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7
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9 PUMP HOUSE, INC and JACOB MATTHEW GAYER

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF COUNTY OF TULARE**

13 NATHANIEL DEAN CARY, an individual,
14 Cross-Plaintiff,

15 v.

16 PUMP HOUSE, INC., a California
17 corporation; JACOB MATTHEW GAYER,
18 individually and as an officer and/or
19 director of PUMP HOUSE, INC., and
20 DOES 1 through 25, inclusive,

21 Cross-Defendants.

Case No.: VCU298865

VERIFIED CROSS-COMPLAINT FOR:

1. **BREACH OF FIDUCIARY DUTIES;**
2. **NEGLIGENCE;**
3. **CONVERSION; and**
4. **DECLARATORY JUDGMENT**

22 JACOB MATTHEW GAYER (as both a
23 individual Cross-Plaintiff and on behalf of
24 PUMP HOUSE, INC.),

25 Cross-Plaintiffs,

26 v.

27 NATHANIEL DEAN CARY; PUMP
28 HOUSE, INC. (as a nominal Cross-
Defendant for the derivative claims); and
ROES 1-40, Inclusive,

Cross-Cross-Defendants.

1 Cross-Plaintiff JACOB MATTHEW GAYER alleges as follows:
2

3 **PARTIES:**

4 1. Cross-Plaintiff, JACOB MATTHEW GAYER ("Cross-Plaintiff" or "GAYER"), is an
5 individual who was, at all times relevant herein, a resident of the County of Tulare, State of
6 California.

7 2. Cross-Defendant NATHANIEL DEAN CARY ("CROSS-DEFENDANT" or "CARY")
8 was at all times mentioned herein an individual residing in the County of Tulare, State of
9 California.

10 3. Cross-Defendant PUMP HOUSE, INC., a California Limited Liability Company,
11 (sometimes referred to herein as "PUMP HOUSE" or "the Company") is and was at all times
12 mentioned, a California corporation with its principal place of business in California. PUMP
13 HOUSE's principal place of business in the County of Tulare, State of California.

14 4. Cross-Plaintiff is informed thereon alleges that the Cross-Defendants named
15 herein as ROES 1 through 40 (referred to herein as "ROES 1-40" or collectively referred to as
16 "Cross-Defendants"), inclusive, are and at all times relevant have been legally responsible in
17 some manner for the events and happenings alleged in this Complaint. The true names and
18 capacities, whether individual, corporate, associate or otherwise, are presently unknown to
19 Cross-Plaintiff, who therefore sues said Cross-Defendants by such fictitious names. Cross-
20 Plaintiff will amend this Complaint to show their true names and capacities when the same have
21 been ascertained.

22 5. Cross-Plaintiff is informed and believes and thereon alleges that at all times
23 mentioned herein, each Cross-Defendant named in this Complaint was and is the agent, servant
24 and/or employee of each of the other Cross-Defendants and that all of the things alleged to have
25 been done by each Cross-Defendant were done in the capacity of and as agent of the other
26 Cross-Defendants.

27 6. Cross-Plaintiff is informed and believes, and based thereon alleges, that at all
28 times mentioned herein each of the Cross-Defendants was a principal, officer, director, agent,

1 representative, alter ego, employee and/or co-conspirator of each of the other Cross-Defendants
2 and in such capacity participated in the acts and/or conduct alleged herein and incurred the
3 obligations set forth in this Complaint.

4 7. Cross-Plaintiff is informed and believes, and based thereon alleges, that each of
5 the Cross-Defendants ratified, approved, and accepted the benefits of the acts of each of the
6 remaining Cross-Defendants alleged in this pleading, with knowledge of the nature and
7 consequences of such acts.

8 9 10 **JURISDICTION AND VENUE**

11 8. Cross-Defendants, and each of them, are subject to the jurisdiction of Tulare
12 County courts of the State of California by virtue of their business dealings and transactions in
13 California, and by causing injurious effects in California by their acts and/or omissions.

14 9. Venue is proper in this Court because the property and transactions at issue
15 occurred in Tulare County.

