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**EUREKA MANAGEMENT SERVICES, NC.,**  
7 **TARIQ ALAZRAIE, CESAR ANGOBALDO,**  
8 **AND ED ROSENTHAL**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA, RENE C. DAVIDSON COURTHOUSE

13 EUREKA MANAGEMENT SERVICES,  
14 INC., a California corporation; TARIQ  
ALAZRAIE, an individual; CESAR  
15 ANGOBALDO, an individual; and ED  
ROSENTHAL, an individual,

16 Plaintiffs,

17 vs.

18 MAG WELLNESS, INC. a California  
19 corporation; DEBORAH GOLDSBERRY, an  
individual; and DOES 1-20,

20 Defendants.

Case No.

Rg20079640

**COMPLAINT OF PLAINTIFFS EUREKA  
MANAGEMENT SERVICES, INC.,  
TARIQ ALAZRAIE, CESAR  
ANGOBALDO, AND ED ROSENTHAL  
FOR:**

- (1) Breach of Contract
- (2) Breach of Fiduciary Duty
- (3) Fraud
- (4) Breach of the Implied Covenant of Good  
Faith and Fair Dealing

Filed By Fax

1 **PARTIES**

2 1. Plaintiff EUREKA MANAGEMENT SERVICES, INC. (“Eureka”) is a California  
3 corporation whose principal place of business is located in Oakland, California.

4 2. Plaintiff TARIQ ALAZRAIE (“Alazraie”) is an individual residing in California.

5 3. Plaintiff CESAR ANGOBALDO (“Angobaldo”) is an individual residing in  
6 California.

7 4. Plaintiff ED ROSENTHAL (“Rosenthal”) is an individual residing in California.

8 Together, Plaintiffs Alazraie, Angobaldo, and Rosenthal, are referred to herein as “investors” or  
9 “Eureka’s investors.”

10 5. Defendant MAG WELLNESS, INC. (“Magnolia”) is a California corporation that  
11 operates a cannabis dispensary. It does business under the fictitious names Magnolia, Magnolia  
12 Wellness, and Magnolia Oakland. Its principal place of business is located at 161 Adeline Street,  
13 Oakland, California 94607.

14 6. Defendant DEBORAH GOLDSBERRY is an individual residing in California.  
15 Upon information and belief, she resides in Alameda County. She is the CEO, Secretary, and  
16 Managing Director and/or Executive Director of Magnolia. She previously served as Eureka’s  
17 CEO, president, and director. Ms. Goldsberry is and was at all relevant times the alter ego of  
18 Defendant Magnolia.

19 7. Eureka is ignorant of the true names or capacities of the defendants sued as DOES  
20 1-20. Eureka thus sues these fictitious defendants pursuant to Section 474 of the California Code  
21 of Civil Procedure.

22 8. Together, Magnolia, Ms. Goldsberry, and DOES 1-20, are referred to herein as the  
23 “Defendants.”

24 **GENERAL ALLEGATIONS**

25 **A. Magnolia Is Formed To Operate A Medicinal Cannabis Dispensary.**

26 9. Magnolia operates a cannabis dispensary located in West Oakland, California. It  
27 was formed in 2010 as a mutual benefit organization organized under the Nonprofit Mutual  
28 Benefit Corporation Law. As a mutual benefit organization, Magnolia initially had no

1 shareholders or owners.<sup>1</sup>

2 10. Until late 2015, Magnolia was run by David Spradlin and Mark Pelter. Messrs.  
3 Spradlin and Pelter served on Magnolia's board of directors, and upon information and belief,  
4 operated Magnolia through an entity known as Nu View Consulting.

5 11. In early 2015, Magnolia was in a precarious financial situation. Messrs. Spradlin  
6 and Pelter were seeking to exit the business, pay off Magnolia's existing debts of approximately  
7 \$1.5M, and transfer control of the organization to a new set of directors and a new management  
8 company.

