



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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CROSS COMPLAINT

JOSEPH CONNELLY VS. COLLEEN HOLLAND et al

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8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

10 **JOSEPH CONNELLY,**

11 Plaintiff,

12 v.

13 **COLLEEN HOLLAND, and DOES 1**
14 **through 20, inclusive,**

15 Defendants,

16 **COLLEEN HOLLAND,**

17 Cross-complainant,

18 v.

19 **JOSEPH CONNELLY, and ROES 1**
20 **through 20, inclusive,**

21 Cross-defendants.

22 No. CGC-12-523731

23 **CROSS-COMPLAINT FOR:**

- 24 1. **PARTNERSHIP**
DISSOLUTION; ACCOUNTING,
INSPECTION OF RECORDS AND
APPOINTMENT OF
RECEIVER/REFEREE;
- 25 2. **BREACH OF ORAL**
PARTNERSHIP AGREEMENT;
- 26 3. **BREACH OF IMPLIED**
COVENANT OF GOOD FAITH
AND FAIR DEALING; AND
- 27 4. **BREACH OF FIDUCIARY DUTY**
AND IMPOSITION OF
CONSTRUCTIVE TRUST.

28 Defendant and cross-complainant Colleen Holland (hereafter "Holland" or "cross-
29 complainant"), by her attorneys, states the following as her cross-complaint against plaintiff and
30 cross-defendant Joseph Connelly (hereafter "Connelly" or "cross-defendant"):

31 **BY FAX**

1

THE PARTIES

2 1. Cross-complainant, Holland is and, at all times mentioned, an individual residing
3 in San Francisco, California.

4 2. Holland is informed and believes, and thereon alleges, that Connelly is, and at all
5 times mentioned herein was, an individual residing in San Francisco, California.

6 3. Holland is unaware of the true names and capacities of cross-defendants sued
7 herein as Roes 1 through 20, inclusive, and therefore sues these cross-defendants by such
8 fictitious names. Holland will amend the cross-complaint to allege their true names and capacities
9 when ascertained. Holland is informed and believes, and based upon such information and belief,
10 alleges that each of the fictitiously named cross-defendants is legally responsible in some manner
11 for the occurrences herein alleged, and that Holland's losses and the grounds for her relief as
12 herein alleged were proximately caused by such wrongful acts and omissions.

13 4. Holland is informed and believes, and on that basis alleges, that at all relevant
14 times each of the cross-defendants, was and is the agent, employee, employer, joint-venturer,
15 representative, subsidiary, alter-ego, successor in interest, and/or partner of one more of the other
16 cross-defendants, and was, in performing the acts complained of herein, acting within the scope
17 of their authority as such agents, servants, employees, joint venturers, or partnership authority
18 with permission and consent from their cross-defendants, and/or in some other way responsible
19 for the acts of one or more of the other defendants.

20

FIRST CAUSE OF ACTION

21

(Dissolution of Partnership, Accounting, Appointment of Receiver/Referee and Records Inspection)

22 5. Holland realleges paragraphs 1 through 4 of this cross-complaint and incorporates
23 them by this reference into this first cause of action.

24 6. In or about December 1999, Holland and Connelly entered into an oral partnership
25 agreement for the purpose of carrying on a business enterprise related to the publication,
26 dissemination, and distribution of news, information and advocacy related to the vegan lifestyle

1 through print and online distribution. The original agreement between the two partners, Holland
2 and Connelly, was to produce a national, industry-wide publication in the form of a newspaper.
3 Holland and Connelly later decided to change the format into a magazine and focus more heavily
4 on digital media. Holland and Connelly have always agreed and continue to be equal partners in
5 the enterprise. Commencing in or about February 2000 this joint enterprise was conducted under
6 the name of VegNews. The partnership's principal place of business was in Los Gatos, California
7 from approximately May 2000 through February 2002. Since 2002, VegNews' principal place of
8 business has been located in the city and county of San Francisco, California. Holland and
9 Connelly have conducted the business together, jointly, from its inception. VegNews is also
10 known as, and has done business under other business names, including but not limited to,
11 VegNews Media, VegNews Magazine, Vegan News Network and The Veg News Network, all of
12 which are part of and within the partnership referred to herein (hereinafter collectively referred to
13 as "VegNews").

