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FILED DISTRICT COURT
Third Judicial District

APR 16 2010

SALT LAKE COUNTY

By _____
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE BOOKSHELF GROUP, LLC, a Utah
limited liability company and Craig D. Case,
an individual,

Plaintiffs,

vs.

MAX INTERNATIONAL, LLC,

Defendant.

COMPLAINT
and
JURY DEMAND

Civil No. 100906935

Judge Toomey

Plaintiffs The Bookshelf Group, LLC (“Bookshelf”) and Craig D. Case (“Case”), by and through counsel of record, hereby complain of Defendant Max International, LLC (“Max”), alleging as follows:

INTRODUCTION

In 2006, defendant Max International asked plaintiff Craig Case to leave his then-present employment, and to assist Max with developing and growing a distributor and marketing system.

There were obvious financial risks to Case in leaving an existing position to help build a fledgling company. Case was aware that cash flow is often an issue for such companies. Case was also aware that placement in the distribution chain, a typical component of compensation in similar organizations, could be perceived as a disincentive to the recruitment of other distributors. With these considerations in mind, Case agreed to accept compensation from Max consisting principally of a reduced salary, plus 1 percent of Max’s gross sales (to be paid to an LLC of which Case was a member).

For nearly three years, Max paid the 1 percent as required. Payments commenced under a contract between Max and Taylor Funding, LLC, and continued through a subsequent contract between Max and plaintiff The Bookshelf Group, LLC. By late 2009, Max International’s sales exceeded \$60,000,000.00 annually. At that point, Max apparently decided that it no longer wanted to honor its existing contract with The Bookshelf Group and, without notice or explanation, Max stopped making payments under the contract.

Case asked Max officials for an explanation on several occasions, but Max would not respond. With no other recourse, on March 10, 2010, The Bookshelf Group, through counsel,

sent a letter pointing out Max's contractual obligations, and stating that payments should be brought current and continue without interruption.

In response to the reminder of his contractual rights as a member of The Bookshelf Group, Max directed Case to come in for a meeting when he returned from a business trip on March 12, 2010. At that meeting, two officers of Max handed Case an already prepared agreement under which The Bookshelf Group would have accepted a 1 percent ownership interest in Max, and given up its claim for the 1 percent of sales. Case was also presented with a new personal employment agreement that would significantly lower Case's salary.

When Case declined to immediately sign the documents, the Max officers retaliated by handing Case a letter purporting to terminate Case, and accusing Case (whose employment they had just sought to retain) of "fraudulent conduct," "self-dealing," and other potentially criminal misconduct. Max further retaliated by telling others that Craig faced criminal charges and could go to jail, and by withdrawing its defense of Case in a pending lawsuit. Max's improper refusal to honor its contractual obligations, and its tortious conduct toward Case in retaliation to his assertion of contractual rights, necessitated this lawsuit.

PARTIES

1. The Bookcase Group, LLC is a Utah limited liability company in good standing, with its registered agent in Davis County, Utah.

2. Craig D. Case is an individual residing in Davis County, Utah.

3. Max International, LLC is a Utah limited liability company, with its registered agent in Salt Lake County, Utah.

JURISDICTION

4. Jurisdiction is proper in this Court pursuant to Utah Code Ann. § 78A-5-102(1).

5. Venue is proper in this Court pursuant to Utah Code Ann. §§ 78B-3-304(2), 78B-3-307(1), and 78B-3-307(2).

GENERAL ALLEGATIONS

6. In the fall of 2006, Greg Fullerton, an original founder and member of defendant Max International, LLC, asked plaintiff Craig Case to leave his present employment as president of Enliven International and assist Max in developing its new marketing operation.

7. After negotiations, Case agreed to accept a position as president of Max International.

8. Case was the first employee hired by Max.

9. Case had no ownership interest in Max.

10. Case had no signing authority on behalf of Max.

11. Case was leaving a stable employment position to assist with an uncertain venture.

12. During his negotiations with Max, Case recognized that cash flow for Max during its initial phases, and perhaps throughout its existence, would be uncertain.