9 **B. Ms. Goldsberry Forms Eureka, Raises Capital, And Assumes Control Of Magnolia.**

10 12. Upon information and belief, in or around February 2015, Ms. Goldsberry, a  
11 cannabis activist and entrepreneur, began discussing with Messrs. Spradlin and Pelter a potential  
12 acquisition of Magnolia. Sometime thereafter, Ms. Goldsberry began soliciting investors for the  
13 capital needed to acquire control of Magnolia.

14 13. Ms. Goldsberry formed Eureka in May 2015 and became its CEO, president, and  
15 director. Upon information and belief, Eureka was formed for the purpose of acquiring Magnolia  
16 and serving as the management services organization that would operate Magnolia.

17 14. Because Magnolia was a mutual benefit organization, i.e., a type of not-for-profit  
18 organization, potential investors could not directly acquire shares of Magnolia. Thus, Ms.  
19 Goldsberry recruited the investors to invest in *Eureka*. Ms. Goldsberry repeatedly informed  
20 investors that Magnolia and Eureka were effectively the same entity for purposes of their  
21 investment. Specifically, Ms. Goldsberry led the investors to believe that by investing in Eureka,  
22 the investors would obtain a financial interest in Magnolia. She also told the investors that when it  
23 became legal for cannabis dispensaries to operate as for-profit businesses, Eureka would convert  
24 its promissory note to Magnolia into equity, and Eureka's would own Magnolia.

25 15. Through these deceptive means, Ms. Goldsberry was able to raise approximately  
26

27 <sup>1</sup> Magnolia has since amended its Articles of Incorporation and is now operating as a corporation  
28 organized under the California Corporations Code.

1 \$1.6M for Eureka. Notably, Ms. Goldsberry did not invest any of her own funds in Eureka or  
2 Magnolia.

3 16. In August 2015, Messrs. Spradlin and Pelter entered into an Agreement with Ms.  
4 Goldsberry and Barbara Blaser to Transfer Operations and Control of Mag Wellness, Inc.  
5 (“Transfer Agreement”). Upon information and belief, Ms. Blaser is Ms. Goldsberry’s mother.

6 17. In late 2015, Ms. Goldsberry, now in control of Magnolia, appointed herself  
7 Magnolia’s CEO and Executive Director and/or Managing Director.

8 **C. Eureka And Magnolia Enter Into A Promissory Note And Security Agreement.**

9 18. Pursuant to the Transfer Agreement, Ms. Goldsberry and Ms. Blaser were named  
10 directors of Magnolia in exchange for their agreement to loan Magnolia \$1,500,000. The purpose  
11 of the \$1,500,000 loan was “to satisfy various debts owed by the Corporation to third parties.”  
12 But it was Eureka—not Ms. Goldsberry and Ms. Blaser—that loaned funds to Magnolia.

13 19. Attached to the Transfer Agreement were a promissory note and security agreement  
14 between Magnolia and Eureka. The promissory note provided that “for value received,” Magnolia  
15 would pay Eureka \$1,500,000 in principal together with interest.

16 20. Under the terms of the promissory note, Magnolia was to commence principal  
17 payments on the third anniversary of the issuance date. Principal was to be “paid monthly in  
18 arrears on the last day of each month in twenty four equal installments of Sixty Two Thousand  
19 Five Hundred Dollars (\$62,500.00).” Interest payments were to commence on the Original Issue  
20 Date until paid in full.

21 21. Although Ms. Goldsberry represented to Eureka’s investors that the promissory  
22 note would provide Eureka with the right to convert its loan into an equity interest in Magnolia,  
23 there was no provision in the promissory note that gave Eureka the right to convert its loan into  
24 equity in Magnolia.

25 22. Eureka and Magnolia also executed a security agreement in which Magnolia  
26 granted Eureka a security interest in its assets, excluding assets in which a security interest could  
27 not be granted due to Medicinal Marijuana Laws or other laws, rules, or regulations. In other  
28 words, due to the complex web of laws and regulations related to cannabis, Eureka may not have

1 received a security interest in one of Magnolia’s most valuable assets—its inventory of cannabis.

2 23. Both the promissory note and the security agreement were executed by Mr.  
3 Spradlin on behalf of Magnolia and Ms. Goldsberry on behalf of Eureka.