16 17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 10. During the summer of 2021, the plaintiff extended a loan of \$10,000 to the Cross-
19 Defendant, CARY, to facilitate the refinancing of his house for investment purposes. CARY
20 proposed to utilize the house to finance the purchase of a bar under certain stipulations. These
21 included the plaintiff's obligation to provide a \$50,000 down payment and secure a loan on behalf
22 of CARY, who was incapable of doing so himself. CARY assured the plaintiff that the house
23 would be fully paid off within five years. As part of this agreement, the plaintiff's income, tips, and
24 shifts for the subsequent 12 months were designated as CARY's interest on his investment.

25 11. In November 2021, a corporation was established with an equal 50/50 ownership
26 distribution. The plaintiff assumed the role of CEO, while CARY undertook the duties of CFO
27 and secretary. By January 17, 2022, the plaintiff transitioned to morning shifts, allowing CARY
28 to commence his year-long collection of the plaintiff's evening shift income.

1 12. On February 22, 2022, CARY promised to compensate the plaintiff \$25,000 for
2 additional unpaid work performed, whilst acknowledging his own noncontribution to the
3 corporation. The following month, escrow was closed on CARY's house. In April 2022, CARY
4 allegedly made an illegal withdrawal of \$900 from the corporate account for personal use,
5 followed by another unauthorized cash withdrawal of \$1000 in June 2022.

6 13. In July 2022, a \$300,000 loan was secured, jointly in the plaintiff's and CARY's
7 names, directed towards land acquisition. The subsequent month, an additional \$150,000 loan
8 was secured. By the end of August 2022, escrows were closed on both the land and the bar.
9 CARY introduced a petty cash/cash system from his former company during this period.

10 14. In September, a Point of Sale (POS) system was implemented. By October, the
11 plaintiff expressed dissatisfaction with the unequal division of labor and proposed to buy out
12 CARY's shares. CARY initially offered to divest some of his shares to offset his corporate
13 neglect. An agreement was reached in the same month, adjusting the share distribution to 80/20
14 in favor of the plaintiff. CARY subsequently selected a public location for an emergency meeting
15 to transfer shares.

16 15. However, in December, tensions resurfaced over CARY's increasing liability to the
17 company. On December 28, 2022, CARY confessed to a severe drug problem and requested a
18 third opportunity to rectify his conduct. A series of conditions were agreed upon: CARY's job
19 security despite his drug use, an immediate personal payment of \$500 to his wife from the
20 plaintiff, and the company's responsibility to pay CARY for a 30-day period equivalent to a 40-
21 hour work week during his recovery.

22 16. CARY prematurely ended his rehabilitation program on January 9, 2022, after only
23 13 days, but concealed this fact for an additional 17 days. This act appeared as an attempt to
24 defraud the company, as he continued to falsely claim payment for the full 30-day period, even
25 impersonating a rehab patient over the phone to assure payment.

26 17. In February 2022, further disputes arose over CARY's lack of contribution to the
27 company and his continued negligent decision-making.

1 **FIRST CAUSE OF ACTION**

2 **BREACH OF FIDUCIARY DUTIES**

3 **(Against Cross-Defendants NATHANIEL DEAN CARY, ROES 1 – 40,**
4 **and Against Nominal Cross-Defendant PUMP HOUSE, INC.)**

5 18. Cross-Plaintiff re-alleges and incorporates by reference the allegations of the
6 preceding paragraphs as though fully set forth herein.

7 19. At all times mentioned in paragraphs above and complained of herein Cross-
8 Plaintiff was an officer, director, and shareholder of the Company.

