, and wrongfully interfering with the Stargate franchise, the reputation of the
4 games created by the Cheyenne Entities, and their relationship with MGM.

5 258. Defendants have deprived the Cheyenne Entities of possession and control
6 over the joint venture assets, preventing the Cheyenne Entities from exercising and
7 fulfilling their contractual rights with MGM and/or increasing the burden of
8 performance for the Cheyenne Entities.

9 259. Without possession and control of the joint venture assets, the Cheyenne
10 Entities cannot raise funds or borrow money.

11 260. Without possession and control of the joint venture assets, the Cheyenne
12 Entities cannot complete the MMORPG, Stargate Worlds.

13 261. Without possession and control of the joint venture assets, the Cheyenne
14 Entities cannot meet deadlines for the MGM licensing agreement, cannot re-negotiate
15 them with MGM, and/or the Cheyenne Entities’ cost of performance and compliance
16 has increased.

17 262. But for Defendants’ tortious behavior, CME, CMG, Firesky, LLC, and
18 Stargate Worlds, LLC were reasonably certain to obtain additional funding and maintain
19 their agreements and business relationships with MGM or renegotiate them.

20 263. CME, CMG, Firesky, LLC, and Stargate Worlds, LLC have suffered, and
21 continue to suffer, significant damages, including an increased risk that MGM will
22 declare the licensing agreement in default, cease all future relationships with the
23 Cheyenne Entities, and/or demand additional concessions or otherwise incur increased
24 costs of performance.

25 264. This cause of action arises out of contract, and Derivative Plaintiffs are
26 entitled to an award of their reasonable attorneys’ fees pursuant to A.R.S. § 12-341.01
27 or, in the alternative, pursuant to the terms of the pertinent contract documents.
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1 265. WHEREFORE, Derivative Plaintiffs pray for a finding and judgment that
2 Defendants have tortiously interfered with the Cheyenne Entities' existing and
3 prospective agreements and business relationships with MGM, resulting in actual
4 damages in excess of \$10 million, in an amount to be proved at trial; for an award of
5 punitive damages; for an award of costs and attorneys' fees; and for such other legal and
6 equitable relief as the Court may deem just and proper.

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8 **COUNT IX: INJUNCTIVE RELIEF**
9 **(VERSUS ALL DEFENDANTS)**

10 266. Derivative Plaintiffs incorporate by reference all previous allegations
11 herein.

12 267. Derivative Plaintiffs seek injunctive relief pursuant to A.R.S. § 12-1801
13 *et. seq.* and the equitable powers of the Court.

14 268. Derivative Plaintiffs are likely to prevail on the merits for Counts I-VIII.

15 269. A declaration that the Joint Venture Agreement is invalid and/or
16 determination that the assets were fraudulently transferred, for example, justifies a
17 temporary, preliminary, and permanent injunction requiring the return of the joint
18 venture assets to the Cheyenne Entities.

19 270. Derivative Plaintiffs and the Cheyenne Entities will suffer immediate and
20 irreparable injury if injunctive relief is not granted to require the return of the Cheyenne
21 Entities' assets. The Receiver and others have acknowledged that the Cheyenne
22 Entities' very survival depends upon their ability to raise funds and that as long as Dark
23 Comet/Fresh Start retain these assets it is impossible for the Cheyenne Entities to raise
24 any money or borrow any monies. Approximately \$50 million of investors and
25 creditors monies will be lost if injunctive relief is not granted.

26 271. The public at large will also suffer injuries if Dark Comet/Fresh Start is
27 allowed to continue to possess the joint venture assets. In repeated public statements,
28 Dark Comet/Fresh Start has been marketing and selling unregistered securities under the

1 guise and misrepresentation that it holds lawful title to these assets, has failed to
2 disclose to actual and potential investors that at least since April 6, 2010 there have been
3 questions raised in open court regarding the validity of the Joint Venture Agreement,
4 and has misrepresented to the public that it had some "agreement" with the Derivative
5 Plaintiffs to support Dark Comet/Fresh Start when in fact Derivative Plaintiffs have
6 never even discussed anything directly with Dark Comet/Fresh Start.

7 272. Allowing Dark Comet/Fresh Start to continue to possess the joint venture
8 assets will only perpetuate ongoing violations of securities laws while Defendants
9 Brown and Dark Comet/Fresh Start continue to market and sell unregistered securities
10 to unaccredited investors with material misstatements and undisclosed material facts.

11 273. The Cheyenne Entities' relationship with MGM will also suffer
12 irreparable harm as Defendants Dark Comet/Fresh Start and Brown make
13 misrepresentations to MGM, disparage the Cheyenne Entities, and cause damage to the
14 Stargate franchise by Dark Comet/Fresh Start's failures related to Stargate Resistance
15 and by preventing the Cheyenne Entities from raising capital or borrowing funds.

16 274. Damages flowing from Defendants' misdeeds, while immediate and
17 substantial, would be difficult, if not impossible, to quantify precisely.

18 275. This cause of action arises out of contract, and Derivative Plaintiffs are
19 entitled to an award of their reasonable attorneys' fees pursuant to A.R.S. § 12-341.01
20 or, in the alternative, pursuant to the terms of the pertinent contract documents.