4 **D. Eureka Enters Into A Management Agreement With Magnolia.**

5 24. The Transfer Agreement provided that Magnolia would enter into a management  
6 and consulting agreement with Eureka for “purposes of transferring operational control of the  
7 Business and seamlessly continuing the Corporation’s not-for profit operation in compliance with  
8 California and local laws.”

9 25. Attached as an exhibit to the Transfer Agreement was a Management & Consulting  
10 Services Agreement between Eureka Management Services, Inc. and Mag Wellness, Inc. (the  
11 “Eureka Management Agreement”). Pursuant to the Eureka Management Agreement, Eureka  
12 promised to provide Magnolia with certain services, including the following:

- 13 a. Dispensary Consultation;
- 14 b. Dispensary Management and Operational Management and control of purchasing  
15 of inventory and hiring, firing and management of employees, and other activities  
16 related to the operations of the business;
- 17 c. Cultivation Consultation;
- 18 d. Product Standards and Development;
- 19 e. Commercial Leasing; and
- 20 f. Investment Opportunities.

21 26. In effect, under the Eureka Management Agreement, Eureka—through Ms.  
22 Goldsberry—was to have full control over Magnolia’s operations.

23 27. In exchange for Eureka’s management and consulting services, Magnolia agreed to  
24 pay the Eureka a monthly fee “equal to [Eureka’s] hourly rate for personnel, plus an additional  
25 25% of this monthly total for overhead expenses.” Magnolia further agreed to reimburse Eureka  
26 for its costs and expenses.

27 28. The Eureka Management Agreement provided for a five-year term, beginning on  
28 the execution date of the agreement. In the event Magnolia terminated the agreement prior to the

1 expiration of the term of the agreement, Eureka would be entitled to liquidated damages in the  
2 amount of \$110,000 multiplied by the number of months remaining on the term. The agreement  
3 expressly provided that these liquidated damages were not a penalty, but rather an estimate of  
4 anticipated damages Eureka would suffer in the event of a breach.

5 29. The Eureka Management Agreement was executed on August 7, 2015, by Mr.  
6 Spradlin on behalf of Magnolia and by Ms. Goldsberry on behalf of Eureka.

7 **E. Ms. Goldsberry Attempts To Raise Additional Capital For Magnolia By**  
8 **Misrepresenting To Investors That They Would Receive An Interest In Magnolia.**

9 30. Soon after Ms. Goldsberry took over management of Eureka and Magnolia, the  
10 restaurant next door to Magnolia closed and Magnolia's business declined. To make matters  
11 worse, Magnolia still had significant outstanding debt and it was entangled in a dispute with the  
12 federal government over back taxes. In October 2016, the federal government filed a tax lien  
13 against Magnolia to secure approximately \$400,000 in unpaid taxes.

14 31. To turn Magnolia's prospects around, Ms. Goldsberry again sought help from  
15 outside investors. She circulated materials to investors stating that Eureka was seeking an  
16 additional \$1M in capital to improve Magnolia's business prospects. She represented that further  
17 investment in Magnolia would redound to Eureka's financial benefit. Ms. Goldsberry represented  
18 that Magnolia would use the additional capital Eureka was raising to (1) purchase the restaurant  
19 space next door to Magnolia, and (2) to pay an additional \$400K owed under an existing  
20 management services contract to the former directors of Magnolia.

21 32. In materials circulated to investors, Ms. Goldsberry made numerous intentional  
22 misrepresentations of fact in order to induce investors to provide additional capital for Magnolia's  
23 benefit and to induce Eureka to loan Magnolia additional funds.

24 33. A document titled, "Eureka Expansion Plan," which upon information and belief  
25 was circulated to potential investors in fall 2016 and was prepared by Ms. Goldsberry, falsely  
26 stated that Eureka had "acquired the operating assets of Magnolia Wellness." Instead, Eureka had  
27 obtained only a security interest in Magnolia's assets.