9 20. Cross-Defendants CARY and ROES 1 – 40 did, in fact, breach their fiduciary duties
10 to PUMP HOUSE and Cross-Plaintiff. Cross-Defendants CARY and ROES 1 – 40 committed
11 the following breaches:

- 12
- 13 - Unlawful cash withdrawals from the company funds.
 - 14 - Instances of assaulting customers.
 - 15 - Hiring unauthorized employees to perform bar and shift work, including an individual
16 known to be involved in illegal drug activities.
 - 17 - Direct cash payment to unauthorized employees from the Company cash register
18 without consent or documentation.
 - 19 - Regular appropriation of beer from Company inventory without purchase, particularly
20 before his rehab stint.
 - 21 - Concealment of sales and transactions from the Company via the misuse of the
22 'custom' button on the Point of Sale (POS) system.
 - 23 - Fabrication of work claims, specifically about monitoring corporate emails, in October.
 - 24 - Engagement in damagingly negligent behavior such as providing false information to
25 an insurance inspector, causing the Company's policy to be dropped and future
26 premiums to rise steeply. Over 100 hours were spent rectifying this issue.
 - 27 - Suspicions of misappropriation of Company funds, supported by correlations between
28 CARY'S drug use, his financial struggles, the use of the custom button, missing

1 inventory, and potential monetary discrepancies.

- 2 - CARY concealed an instance where an employee provided office keys to a customer,
3 compromising the security of the office safe.
- 4 - Unauthorized provision of his owner access to the POS system to other employees
5 and customers. This access level includes sensitive payroll information, thus
6 constituting a major security breach. Despite the security risk, CARY refused to
7 change his access code.
- 8 - Unauthorized provision of the owner's cash deposit safe access code to an employee
9 without consulting the Cross-Plaintiff.
- 10 - While responsible for holding bar deposits, CARY'S wife reportedly stole from the
11 Company. Cross-Defendant CARY admitted to this on multiple occasions, even in the
12 presence of impartial witnesses.
- 13 - Cross-Defendant CARY made negligent decisions without due research or
14 consideration for potential damages, such as hiring his brother for B-1 construction
15 work and paying him in cash, without a receipt. This forced the bar's temporary closure
16 and caused subsequent repair costs, and other damages such the cost of ice due to
17 the procurement of a low-quality ice machine.
- 18 - Cross-Defendant CARY breached the loan agreement by demanding immediate
19 repayment of his loan upon the conclusion of his front-loaded interest collection.
- 20 - Cross-Defendant CARY personal drug-related issues forced the closure of the bar
21 during peak business hours.
- 22 - CARY often left the bar in a state unfit for operation at the end of his shifts, including
23 unsanitary disposing of sunflower seeds in the sanitation sink, leaving toilets clogged
24 and waiting for a plumber to clear the lines, and depleting the bar's ice supply, thus
25 impeding the ability to open employees to operate the bar.

26 21. Cross-Defendant's multiple breaches of the aforementioned exacting duties
27 imposed upon Cross-Defendant, Cross-Plaintiff suffered damages in an amount to be proven at
28 trial.

1 22. Cross-Plaintiff has undertaken significant efforts to secure action including a
2 written notice to Cross-Defendant CARY on May 11, 2023. As is clear from the facts set forth
3 above, Cross-Defendants CARY and ROES 1 - 40 are neither disinterested nor independent.
4 Their actions were not the product of a valid exercise of business judgment. Cross-Defendants
5 CARY and ROES 1 - 40 acted in bad faith and abused their discretionary power as officers and
6 stockholders of the Company. There is no chance that Cross-Defendants CARY and ROES 1 -
7 40 will initiate legal action on behalf of the Company, against themselves.

8 23. Unless this action is maintained, it is almost certain the Cross-Defendants CARY
9 and ROES 1 - 40 will retain a gain derived from the willful breaches of their fiduciary duties.

10 24. As a direct result of the actions and inactions, Cross-Defendants CARY and ROES
11 1 - 40 caused substantial damages to Cross-Plaintiff. Cross-Defendants CARY and ROES 1 -
12 40 should be required to compensate Cross-Plaintiff for all such damages, including loss of past
13 and future profits, together with Cross-Plaintiff's costs of suit and interest thereon as is allowed
14 by law. The amount of money due from Cross-Defendants to Cross-Plaintiff cannot be precisely
15 ascertained without an accounting of the receipts and disbursements of the Company.