13. To partially compensate individuals for their contributions and risk-taking in helping build up an organization of this nature, such individuals were often placed at the top of the distribution chain. Placement at the top of a distribution chain is often quite lucrative. At Max International, for example, some individuals at or near the top of the distribution chain are

presently earning in excess of \$100,000.00 per month. However, Case recognized that placement of officers or members at the top of a distribution chain could be perceived as a disincentive to the recruitment of lower-level distributors.

14. In recognition of these considerations and others, Case agreed to compensation from Max consisting principally of (a) a reduced salary; plus (b) 1 percent of Max's sales, payable to Taylor Funding, LLC, of which Case was a member.

15. Memorializing their agreement, the parties entered into (1) a contract dated February 15, 2007 between Max and Taylor Funding, LLC (the "First 1% Contract"), and (2) a February 1, 2007, Employment Agreement with Craig D. Case personally (the "Employment Agreement") which contains various provisions regarding salary, severance, etc. *See Exhibits 1 and 2 hereto, respectively.*

16. Both the First 1% Contract and the Employment Agreement were signed by Fred Ninow and Greg Fullerton. Ninow and Fullerton were at that time Members of Max International LLC as defined in Max's Articles of Organization. *See Exh. 3.*

17. The Articles of Organization of Max International, LLC, executed by Max's three Member/Managers and filed with the Utah Division of the Corporations and Commercial Code on September 25, 2006, state that "The action of any two of the Managers shall bind the Company." *See Exh. 3.*

18. The First 1% Contract was drafted by counsel retained by Max International.

19. Case had no involvement or input in the wording of the First 1% Contract, which he signed in the exact form presented to him.

20. Max International has acknowledged that the 1% payment was not only part of Mr. Case's promised compensation for joining Max, but was also in lieu of Mr. Case receiving the (considerably higher) compensation that Mr. Case otherwise would have received, including what he typically would have received had he been placed at the top of the distribution list, the practice at many similar organizations. *See* Exh. 4 hereto, p. 7.

21. The Employment Agreement was drafted by counsel retained by Max International.

22. Case had no involvement or input in the wording of the Employment Agreement, which he signed in the exact form presented to him.

23. Among other things, the Employment Agreement provided that, if Max terminated Case without cause or Case resigned for good reason, Case was entitled to a continuation of his salary for two (2) years. *See* Exh. 2.

24. Max made consistent and timely payments to Taylor Funding, LLC, under the First 1% Contract.

25. At the request of Max, Taylor Funding, LLC, subsequently agreed to release its rights under the First 1% Contract. The purpose and practical effect of Max's request was to enable Max to enter into individual contracts with each member of Taylor Funding, LLC.

26. Accordingly, on January 1, 2008, The Bookshelf Group, LLC, of which Mr. Case is a member, entered into an agreement with Max titled Business Development and Commission Plan Agreement (the "Second 1% Contract"). *See* Exh. 4.

27. The Second 1% Contract was drafted by counsel retained by Max International.

28. Case had no involvement or input in the wording of the Second 1% Contract, which he signed in the exact form presented to him.

29. Among other things, the Second 1% Contract requires Max to pay Bookshelf “an amount equal to one percent (1%) of all gross sales from Independent Distributors of Max during any fiscal year.” *See* Exh. 4, p. 2, ¶ 2.

30. Bookshelf’s “commission percentage is fixed and will not increase or decrease unless agreed to in writing by the parties.” *See* Exh. 4, p. 2 ¶ 2.

31. The Second 1% Contract was signed by Fred Ninow and Greg Fullerton. Ninow and Fullerton were at that time Members of Max International, LLC, as defined by Max’s Articles of Organization.

32. Max made timely and consistent payments under the Second 1% Contract through November 2009 (for October 2009 sales).

33. After November 2009, without notice or explanation, Max discontinued its payments to Bookshelf under the Second 1% Contract.

34. Over the next few months, Case made several inquiries of Max Officers and Members as to why the payments to Bookshelf had ceased, but received no substantive response.