28 34. Further, the "Eureka Expansion Plan" explicitly tied Eureka's financial projections

1 to Magnolia’s expected profits, suggesting to investors that an investment in Eureka was  
2 effectively an investment in Magnolia. As but one example, the Eureka Expansion Plan contained  
3 the following misstatement:

4 [Eureka] has developed its financial plan with the awareness that  
5 cash and the bottom line are key components of any successful  
6 operation. Revenues for the operation will come from several  
7 sources:

- 8 • retail sale of cannabis for use off and on site.
- 9 • sale of ancillary products such as storage containers,  
10 tools for use, and other novelty items.
- 11 • wholesale distribution of cannabis products  
12 produced under Magnolia’s auspices and sold under  
13 its brand name or white labeled.
- 14 • sublease of the licensed kitchen space to other  
15 cannabis ingestible manufacturers.
- 16 • Consulting agreements with Magnolia Wellness and  
17 other clients.

18 35. The “Eureka Expansion Plan” stated that Eureka would draw revenue from the sale  
19 of cannabis. But Eureka did not have a license to sell cannabis. The only way it could have drawn  
20 revenue from the sale of cannabis was through its relationship with Magnolia. The inescapable  
21 conclusion of the “Eureka Expansion Plan” is that Magnolia’s profits would flow through to  
22 Eureka and its investors. Of course, this was not possible under the law that then existed, which  
23 required cannabis dispensaries to operate as not-for-profit operations.

24 36. Eureka’s annual report for November 15, 2015 – November 15, 2016, prepared by  
25 Ms. Goldsberry, stated that “Eureka loaned [] funds to Magnolia, on convertible notes with 10%  
26 interest.” However, despite informing Eureka’s investors in this writing (and orally at other points  
27 in time) that Eureka and Magnolia had entered into a convertible promissory note, this was not  
28 true. As Ms. Goldsberry knew, there was no provision in the promissory note providing that

1 Eureka could convert its debt interest in Magnolia for an equity interest. Ms. Goldsberry actively  
2 concealed this truth from Eureka's investors.

3 37. In Eureka's Executive Summary, which upon information and belief was circulated  
4 to investors in 2016, Ms. Goldsberry referred to Eureka as Magnolia's parent company in order to  
5 lead investors into believing that Eureka had an ownership interest in Magnolia. In fact, Eureka  
6 was not Magnolia's parent company. It had no ownership interest in Magnolia.

7 38. Ms. Goldsberry also informed investors that Eureka would earn revenue by  
8 providing consulting services to other businesses seeking to establish cannabis dispensaries. One  
9 of the entities Eureka provided such services to was Amoeba, which opened a dispensary known  
10 as Hi-Fidelity in Berkeley, California in 2018. Ms. Goldsberry misled investors into believing that  
11 Eureka would receive the proceeds of these consulting services. However, upon information and  
12 belief, Ms. Goldsberry instead obtained an individual ownership in Hi-Fidelity in exchange for  
13 Eureka's services.

14 39. The misrepresentations described above induced investors to make additional  
15 contributions of capital to Eureka. The misrepresentations described above also induced Eureka to  
16 loan additional funds to Magnolia.

17 40. Because Ms. Goldsberry served in a dual role as Magnolia's CEO, Managing  
18 Director and/or Executive Director, and director, on the one hand, and Eureka's CEO, president,  
19 director, and sole officer and decision maker, on the other hand, Ms. Goldsberry controlled access  
20 to and wrongfully prevented others from obtaining information about Eureka, including  
21 information about Eureka's relationship with Magnolia. Investors were prevented from accessing  
22 information that would have led them to discover Ms. Goldsberry's fraudulent conduct.

23 F. **Magnolia's Business Suffers Under Ms. Goldsberry's Leadership, And Ms.**  
24 **Goldsberry Rejects Attempts By Investors To Obtain Information About Their**  
**Investment.**

25 41. Despite the fact that it was one of the first licensed dispensaries in Oakland, and  
26 thus presumably had a competitive advantage over newer dispensaries and an established base of  
27 customers, Magnolia's business suffered under Ms. Goldsberry's leadership due to Ms.  
28 Goldsberry's mismanagement.