16 25. Cross-Plaintiff is informed and believes, and based thereon alleges, that in doing
17 the acts alleged herein, the Cross-Defendants acted with oppression, fraud and malice, and
18 Cross-Plaintiff is accordingly entitled to punitive damages. Cross-Plaintiff is entitled to an award
19 of damages to punish Cross-Defendant CARY, and for the sake of example, because Cross-
20 Defendant's conduct was: (1) oppressive, in that it resulted in cruel and manifestly unjust
21 hardship to Cross-Plaintiff while seeking to enrich himself alone; (2) despicable, base, vile,
22 depraved and contemptible, in that it was the product of intentional and systematic attempt to
23 deprive Cross-Plaintiff of his rights; and (3) malicious, in that the conduct was done with willful
24 and conscious disregard for the rights of Cross-Plaintiff.

25 26. Cross-Defendants also failed to furnish Cross-Plaintiff with information concerning
26 the Partnership's business and affairs. The information withheld was reasonably required for the
27 proper exercise of the Cross-Plaintiff's rights and duties and to upon demand receive information
28 concerning the Partnership's business and affairs. Cross-Plaintiff seeks an award attorney's

1 fees against Cross-Defendants for wrongfully withholding information.

2 27. If Cross-Plaintiff is successful in this action, a substantial benefit will result to
3 PUMP HOUSE on whose behalf this action is also prosecuted derivatively by Cross-Plaintiff,
4 and Cross-Plaintiff is entitled to attorney's fees incurred herein in an amount to be proven at trial.

5
6 **SECOND CAUSE OF ACTION**

7 **NEGLIGENCE**

8 **(Against Cross-Defendants NATHANIEL DEAN CARY and ROES 1 – 40)**

9 28. Cross-Plaintiff re-alleges and incorporates by reference the allegations of the
10 preceding paragraphs as though fully set forth herein.

11 29. Cross-Defendant CARY owed Cross-Plaintiff a duty to use such skill, prudence
12 and diligence as other members of his profession commonly possess and exercise.

13 30. Cross-Defendant breached his duty by failing to exercise reasonable care and
14 competence when handling Company assets and managing PUMP HOUSE.

15 31. As shareholders and officers of PUMP HOUSE, INC., Cross-Defendants CARY
16 and ROES 1 - 40 owed a duty to Cross-Plaintiff to act in the highest good faith, in the best
17 interests of the Company and its members and with such care, including reasonable inquiry, as
18 an ordinarily prudent person in a like position would use under similar circumstances.

19 32. In committing the acts hereinabove alleged, Cross-Defendants acted with
20 negligent disregard for Cross-Plaintiff's interest in the company.

21 33. As a proximate result of the Cross-Defendant's conduct described above, Cross-
22 Plaintiff has been damaged and will continue to be damaged in an amount to be proven at the
23 time of trial.

24 34. Cross-Defendants also breached the duties they owed the Company and its
25 members by, among other things, doing all the things set forth in paragraph 21 above and
26 incorporated herein by reference.

27 35. Cross-Defendants have caused substantial damage to Cross-Plaintiff, in an
28 amount to be proven at trial, as a result of the breaches of the duties they owed to the Company

1 and its members. Cross-Defendants should be required to compensate Cross-Plaintiff for all
2 such damages, including loss of past and future profits, together with Cross-Plaintiff's costs of
3 suit.

4 36. If Cross-Plaintiff is successful in this action, a substantial benefit will result to the
5 Company on whose behalf this action is prosecuted. Cross-Plaintiff is therefore entitled to his
6 attorney's fees incurred herein in an amount to be proven at trial against the Company.

7
8 **THIRD CAUSE OF ACTION**

9 **CONVERSION**

10 **(Against Cross-Defendants NATHANIEL DEAN CARY, ROES 1 - 40,**
11 **and Against Nominal Cross-Defendant PUMP HOUSE, INC.)**

12 37. Cross-Plaintiff re-alleges and incorporates by reference the allegations of the
13 preceding paragraphs as though fully set forth herein.