14 7. Holland has performed all conditions, covenants, and promises required to be
15 performed by her in accordance with the terms and conditions of the agreement, except to the
16 extent of any work, labor or services for the enterprise from she has been excluded, the
17 performance of which was excused on the ground that Connelly has repudiated their partnership
18 relationship, prevented her from attending to her normal duties and management activities related
19 to VegNews, obstructed and otherwise prevented her access to the books, records and information
20 related and necessary to the operation of the business and her activities, and otherwise taken or
21 misappropriated partnership property, assets and information that has effectively excluded
22 Holland from the management and operation of the business and the effective performance of her
23 duties.

24 8. Within the past two years, disagreements and disputes have arisen between Holland
25 and Connelly regarding matters of policy, administration, operations and finance in the conduct of
26 VegNews. Connelly has engaged in conduct relating to the partnership business that makes it not

1 reasonably practicable to carry on the business in partnership with that partner or in conformity
2 with the partnership agreement, including but not limited to the following: Connelly has
3 appropriated funds from partnership accounts to his own use, misappropriated or destroyed
4 partnership books and records and prevented Holland from any access thereto; has purported to
5 "demote" Holland and announce that she has no role in or right or entitlement to and management
6 and operation of VegNews; has repudiated unequivocally their partnership relationship; and,
7 without Holland's knowledge, approval, or consent taken action in disregard of the partnership
8 and purported to claim the enterprise as his own. Feelings between Holland and Connelly have
9 become bitter, spiteful and antagonistic making it impossible, impractical or unreasonably difficult
10 to operate VegNews. Holland, in any event, as a one-half owner of VegNews, does hereby
11 express her will, pursuant to California Corporations Code section 16801(1), to dissolve and wind
12 up the affairs of VegNews.

13 9. As a result of the foregoing, Holland is entitled to dissolution of the partnership by
14 court decree, pursuant to Subdivisions (5)(B) and (C) of said Section 16801, as hereinabove
15 alleged. Connelly has not only refused to dissolve the partnership, but has repudiated its existence
16 altogether, claiming VegNews as his own and barring Holland from any participation therein.

17 10. Connelly is in possession of the partnership books, assets, and accounts. The
18 amount of partnership assets and liabilities is unknown to Holland and cannot be ascertained
19 without an accounting of assets, liabilities, profits and losses that occurred during the operation of
20 the partnership business.

21 11. The partnership agreement requires that the profits of the partnership are to be
22 divided equally between Holland and Connelly, as adjusted in said accounting for damages caused
23 or property misappropriated by Connelly in breach of his agreement with and his fiduciary duties
24 owed to Holland and the partnership.

25
26

1 12. Holland has demanded and does hereby demand an accounting, but Connelly has
2 failed and refused, and continues to refuse to settle accounts and divide partnership assets and
3 liabilities with plaintiff.

4 13. Unless a Receiver or Referee is appointed by the court to take possession of, care
5 for, manage, and operate the partnership assets and property, such property and assets are in
6 danger of being lost, removed, or materially destroyed, in that Connelly has taken and is in
7 control of the partnership business, and has and is applying partnership funds to his own use, in
8 excess of his interest in the partnership business, refuses to account to Holland for any activities
9 of the partnership, and has engaged in unprofessional, un-businesslike, and secretive conduct
10 motivated by ill-will and antagonism toward Holland in derogation of Holland's rights and the
11 best interests of VegNews.

12 14. Connelly, for his own individual benefit and in breach of his duties to the
13 partnership and Holland has failed to allow or provide Holland or and her agents and attorneys
14 access to VegNews' books and records, to which she is entitled for the period during which she
15 has been a partner. At all times relevant herein Connelly has failed to furnish Holland with: (1)
16 any information concerning the partnership's business and affairs reasonably required for the
17 proper exercise of the partner's rights and duties under the partnership agreement or this chapter,
18 and as to which no demand is necessary; and (2) despite Holland's demands, any other
19 information concerning the partnership's business and affairs.