35. Bookshelf then sought the assistance of counsel with respect to its rights under the Second 1% Contract.

36. On Monday, March 10, 2010, counsel for Bookshelf transmitted a letter to Peter Nordberg, Chief Executive Officer, and Joseph Voyticky, Chief Financial Officer, of Max. The

letter pointed out Max's obligations under the Second 1% Contract, and stated an expectation that payments under the contract would resume and be brought current.

37. In the letter, Bookshelf's counsel expressed a desire to avoid litigation if possible. Bookshelf's counsel offered to meet with Max representatives to discuss alternative payment arrangements if Max's cessation of payment was due to financial difficulties, or other related issues.

38. On Wednesday, March 12, 2010, Max president Mike Larkins directed Case to come in for a meeting when Case returned from an out of town business trip. The meeting began at approximately 7 p.m.

39. At that meeting, Voyticky handed Case an already prepared agreement under which The Bookshelf Group would receive a 1% ownership interest in Max, in exchange for giving up its claim to receive 1% of Max's gross sales. *See* Exh. 5.

40. Voyticky also presented Case with a new personal employment agreement that would cut Case's salary significantly. *See* Exh. 6.

41. When Case declined to sign the documents, Voyticky handed Case a letter purporting to terminate Case's employment (the "Termination Letter"). *See* Exh. 7.

42. The Termination Letter was signed by Max president Mike Larkins, Max CEO Peter Nordberg, and Max CFO Joseph Voyticky.

43. The Termination Letter accused Case (whose employment they had just sought to retain) of "fraudulent conduct," "self-dealing," and other potentially criminal misconduct.

44. At the end of the meeting, Voyticky agreed to sit down with Bookshelf's and Case's attorneys and discuss Max's position regarding the 1% Contract and related issues. However, when Bookshelf's counsel requested such a meeting, it was refused.

45. After the March 12, 2010, meeting, Max continued to retaliate against Case by withdrawing its defense of Case in a pending legal action by Tripharma, LLC, against Max, Case.

46. As a result of Max's improper actions, Bookshelf and Case were required to bring the instant action, and to incur attorney fees and other litigation expenses.

FIRST CAUSE OF ACTION

(Accounting)

47. Plaintiffs incorporate by reference all other allegations of this Complaint as though fully set forth herein.

48. By reason of Defendants' conduct, Bookshelf has been deprived of information to which he is legally and equitably entitled, including without limitation, information related to sales of product by Max International.

49. Bookshelf is entitled to an accounting of all gross sales from Independent Distributors of Max from November 2009 through the duration of this litigation.

50. Bookshelf is entitled to copy, inspect and perform an audit on any and all of the books and records of, and any other materials reflecting the accounting for Max International, including without limitation, annual sales of all distributors and the related commissions for each accounting period. *See* Exh. 4, p. 3 ¶ 5.

51. Bookshelf is also entitled to reimbursement for the cost of the accounting if the accounting shows that Max is in default as defined in the Second 1% Contract. *See* Exh. 4, p. 3 ¶ 5.

SECOND CAUSE OF ACTION

(Breach of Contract – breach of Second 1% Contract)

52. Plaintiffs incorporate all other paragraphs of this Complaint by reference as though fully set forth herein.

53. The Second 1% Contract is a binding and enforceable contract between Max and The Bookshelf Group, LLC.

54. Bookshelf has performed all conditions and obligations of the Second 1% Contract.

55. Max has breached the Second 1% Contract by refusing to make payments required under the contract.

56. As a result of Max's breach, The Bookshelf Group has been forced to retain counsel, and to incur attorney fees and related expenses.

57. As a direct and proximate result of Max's breach of its contractual obligations, The Bookshelf Group has been further damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Breach of Contract – breach of Employment Agreement)

58. Plaintiffs incorporate all other paragraphs of this Complaint by reference as though fully set forth herein.

59. The Employment Agreement is a binding and enforceable contract between Max and Mr. Case.

60. Mr. Case has performed all conditions and obligations of the Employment Contract.

61. Max terminated Mr. Case without cause, and/or Mr. Case resigned for good reason, as set forth in the Employment Agreement.