21 276. WHEREFORE, Derivative Plaintiffs request an immediate, ex parte,
22 temporary restraining order (TRO) be issued against Dark Comet/Fresh Start enjoining
23 it from holding any additional discussions from MGM; enjoining it from soliciting or
24 accepting any new investor monies from any third parties; enjoining Dark Comet/Fresh
25 Start from encumbering the joint venture assets, and enjoining Defendants from
26 destroying, copying, transferring, encrypting, erasing, hiding, or damaging any of the
27 hardware, servers, software, or documentation for Stargate Resistance or Stargate
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1 Worlds or any documents relating to the negotiation of the Joint Venture Agreement,
2 and requiring them to maintain the servers and websites for the Cheyenne Entities until
3 the assets are returned in an orderly transition.

4 277. WHEREFORE, Derivative Plaintiffs further request that the TRO be
5 followed by an evidentiary hearing held as soon as possible after which a preliminary
6 injunction should issue which:

- 7 a. Enjoins the Defendants to return all the assets, software, and
8 intellectual property, including without limitation any derivative works
9 from that software, to the Cheyenne Entities;
- 10 b. Enjoins the Defendants and their employees, agents, representatives,
11 and privies from retaining, using, disclosing, licensing, transferring,
12 selling, or encumbering any of the joint venture assets to any other
13 person;
- 14 c. Enjoins the Defendants and their employees, agents, representatives,
15 and privies from retaining, using, disclosing, licensing, transferring,
16 selling, or encumbering any software that is part of Stargate Resistance
17 or Stargate Worlds; and
- 18 d. Enjoin the Defendants and their employees, agents, representatives,
19 and privies from contacting, negotiating with, discussing, or
20 contracting with MGM in any manner concerning Stargate-related
21 gaming or otherwise interfering with CME's licensing agreement with
22 MGM for a period of at least two (2) years;
- 23 e. For an award of Derivative Plaintiffs' costs and attorneys' fees; and
24 f. Such other just and equitable relief as Plaintiffs may be entitled.

25 **PRAYER FOR RELIEF**

26 Derivative Plaintiffs respectfully request this Court:
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- a. Declare the Joint Venture Agreement null and void *ab initio*, or alternatively, voidable at the option of the Cheyenne Entities;
- b. Declare the transfer of assets from the Cheyenne Entities to Dark Comet/Fresh Start to be fraudulent;
- c. Enjoin the Defendants to return all the assets, including without limitations software and intellectual property, and including without limitation any derivative works from that software, to the Cheyenne Entities;
- d. Enjoin the Defendants and their employees, agents, representatives, and privies from retaining, using, disclosing, licensing, transferring, selling, or encumbering any of the joint venture assets to any other person;
- e. Enjoin the Defendants and their employees, agents, representatives, and privies from retaining, using, disclosing, licensing, transferring, selling, or encumbering any software that is part of Stargate Resistance or Stargate Worlds;
- f. Enjoin the Defendants and their employees, agents, representatives, and privies from contacting, negotiating with, discussing, or contracting with MGM in any manner concerning Stargate-related gaming or otherwise interfering with CME's licensing agreement with MGM for a period of at least two (2) years;
- g. Enter judgment against Dark Comet/Fresh Start adjudging it to be in material breach of the Joint Venture Agreement, require Dark Comet/Fresh Start to return the joint venture assets, and award Derivative Plaintiffs' damages in an amount to be proved at trial;
- h. Enter judgment against Tim Jenson adjudging him to be in breach of fiduciary duties owed to CME and CMG;

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- i. Enter judgment against all individual Defendants for aiding and abetting Jenson's breach of fiduciary duties and against all Defendants for engaging in a civil conspiracy to breach such duties and wrongfully transfer all or substantially all of the Cheyenne Entities' assets to Dark Comet/Fresh Start;
- j. Enter judgment against all Defendants except Jenson for unjust enrichment;
- k. Enter judgment against Defendants for tortiously interfering with CME's licensing agreement for the Stargate franchise;
- l. Declare that all assets under the control of Dark Comet/Fresh Start are held in constructive trust for the benefit of CME, CMG, and Stargate Worlds, LLC, order the joint venture assets to be returned to the Cheyenne Entities, and order Defendants to disgorge all revenues and payments retained or received by them from the joint venture assets, including without limitation from Stargate Resistance;
- m. Award actual, direct, compensatory, consequential, and punitive damages to Derivative Plaintiffs for each of the torts and breaches committed by the Defendants; and
- n. Award such other relief as the Court deems just and equitable

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JURY DEMAND

Derivative Plaintiffs demand a jury trial on all issues so triable in this case.

DATED this 27th day of August, 2010.

GALLAGHER & KENNEDY, P.A.

By:  _____

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VERIFICATION UNDER PENALTY OF PERJURY

I, David Roberts, pursuant to A.R.C.P. 80(i), depose, declare, verify, certify and state that I am one of the derivative plaintiffs, that I have read the foregoing *First Amended Verified Complaint* and that I know the contents thereof, and that the factual matters and things therein stated are true to my own knowledge, except as to those matters therein stated upon my information and belief and as to those matters, I believe them to be true.

I declare, verify, certify and state, under penalty of perjury of the laws of the United States of America, that the foregoing is true and correct.

Executed on August 27, 2010
Kansas City, Missouri
United States of America



David Roberts

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