20 15. Holland is informed and believes, and upon such information and belief alleges that
21 she and the partnership alleged herein will suffer irreparable injury from the ongoing conduct of
22 Connelly as alleged unless he is restrained and enjoined from taking such acts as may be in
23 violation of his duties and the rights of Holland and the partnership, and that sufficient basis exists
24 for this court to find that Connelly has violated both his fiduciary duty and contractual obligations
25 by engaging in conduct detrimental to Holland and the partnership regarding its assets, accounts
26 and management and operations without the knowledge or consent of Holland, including, but not

1 limited to (i) taking unauthorized withdrawals or distributions from VegNews accounts for his
2 personal benefit; (ii) repudiating Holland's status as a partner and preventing her from
3 participating in the management and control and general affairs of the partnership, or in sharing
4 the profits of the partnership, (iii) preventing Holland access to the partnership's books and
5 records; (iv) failing to make a full or any disclosure to Holland as to either the nature or extent of
6 the expenditure of the partnership funds or the affairs of the partnership; (v) drawing a salary or
7 taking distributions of profits without the consent of Holland; and (vi) taking possession and
8 control of the partnership funds, assets, accounts, management, books and placing him in a
9 position to arbitrarily operate the partnership business and dissipate the partnership funds. Based
10 upon the foregoing, the court may properly exercise its discretion in appointing a Receiver and or
11 Referee and granting a temporary restraining order and preliminary and permanent injunction as
12 prayed for herein, after weighing the probable injury which would ensue to Holland by denying
13 the relief as against the absence of probable injury which would accrue to the Connelly by
14 granting it.

15 **SECOND CAUSE OF ACTION**
16 **(Breach of Oral Partnership Agreement)**

17 16. Holland realleges paragraphs 1 through 15 of this cross-complaint and incorporates
18 them by this reference into this second cause of action.

19 17. The partnership agreement requires the profits of the partnership are to be divided
20 equally between Holland and Connelly, and that Holland have access to VegNews' books and
21 records, to which she is entitled for the period during which she has been a partner.

22 18. Holland has performed all conditions, covenants, and promises required on her part
23 to be performed in accordance with the terms and conditions governing the partnership
24 agreement.

25 19. Connelly has breached the partnership agreement by, among other things and
26 without limitation, taking control of the partnership business, applying partnership funds and

1 assets to his own use, in excess of his interest in the partnership business, refusing to account to
2 Holland for any activities of the partnership, and has engaged in unprofessional, un-businesslike,
3 and secretive conduct motivated by ill-will and antagonism toward Holland.

4 20. As a direct and proximate result of said breaches, Holland has been damaged by
5 Connelly in an amount according to proof, but in excess of the jurisdictional limit of this Court.

6 **THIRD CAUSE OF ACTION**
7 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

8 21. Holland realleges paragraphs 1 through 20 of her cross-complaint and incorporates
9 them by this reference into this third cause of action.

10 22. Every contract contains an implied covenant of good faith and fair dealing, such
11 that neither party will do anything that will injure the right of the other to receive the benefits of
12 the agreement.

13 23. Connelly has breached the covenant of good faith and fair dealing by, among other
14 things and without limitation, taking control of the partnership business, applying partnership
15 funds and assets to his own use, in excess of his interest in the partnership business, refusing to
16 account to Holland for any activities of the partnership, and has engaged in unprofessional, un-
17 businesslike, and secretive conduct motivated by ill-will and antagonism toward Holland.

18 24. As a direct and proximate result of said breaches, Holland has been damaged by
19 Connelly in an amount according to proof, but in excess of the jurisdictional limit of this Court.

20 **FOURTH CAUSE OF ACTION**
21 **(Breach of Fiduciary Duty and Imposition of Constructive Trust)**

22 25. Holland realleges paragraphs 1 through 24 of her cross-complaint and incorporates
23 them by this reference into this fourth cause of action.

24 26. At all times herein mentioned, Connelly owed and continues to owe to the
25 partnership and Holland a fiduciary duty of loyalty including, but not limited to, the obligations
26 (i) to account to the partnership and hold as trustee for it any property, profit, or benefit derived

1 by him in the conduct and winding up of the partnership business or derived from a use by him of
2 partnership property or information, (ii) to refrain from dealing with the partnership in the
3 conduct or winding up of the partnership business as an individual having an interest adverse to
4 the partnership; and (iii) to refrain from competing with the partnership in the conduct of the
5 partnership business before the dissolution of the partnership.