62. Mr. Case has made demand upon Max for continued payment of his salary for twenty-four (24) months as provided by the Employment Agreement, but Max has refused.

63. Max's refusal to pay Mr. Case amounts to which he is entitled under the Employment Agreement constitutes a breach of the Employment Agreement.

64. As a direct and proximate result of Max's breach of contract, Case has been required to retain the services of counsel, and to incur attorney fees and related expenses.

65. As a direct and proximate result of Max's breach of its contractual obligations, Case has been further damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing – Second 1% Contract)

66. Plaintiffs incorporate all other paragraphs by reference as though fully set forth herein.

67. The Second 1% Contract contains an implied covenant of good faith and fair dealing.

68. Max was obligated not to destroy or injure The Bookshelf Group's right to receive the fruits of the Second 1% Contract.

69. Max's conduct is inconsistent with the agreed common purpose of the Second 1% Contract and The Bookshelf Group's justified expectations.

70. Max has breached its obligation of good faith and fair dealing to The Bookshelf Group under the Second 1% Contract by, among other things, refusing to make payments under the contract, threatening Mr. Case and The Bookshelf Group with unfounded criminal accusations in an effort to induce The Bookshelf Group to give up its rights under the contract, and seeking to destroy The Bookshelf Group's ability to receive the fruits of the contract.

71. As a direct and proximate result of Max's breach of the covenant of good faith and fair dealing, The Bookshelf Group has been required to retain the services of counsel, and to incur attorney fees and related expenses.

72. As a direct and proximate result of Max's breach of the covenant of good faith and fair dealing, The Bookshelf Group has been further damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing – Employment Agreement)

73. Plaintiffs incorporate all other paragraphs by reference as though fully set forth herein.

74. The Employment Contract contains an implied covenant of good faith and fair dealing.

75. Max was obligated not to destroy or injure Mr. Case's right to receive the fruits of the Employment Agreement.

76. Max's conduct is inconsistent with the agreed common purpose of the Employment Agreement and Mr. Case's justified expectations.

77. Max has breached its obligation of good faith and fair dealing to Mr. Case under the Employment Contract by, among other things, threatening and terminating Mr. Case's employment status in order to gain an unfair advantage on Bookshelf's contractual claim; fabricating false criminal and other defamatory accusations against Mr. Case in order to wrongfully avoid Max's obligations under the Employment Agreement; and seeking to destroy Mr. Case's ability to receive the fruits of the Agreement.

78. As a direct and proximate result of Max's breach of the covenant of good faith and fair dealing, Mr. Case has been required to retain the services of counsel, and to incur attorney fees and related expenses.

79. As a direct and proximate result of Max's breach of the covenant of good faith and fair dealing, Mr. Case has been further damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(Defense and indemnity)

80. Plaintiffs incorporate all other paragraphs by reference as though fully set forth herein.

81. On February 17, 2010, Tripharma LLC ("Tripharma") sued Max International, LLC and various current and former Max executives and employees (collectively "Max"), along

with various Max associates, in *Tripharma LLC v. Max International LLC et al.*, U.S. District Court, Central District of California, 8:10-cv-00196-JVS-AN.

82. The Tripharma suit claims that Max allegedly improperly and falsely marketed, advertised, and labeled the Max WLX product as being the subject of certain scientific tests or studies and as being licensed under United States Patent No. 6,899,892 (the “892 patent”). The suit also claims that Max allegedly violated a marketing and supply agreement between Max and Tripharma by not purchasing a minimum amount of a viscous polysaccharide product for Max’s Max WLX.