1           42.     Upon information and belief, Ms. Goldsberry commingled corporate funds and  
2 used Eureka's and Magnolia's funds for her own personal purposes. For example, one of  
3 Magnolia's employees spent substantial business time, if not all of his business time, writing a  
4 book titled, "Idiot's Guide: Starting and Running a Marijuana Business," which Ms. Goldsberry  
5 published in 2017. On information and belief, the proceeds of the book's sales went to Ms.  
6 Goldsberry personally. Effectively, the investors' resources were used to pay a Magnolia  
7 employee to write Ms. Goldsberry's book, and yet the royalties from that book did not flow back  
8 to Eureka or its investors.

9           43.     Upon information and belief, while Ms. Goldsberry was using Magnolia's  
10 resources for her own personal gain, Magnolia was struggling to meet its obligations to pay  
11 vendor invoices.

12           44.     Investors grew concerned by Ms. Goldsberry's lack of communication. They were  
13 also concerned that Ms. Goldsberry did not hold board meetings, did not establish any  
14 management structure for Eureka, and did not abide by corporate formalities between Eureka and  
15 Magnolia. The investors were promised that Eureka would thrive because it would be run by  
16 multiple individuals with experience in the cannabis industry, including Mr. Rosenthal. But this  
17 did not happen. Ms. Goldsberry, seeking to conceal her fraudulent behavior, refused to allow  
18 anyone else to participate in Eureka or Magnolia.

19           45.     When Mr. Rosenthal attempted to become more involved in Eureka and  
20 Magnolia's operations, Ms. Goldsberry refused to allow him to participate. For instance, when  
21 Mr. Rosenthal asked to join Magnolia's board of directors, Ms. Goldsberry falsely informed him  
22 that Magnolia did not have the authority to add additional directors.

23           46.     Investors grew increasingly concerned that Magnolia and Eureka were being  
24 mismanaged and that their funds were being misused. For instance, Ms. Goldsberry raised funds  
25 in 2016 to build a restaurant/indoor use facility adjacent to the dispensary. Magnolia did  
26 ultimately rent the adjacent building, doubling its monthly rental obligations, but the restaurant  
27 plans never came to fruition.

28           47.     Frustrated with Ms. Goldsberry's mismanagement, investors began to demand

1 more information about their investment in Magnolia, but Ms. Goldsberry rebuffed such demands.

2 48. At an impasse and fearing that she might lose her control over Magnolia, Ms.  
3 Goldsberry decided to take steps to end Magnolia's relationship with Eureka.

4 **G. Ms. Goldsberry Terminates The Eureka Management Contract And Forms A New**  
5 **Management Company.**

6 49. In June 2017, Emergent Management Services ("Emergent") was formed. Upon  
7 information and belief, Ms. Goldsberry, then an officer and director of Eureka, formed Emergent  
8 with the intent to usurp corporate opportunities from Eureka.

9 50. On or about July 12, 2017, Ms. Goldsberry, acting in her authority as Managing  
10 Director of Magnolia terminated the Eureka Management Agreement "for cause" citing Eureka's  
11 alleged failure "to provide effective management services." Notably, Ms. Goldsberry did not  
12 consult Eureka's investors prior to this decision.

13 51. In the termination letter, Ms. Goldsberry claimed that Eureka's failure to address  
14 Magnolia's financial issues brought Magnolia "to the brink of insolvency and, potentially,  
15 bankruptcy." But Ms. Goldsberry's reasons for terminating the Eureka Management Agreement  
16 ring hollow. Ms. Goldsberry served as Eureka's CEO and president. Further, because she failed  
17 to hold board meetings and there were no officers or managers other than Ms. Goldsberry, she was  
18 Eureka's *only* decision maker. She was thus the only individual who provided services to  
19 Magnolia—the very services about which she now complained. By terminating the Eureka  
20 Management Agreement for cause, she was effectively firing herself for her own mismanagement  
21 of Magnolia.

22 52. Despite the fact that she terminated the Eureka Management Agreement, Ms.  
23 Goldsberry nonetheless continued to utilize Eureka's bank account for her own purposes. On or  
24 about July 13, 2017, Ms. Goldsberry wrote a check on behalf of Eureka to "cash" in the amount of  
25 \$6,800. On or about July 26, 2017, Ms. Goldsberry wrote a check on behalf of Eureka to "cash"  
26 in the amount of \$4,000.