6 27. At all time herein mentioned, Connelly owed to Holland and to the partnership a
7 duty of care in the conduct and winding up of the partnership business to refraining from
8 engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation
9 of law.

10 28. At all time herein mentioned, Connelly was required to discharge his duties to the
11 partnership and Holland and exercise any rights consistently with the obligation of good faith and
12 fair dealing.

13 29. Within the last two years Connelly has breached and continues to breach and
14 disregard his duties to Holland and the partnership, as alleged, and his obligation to act with good
15 faith and fair dealing, in that he has repudiated unequivocally the partnership status and his
16 partnership obligations, he has used and taken partnership assets and property for his own benefit,
17 he has prevented and interfered with Holland's exercise of her rights in the management,
18 operation and sharing of the partnership activities, and refused access to or inspection of, and
19 made unavailable the partnership books, records and information concerning its business and
20 affairs. Furthermore he has interfered with and attempted to take control of the bank accounts of
21 the partnership and other partnership property. All of this conduct has been in breach of his
22 fiduciary responsibilities, grossly negligent, reckless and intentional misconduct, motivated by
23 self-interest and ill-will toward Holland, and in breach of his obligation of good faith and fair
24 dealing.

25 30. As a direct and proximate result of Connelly's conduct, Holland has been
26 damaged, and her partnership rights and accounts damaged in amounts that at this time are

1 uncertain and require an accounting. Holland is informed and believes and upon such information
2 and belief alleges that Connelly's conduct as alleged herein has caused substantial damage to
3 Holland that must be accounted for in the accounting of the partners' rights and entitlements in the
4 winding up of the VegNews, or otherwise.

5 31. Holland is informed and believes, and upon such information and belief alleges that
6 Connelly has used or taken property or assets of the partnership for his own purpose, gain or
7 benefit, in breach of his trust and fiduciary obligations pursuant to California law. As a direct
8 result of this conduct, in addition to any damages or monetary losses caused by such conduct, any
9 such property or assets taken or in any way appropriated by Connelly, or other tangible or
10 intangible property or assets into which said property or assets has been converted, transferred or
11 conveyed, and any other assets or property traceable to said assets or property is and shall be held
12 in constructive trust for the benefit of the partnership and Holland and subject to its accounting
13 and winding up.

14 WHEREFORE, cross-complainant prays judgment against cross-defendant as follows:

15 1. For an order that the partnership be dissolved;

16 2. Notwithstanding and without prejudice to any rights of Holland by way of civil
17 discovery, for an order requiring the delivery of all partnership books and records and files and
18 information related to its business and affairs;

19 3. For an accounting of partnership affairs from July 2000 to the present, that the
20 account be settled between Holland and Connelly, and that Holland have judgment against
21 Connelly for whatever sums may be found due and owing to her under the accounting;

22 4. For a temporary, preliminary and permanent injunction restraining Connelly and
23 anyone acting for or in concert with him from (i) taking unauthorized withdrawals or
24 distributions from VegNews accounts for their personal benefit; (ii) repudiating Holland's status
25 as a partner and preventing her from participating in the management and control and general
26 affairs of the partnership, or in sharing the profits of the partnership, (iii) preventing Holland

1 access to the partnership's books and records; (iv) failing to make a full or any disclosure to
2 Holland as to either the nature or extent of the expenditure of the partnership funds or the affairs
3 of the partnership; (v) drawing a salary or taking distributions of profits without the consent of
4 Holland; and (vi) taking possession and control of the partnership funds, assets, accounts,
5 management, books and placing him in a position to arbitrarily operate the partnership business
6 and dissipate the partnership funds¹;

7 5. For the appointment of a receiver to take over management and control of
8 partnership property and assets, to wind up partnership affairs, to control partnership business
9 until winding up is completed, and to keep partnership assets until their division between the
10 partners;

11 6. For an order that all partnership property or assets taken or appropriated by
12 Connelly, or other tangible or intangible property or assets into which said property or assets
13 has been converted, transferred or conveyed, and any other assets or property traceable to said
14 assets or property is and shall be held in constructive trust for the benefit of the partnership and
15 Holland and subject to its accounting and winding up.