83. The defendants named in the Tripharma lawsuit include Max International LLC, Steve Scott, Fred Ninow, Greg Fullerton, Peter Nordberg, Mike Larkins, David Bagley, Eric Anderson, Craig Case, Ken Dunn, Julie Dunn, Bill Andersen, Cindy Andersen, Heidi Reitano, Joe Reitano, Jose Marie Abilay, Ryan Vanderpool, Brenda Bridgforth, David Bridgforth, Carl Stanitzky, Winder Lyons, Tammy Sellars, Yo Fujikawa, and Jamie Fujikawa.

84. Craig Case is identified in the Tripharma lawsuit as the Executive Vice President of Field Development and Strategy of Max. Defendants Steve Scott, Fred Ninow, Greg Fullerton, Peter Nordberg, Mike Larkins, David Bagley, Eric Anderson, and Case are collectively referred to in the Tripharma complaint as the “Max Executives.”

85. The only allegations against Case in the Tripharma litigation are those lodged against all “Max Executives” collectively. No allegations of personal misconduct or actions by Case are identified in the Tripharma complaint.

86. Max believes the suit is without any merit, was filed for an improper purpose, was filed to attempt to damage Max's reputation and business, and Max plans to seek, among other things, attorneys' fees and costs incurred in defending the lawsuit.

87. Max is providing a defense to current and former employees of Max in the Tripharma litigation, but not to plaintiff Craig Case.

88. Under Utah law, Max owes a duty to defend Case in the Tripharma litigation.

89. Upon receipt of the Tripharma litigation, Max was prepared to, and took steps to, provide a defense to Craig Case. However, after receiving the letter from Bookshelf's counsel on March 10, 2010, regarding Bookshelf's contractual rights, Max withdrew its defense from Case.

90. As a result of Max's breaches of duty, Case has incurred legal fees and related expenses.

91. As a result of Max's breaches of duty, Case has incurred other damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION

(Intentional and/or Negligent Infliction of Emotional Distress)

92. Plaintiffs incorporate all other paragraphs by reference as though fully set forth herein.

93. The actions of Max described above were undertaken intentionally, recklessly, and/or negligently.

94. The acts of Max International in retaliation for Bookshelf's good faith assertion of contractual rights, including accusing Craig Case of criminal misconduct, and withdrawing a defense of Case from pending litigation, constitute outrageous conduct that offend generally accepted standards of decency and morality.

95. Max's actions in falsely accusing Craig Case of criminal misconduct were especially outrageous as Max was fully aware at the time that it has itself engaged in repeated misconduct, including, but not limited to, failing to disclose material liabilities to prospective investors, and materially misrepresenting the nature of its principal product to the public and to individuals in the distribution stream.

96. Any reasonable company would have known that engaging in such conduct would cause Craig Case severe emotional distress, and Mr. Case has experienced such distress.

EIGHTH CAUSE OF ACTION

(Declaratory Relief)

97. Plaintiffs incorporate all other paragraphs by reference as though fully set forth herein.

98. Max has taken the position that it owes no duties toward Case with respect to the Tripharma litigation, including no duty to defend Case or to protect Case's interests with respect to the litigation.

99. If Max's refusal to defend Case is a breach of duty, or if Max is correct that no duty is owed, then Case is entitled to a declaration that he conversely owes no duties toward Max with respect to the Tripharma litigation.

100. Case is entitled to a declaration that he may protect himself from liability and expense associated with the Tripharma litigation through any lawful means.

WHEREFORE, Plaintiffs respectfully pray for the following relief:

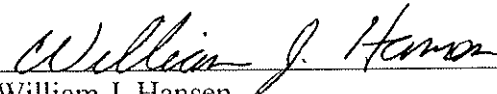
1. For judgment on each cause of action as requested.
2. For declaratory relief as requested.
3. For an award of interest, costs, and attorney fees and litigation expenses as allowed by law.
4. For all equitable and other relief permitted by law.

DEMAND FOR JURY TRIAL

Pursuant to Utah Rule of Civil Procedure 38, Plaintiffs Bookshelf and Case demand a trial by jury on all issues so triable. The required fee is tendered herewith.

DATED this 16th day of April, 2010.

CHRISTENSEN & JENSEN, P.C.



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