27 53. On or about August 16, 2017, Ms. Goldsberry prepared a letter to Eureka  
28 "confirming" that she had resigned as director and/or officer of Eureka on July 12, 2017.

1 Although, the letter stated that it was a confirmation of her earlier resignation, she had not  
2 previously communicated to Eureka or any of Eureka's investors that she had resigned.

3 54. Upon information and belief, on or about October 2017, Magnolia circulated a  
4 letter to its vendors in order to try to settle its outstanding debts. Magnolia offered its vendors  
5 three options to resolve past due invoices: (1) a promissory note under which past due invoices  
6 would be converted into a loan that would be paid within 12 months with 10% interest; (2) a  
7 promissory note to repay debt under which past due invoices would be converted into a loan that  
8 would be paid upon the completion of certain milestones; or (3) a convertible promissory note  
9 under which past due invoices would be converted into a convertible notes in tranches of \$25,000.

10 55. The conversion features of the third option were described as follows:

11 Conversion will be into preferred, non-voting shares of  
12 Emergent Management and Consulting Services, Inc.,  
13 which in turn converts its loans to Mag Wellness. After all  
14 the conversions of Emergent loans into shares, Emergent  
15 will own most of the shares of Mag Wellness and investors  
16 will own Mag Wellness through Emergent. All early  
17 investors are guaranteed 20% discount from the price paid  
18 by Series A investors on the shares and are guaranteed that  
19 they will convert into shares in a company with a valuation  
20 cap of \$5 million solely for purposes of selling shares to the  
21 early investors. These terms will be memorialized in the  
22 Subscription Agreement.

23 56. The vendor letter made clear that Ms. Goldsberry was again trying to entice  
24 potential investors by promising them that they could obtain an interest in Magnolia by investing  
25 in a separate entity, as she had earlier done with Eureka.

26 57. On or about November 2017, Eureka first learned that Magnolia and Ms.  
27 Goldsberry were purporting to sell shares of Magnolia through Emergent. Soon thereafter, Eureka  
28 and its investors began to investigate their options in the wake of Ms. Goldsberry's improper

1 termination of the Eureka Management Agreement. It was only then that Eureka and Eureka's  
2 investors discovered that Ms. Goldsberry's representations about Eureka investment in Magnolia  
3 were untrue and thereby discovered Defendants' fraud.

4 **H. Magnolia Breaches The Promissory Note.**

5 58. Under the terms of the Promissory Note, Magnolia was to begin making interest  
6 payments on the Original Issue Date.

7 59. Due to its dire financial situation, however, Magnolia never made any interest  
8 payments to Eureka. During the time period when Ms. Goldsberry was running both Eureka and  
9 Magnolia, Eureka never attempted to collect interest payments from Magnolia.

10 60. Under the terms of the promissory note, Magnolia was to begin making principal  
11 payments on the promissory note on the third anniversary of the issuance date.

12 61. To date, Magnolia has not made a single payment of interest or principal to Eureka  
13 on the promissory note.

14 62. Magnolia has thus breached its obligations to repay Eureka under the terms of the  
15 promissory note.

16 63. As a result, Eureka has been unable to repay its investors who entered into  
17 convertible promissory notes with Eureka, thus subjecting Eureka to potential lawsuits by its  
18 investors.

19 **I. Ms. Goldsberry Intentionally Defrauded Investors to Obtain Ownership and Control**  
20 **of Magnolia.**

21 64. In 2018, recreational cannabis became legal in California. Soon after, in April  
22 2018, Magnolia filed amended and restated articles of incorporation and became a for-profit  
23 entity.

24 65. Upon information and belief, Ms. Goldsberry became a shareholder of Magnolia  
25 after it became a for-profit entity. Ms. Goldsberry essentially obtained this ownership interest for  
26 free by perpetrating fraud against Eureka and its investors. Eureka's investors provided the capital  
27 Ms. Goldsberry needed in order to gain control of Magnolia. They did so with the understanding  
28 that they would receive shares in Magnolia when it became a for-profit entity. But Ms.