16 7. For damages, according to proof, said damages to be accounted for in the
17 accounting and winding up of VegNews or otherwise awarded as damages to Holland;

18 \\

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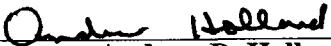
20 1 a. Issuing any checks or drafts drawn against the funds or deposits of VegNews, without said checks or drafts
bearing the signature of Holland;
21 b. Withdrawing any funds of said VegNews from any and all bank accounts in which said funds may be on
deposit without said withdrawals being approved by Holland;
22 c. Depositing the receipts of VegNews in any bank account not requiring the signature or authorization of
Holland for withdrawals;
23 d. Paying, transferring or distributing to himself any sum of money other than a pro rata payment of profits, if
any, provided that such profits shall only be paid such profits are paid also to Holland;
24 e. Transferring, encumbering, hypothecating, concealing, claiming as his own, or in any way disposing of any
property, real or personal, tangible or intangible of VegNews;
25 f. Incurring any debts or liabilities in the name of VegNews or for which Ms. Holland may be responsible as
your partner other than in the ordinary course of VegNews' customary, day-to-day business operations; or,
26 g. Deleting, appropriating to himself, destroying or concealing any VegNews-related files, books, records,
emails, documents and property, however preserved and maintained, whether maintained in hard-copy or digitally as
electronically stored information.

1 8. For costs of suit herein incurred; and
2 9. For such other and further relief as the court may deem proper.
3

4 Dated: December 27, 2012.

5 THOITS, LOVE,
6 HERSHBERGER & McLEAN

7 By



Andrew P. Holland
Attorneys for Defendant/Cross-
Complainant
Colleen Holland

VERIFICATION

I, Colleen Holland, am the cross-complainant in this action. I have read the foregoing cross-complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe it to be true.

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

DATED: December 27, 2012 (12/27/12)
COLLEEN HOLLAND

~~COLLEEN HOLLAND~~

LOVE, HERSHBERGER & MCLEAN
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855 Hamilton Avenue, Suite 300
PALO ALTO, CALIFORNIA 94301
(415) 362-4700

229191.001/422929

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1

DECLARATION OF SERVICE

2

I, Michelle Garcia, hereby declare:

3

I am over the age of eighteen years and not a party to the foregoing case. I am employed in the County of Santa Clara, California. My business address is Thoits, Love, Hershberger & McLean, 285 Hamilton Avenue, Suite 300, Palo Alto, CA 94301. On December 27, 2012, I caused to be served the below listed document(s) in the manner indicated:

7

CROSS-COMPLAINT

8

- () By transmitting said document(s) via electronic mail from the electronic mail account: mgarcia@thoits.com to each interested party at the electronic mail address(es) shown in the service list. No message was received that the electronic mail was undeliverable.
- () By transmitting said document(s) via facsimile transmission at the time shown on each attached transmission report from sending facsimile machine telephone number (650) 325-5572 to each interested party at the facsimile number(s) shown in the service list. Each transmission was reported as complete and without error. A transmission report was properly issued by the sending facsimile machine for each interested party served.
- () By placing said document(s) in a sealed envelope, and causing them to be hand delivered via messenger to the person(s) set forth below at the location indicated.
- () By placing said document(s) listed above in a sealed Federal Express envelope, affixing a pre-paid air bill for priority overnight delivery, and causing same to be delivered to a Federal Express agent for delivery to the person(s) set forth below.
- (X) By placing said document(s) in a sealed envelope, and causing said envelope to be deposited with the United States Mail at Palo Alto, California, addressed for delivery to the person(s) set forth below.

19

20

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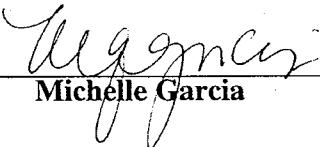
23

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on December 27, 2012, in Palo Alto, California.

24

25

26


Michelle Garcia