14 38. Cross-Plaintiff is informed and believes, and based thereon alleges, that Cross-
15 Defendants intentionally and substantially interfered with Cross-Plaintiff's property rights by
16 taking possession of his property, including but not limited to, money owed to Cross-Plaintiff and
17 PUMP HOUSE.

18 39. Cross-Plaintiff is informed and believes, and based thereon alleges, that Cross-
19 Defendants converted to their own use and benefit the money, inventory, equipment, and other
20 items of property which belonged to PUMP HOUSE and Cross-Plaintiff and did so without legal
21 justification.

22 40. Cross-Plaintiff is informed and believes, and based thereon alleges, that Cross-
23 Defendants conspired and agreed to a scheme by which they would deprive Cross-Plaintiff his
24 interest in PUMP HOUSE.

25 41. Cross-Plaintiff is further informed and believes, and based thereon alleges, that all
26 Cross-Defendants agreed to, and did participate in, the formation and operation of the
27 conspiracy. Each and all Cross-Defendants also carried out specific, wrongful acts in
28 furtherance of the conspiracy, as set forth above.

1 42. As a proximate result of Cross-Defendants' conversion, Cross-Plaintiff was
2 damaged and will continue to be damaged in an amount to be proven at the time of trial.

3 43. Cross-Plaintiff is informed and believes, and based thereon alleges, that the Cross-
4 Defendants' acts alleged above were willful, wanton, malicious, and oppressive, and justify the
5 awarding of exemplary and punitive damages.

6
7 **FOURTH CAUSE OF ACTION**

8 **DECLARATORY JUDGMENT**

9 **(Against Cross-Defendants NATHANIEL DEAN CARY, ROES 1 - 40,**
10 **and Against Nominal Cross-Defendant PUMP HOUSE, INC.)**

11 44. The aim of an action for declaratory relief is to eliminate controversies or lack of
12 certainty that may result in subsequent litigation. An "actual controversy" exists which relates to
13 the legal rights of the parties to this action; namely to which party, or parties, owns the intellectual
14 property used by the Company, the ownership interests in the Company, and to what percentage
15 those interests are held.

16 45. An actual controversy exists between Cross-Plaintiff and Cross-Defendants CARY
17 and ROES 1 - 40 with respect to Cross-Plaintiff's membership rights in PUMP HOUSE.

18 46. A further actual controversy exists between Cross-Plaintiff and Cross-Defendants
19 CARY and ROES 1 - 40 regarding the Cross-Defendant CARY'S ownership interest in the PUMP
20 HOUSE.

21 47. Cross-Plaintiff desires a judicial determination of his rights and duties, and a
22 declaration as to the value of Cross-Plaintiff's ownership interest in the Company.

23 48. A judicial declaration is necessary and appropriate at this time under the
24 circumstances in order that Cross-Plaintiff may ascertain his rights and duties relating to PUMP
25 HOUSE, INC.

26 49. As a result of being excluded from management or participation of any kind in the
27 business of PUMP HOUSE, INC., Cross-Plaintiff has incurred damages in an amount to be
28 proven at trial.

1 50. Cross-Plaintiff seeks a declaration of his rights under Code of Civil Procedure §§
2 1060 through 1062.5.

3 51. A declaration is necessary and/or proper at this time and under the circumstances.
4 Cross-Plaintiff has already incurred expenses as a result, yet Cross-Defendants' claims will
5 imminently cause Cross-Plaintiff to continue to incur additional expenses and hardship.

6
7 **PRAYER FOR RELIEF**

8 Wherefore, Cross-Plaintiff prays for:

9 On the First Cause of Action (Breach of Fiduciary Duties in Violation of California Law), as to
10 each and all Cross-Defendants named therein:

- 11 1. For compensatory damages, including past and future lost profits, in an amount
12 according to proof at trial;
- 13 2. For punitive damages in an amount appropriate to punish Cross-Defendants and
14 to deter others from engaging in similar conduct;
- 15 3. For pre-judgment interest at the maximum legal rate;
- 16 4. For post-judgment interest at the maximum legal rate;
- 17 5. For attorneys fees in an amount to be proven;
- 18 6. For costs of suit herein incurred; and
- 19 7. For such other and further relief as the Court may deem just and proper.