1 Goldsberry knew all along, and actively concealed from investors, that there was no method under  
2 the Transfer Agreement whereby Eureka could convert its debt interest in Magnolia into an equity  
3 interest. All the while, Ms. Goldsberry knew that she could simply terminate Magnolia's  
4 relationship with Eureka to get rid of the investors once she gained control of Magnolia.

#### 5 ALTER EGO ALLEGATIONS

6 66. Plaintiffs are informed and believe and so allege that Defendants are and were at all  
7 relevant times the alter egos of one another. Each Defendant is liable for the conduct of the other  
8 as alleged in this Complaint.

9 67. On information and belief, at all relevant times a unity of interest and ownership  
10 existed between Defendants, such that adherence to the fiction of separate existence would render  
11 an injustice under the facts and circumstances of this case.

12 68. On information and belief, alter ego liability arises from the following:

- 13 a. Defendants shared a unity of interest in carrying out the business, and  
14 enjoying the profits earned from Magnolia;
- 15 b. The assets of Defendants were commingled, and Defendants were involved  
16 in that commingling of assets, directing or diverting the income and assets  
17 of Defendants without regard to the corporate form;
- 18 c. Defendant Magnolia is undercapitalized and potentially incapable of  
19 satisfying its liabilities. On information and belief, Defendants do not have  
20 sufficient assets on their own to cover Plaintiffs' damages; and
- 21 d. Plaintiffs would suffer injustice if required to adhere to the fiction of the  
22 separate existences of the Defendants.

23 69. Because Defendants do not possess sufficient assets to satisfy their obligations and  
24 given the foregoing allegations, Plaintiffs would be prejudiced and unable to recover their  
25 damages if they were prohibited from proceeding against all Defendants.

#### 26 FIRST CAUSE OF ACTION

#### 27 (Breach of Contract)

28 70. Plaintiffs re-allege and incorporate each and every allegation in the foregoing

1 paragraphs 1 through 69 as if fully set-forth herein.

2 71. The promissory note constitutes a valid contract between Eureka and Magnolia,  
3 under which Eureka loaned Magnolia \$1,500,000.

4 72. Eureka performed all of its obligations under the promissory note. If Eureka failed  
5 to perform any obligations, Defendants excused such nonperformance or waived performance.

6 73. Defendants have failed to fulfill their obligations under the promissory note. This  
7 failure includes but is not limited to their refusal to pay principal and interest due and owing under  
8 the terms of the promissory note.

9 74. Because principal and interest payments are due in monthly installments,  
10 Defendants have engaged in a continuing violation for purposes of the relevant statute of  
11 limitations.

12 75. Eureka has suffered damages from such conduct in an amount to be proven at trial.

13 76. Accordingly, Plaintiffs pray for judgment as set forth below.

14 **SECOND CAUSE OF ACTION**

15 **(Breach of Contract)**

16 77. Plaintiffs re-allege and incorporate each and every allegation in the foregoing  
17 paragraphs 1 through 76 as if fully set-forth herein.

18 78. The Eureka Management Agreement constitutes a valid contract between Eureka  
19 and Magnolia, under which Eureka agreed to provide management and consulting services to  
20 Magnolia for a five-year term.

21 79. Eureka performed all of its obligations under the Eureka Management Agreement.  
22 If Eureka failed to perform any obligations, Defendants excused such nonperformance or waived  
23 performance.

24 80. Defendants have failed to fulfill their obligations under the Eureka Management  
25 Agreement. Specifically, Defendants terminated the Eureka Management Agreement before the  
26 five-year term ended and without proper cause.

27 81. The Eureka Management Agreement provided that Magnolia would be responsible  
28 for liquidated damages in the event that it terminated the Eureka Management Agreement prior to

1 the expiration of the five-year term and that such liquidated damages were a forecast of actual  
2 damages and not a penalty.

3 82. Eureka has suffered damages due to Defendants' conduct, and it requests liquidated  
4 damages pursuant to the Eureka Management Agreement in an amount to be proven at trial.

5 83. Accordingly, Plaintiffs pray for judgment as set forth below.

6 **THIRD CAUSE OF ACTION**

7 **(Common law fraud)**

8 84. Plaintiffs re-allege and incorporate each and every allegation in the foregoing  
9 paragraphs 1 through 83 as if fully set-forth herein.

10 85. Defendants sought to entice investors to provide the capital needed for Magnolia's  
11 operations and sought to entice Eureka to loan funds to Magnolia. Because Magnolia was a  
12 nonprofit organization, it could not issue shares. Defendants nonetheless misled led investors to  
13 believe that by investing in Eureka, they would receive an interest in Magnolia. Defendants also  
14 falsely stated that Eureka was Magnolia's parent company, Eureka had acquired Magnolia's  
15 assets, and that Eureka had entered into a convertible promissory note with Magnolia that Eureka  
16 would be able to convert once Magnolia became a for-profit entity.

17 86. In reality, Eureka did not own Magnolia, and it was not its parent organization.  
18 Eureka instead had only a security interest in certain of Magnolia's assets. Nor did Eureka enter  
19 into a convertible note with Magnolia. While Magnolia had a financial obligation to repay Eureka  
20 the \$1.5M it had loaned, it was under no obligation to share its profits with Eureka and there was  
21 no provision in the promissory note that gave Eureka the right to convert its loan into equity in  
22 Magnolia.

23 87. Defendants made such representations with knowledge of their falsity and with the  
24 intend to defraud Eureka and Eureka's investors.

25 88. Plaintiffs justifiably relied on Defendants' representations and have been harmed  
26 by their reliance on Defendants' representations.

27 89. Plaintiffs have suffered damages from such conduct in an amount to be proven at  
28 trial.

1 90. Defendants fraudulently prevented Eureka and its investors from discovering the  
2 fraud committed by Defendants.

3 91. The conduct of Defendants in defrauding and intending to defraud Plaintiffs entitles  
4 Plaintiffs to punitive damages for the Defendants' willful and conscious disregard of Eureka's  
5 rights.

6 92. Accordingly, Plaintiffs pray for judgment as set forth below.

7 **FOURTH CAUSE OF ACTION**

8 **(Breach of the Implied Duty of Good Faith and Fair Dealing)**

9 93. Plaintiffs re-allege and incorporate each and every allegation in the foregoing  
10 paragraphs 1 through 92 as if fully set-forth herein.

11 94. On or about August 7, 2015, Eureka and Magnolia entered into a promissory note,  
12 security agreement, and the Eureka Management Agreement.

13 95. Eureka performed all obligations required by the promissory note, the security  
14 agreement, and the Eureka Management Agreement.

15 96. By failing to establish a formal management structure for Eureka, failing to hold  
16 board meetings for Eureka, failing to allow Eureka to be involved in Magnolia's management and  
17 operations, and failing to provide Eureka, and its investors, with sufficient information about  
18 Eureka and Magnolia's operations and finances to understand and make informed decisions about  
19 Eureka's investment in Magnolia, among other reasons, Defendants have unfairly interfered with  
20 Eureka's right to receive the benefits of its contracts with Magnolia.

21 97. Eureka has suffered damages from such conduct in an amount to be proven at trial.

22 98. Accordingly, Plaintiffs pray for judgment as set forth below.

23 **FIFTH CAUSE OF ACTION**

24 **(Breach of Fiduciary Duty)**

25 99. Plaintiffs re-allege and incorporate each and every allegation in the foregoing  
26 paragraphs 1 through 98 as if fully set-forth herein.

27 100. From the time of its founding until August 2017, Defendant Goldsberry served as  
28 Eureka's officer and director.






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f. For all other and further relief as the Court may deem just and proper.

Dated: October 30, 2020

FARELLA BRAUN + MARTEL LLP

By:   
\_\_\_\_\_  
Mark D. Petersen

Attorneys for Plaintiffs  
**EUREKA MANAGEMENT SERVICES, INC.,  
TARIQ ALAZRAIE, CESAR ANGOBALDO, and  
ED ROSENTHAL**