20 On the Second Cause of Action (Negligence), as to each and all Cross-Defendants named
21 therein:

- 22 1. For compensatory damages, including past and future lost profits, in an amount
23 according to proof at trial;
- 24 2. For pre-judgment interest at the maximum legal rate;
- 25 3. For post-judgment interest at the maximum legal rate;
- 26 4. For attorneys fees in an amount to be proven;
- 27 5. For costs of suit herein incurred; and
- 28 6. For such other and further relief as the Court may deem just and proper.

1 On the Third Cause of Action (Conversion) as to each and all Cross-Defendants named therein:

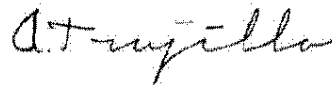
- 2 1. For general damages according to proof including, but not limited to, monies to
3 compensate Cross-Plaintiff for the fair value of the property taken, with interest
4 from the time taken, or, an amount sufficient to indemnify Cross-Plaintiff for the
5 loss which was the natural, reasonable and proximate result of the conversion,
6 plus a fair compensation for the time and money Cross-Plaintiff expended in
7 pursuit of the property;
- 8 2. For pre-judgment interest at the maximum legal rate;
- 9 3. For post-judgment interest at the maximum legal rate;
- 10 4. For attorneys fees in an amount to be proven;
- 11 5. For costs of suit incurred herein; and
- 12 6. For such other and further relief as the court may deem proper.

13 On the Fourth Cause of Action (Declaratory Relief) as to each and all Cross-Defendants named
14 therein:

- 15 1. For a determination of Cross-Plaintiff's membership rights in PUMP HOUSE, INC.;
- 16 2. For a determination of value of Cross-Plaintiff's ownership interest in the PUMP
17 HOUSE, INC.; and
- 18 3. For such other and further relief as the court may deem just and proper.

19
20 Dated: July 5, 2023

Respectfully submitted,
TRUJILLO & WINNICK, LLP

21
22 

23 By: _____

24 Anthony W. Trujillo
25 Attorneys for Cross-Defendants/Cross-Plaintiff
26 PUMP HOUSE, INC and JACOB MATTHEW
27 GAYER
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VERIFICATION

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I am the Cross-Plaintiff in the above-entitled action. I have read the foregoing Cross-Complaint and know the contents thereof, and I certify that the same is true and correct and of my own knowledge, except as to matters which are stated on my own information and belief and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 5, 2023 in Tulare County, California.


jacob.gayer (Jul 5, 2023 18:39 PDT)

JACOB MATTHEW GAYER

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the
4 age of 18 and not a party to the within action. My business address is 2919 1/2 Main
5 Street, Santa Monica, CA 90405.

6 On July 5, 2023, I served the foregoing document described as

7 **1) DEFENDANTS' VERIFIED ANSWER TO PLAINTIFF'S COMPLAINT;**

8 **2) VERIFIED CROSS-COMPLAINT**

9 on the interested parties in this action as follows:

10 By placing true copies enclosed in a sealed envelope addressed to each
addressee as follows:

11 Michael L. Farley
12 FARLEY LAW FIRM.
13 500 North Willis Street
14 Visalia, CA 93291

Attorney for Plaintiff

15 BY MAIL:

16 I deposited each envelope in the mail at Santa Monica, California, with
17 postage thereon fully prepaid.

18 I am "readily familiar" with the firm's practice for collection and
19 processing correspondence for mailing with the U.S. Postal Service.
20 Under that practice, and in the ordinary course of business,
21 correspondence would be deposited with the U.S. Postal Service on that
same day with postage thereon fully prepaid at our business address in
Santa Monica, California. Each of the above envelopes was sealed and
placed for collection and mailing on that date following ordinary business
practices.

22 Executed on July 5, 2023 at Santa Monica, California.

23 STATE - I declare under penalty of perjury under the laws of the State
24 of California that the foregoing is true and correct.

25 Francisco Escandon

