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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JOSEPH CONNELLY,

Plaintiff,

v.

COLLEEN HOLLAND, and DOES 1
through 20, inclusive,

Defendants.

No. CGC-12-523731

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ISSUANCE OF A
PRELIMINARY INJUNCTION AND
APPOINTMENT OF A RECEIVER

COLLEEN HOLLAND,

Cross-complainant,

v.

JOSEPH CONNELLY, and ROES 1
through 20, inclusive,

Cross-defendants.

Date: March 7, 2013
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Marla J. Miller

Complaint Filed: August 27, 2012

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION AND APPOINTMENT OF RECEIVER

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1 I. INTRODUCTION

2 Defendant and cross-complainant Colleen Holland's ("Holland") Motion for a
3 Preliminary Injunction and Appointment of Receiver should be granted because irreparable harm
4 will result to Holland and to VegNews, the business that is the subject of this litigation, if the
5 activity complained of is not enjoined and a receiver is not appointed.

6 Holland and cross-defendant Joseph Connelly ("Connelly") co-founded VegNews in
7 2000 and ran it together as co-owners and as equals for approximately twelve years. However,
8 when their romantic relationship ended and Holland and Connelly could not agree on an
9 equitable division of their jointly owned assets, Connelly threatened "*I will spend the rest of my*
10 *life making sure that you do not get what you want, and I hope we both get cancer and die.*"¹
11 He then brought a verified complaint denying that Holland is a co-owner or co-founder of the
12 business at all, and has since engaged in a self-help campaign to push Holland out of the
13 business.

14 There is a mountain of proof that Holland is an owner of VegNews, including not only
15 Holland's own testimony, but also countless written and oral statements by Connelly, as well as
16 financial and other formal records, and the testimony of third parties. Meanwhile, Connelly has
17 produced almost nothing except implausible self-interested statements to support his after-the-
18 fact legal position that Holland has never been a founder or owner of VegNews. He has ignored
19 or evaded all discovery demands for his supporting evidence, because there is none, and
20 repeatedly contradicted his own testimony in discovery and, most recently, in a declaration
21 submitted to this Court.

22 The requested relief is necessary because Connelly is not waiting for the Court to hear
23 evidence and decide this matter. Instead, he is attempting to seize exclusive control of
24 VegNews, and to eliminate Holland's role. His campaign has not been subtle. For example, he
25 has changed passwords and locked Holland out of accounts, blocked her access to financials,

26

¹ Declaration of Colleen Holland ("Holland Decl.", ¶40.)

1 removed Holland from the company bank account and recently **absconded with \$59,175.51 of**
2 **VegNews' funds**, threatened to move the company to another state and fire all of its employees,
3 demanded that the landlord terminate Holland from the company lease and further threatened to
4 leave her with a huge outstanding liability by moving the business if the lease is not terminated,
5 threatened and harassed her at the office and so forth. In sum, Connelly is attempting a full
6 power grab, and to completely disrupt the status quo, while this litigation is ongoing. In many
7 cases Connelly's actions would not only illegitimately push Holland out of her own company,
8 but also directly harm the business.

9 Accordingly, a preliminary injunction prohibiting Connelly from, for example,
10 absconding with and exerting sole control over VegNews' funds, unilaterally terminating
11 employees, relocating the business, and obstructing Holland's ability to perform her
12 responsibilities and generate revenues for VegNews is warranted and a receiver should be
13 appointed to oversee the operations of VegNews. Unless this relief is granted, the business that
14 is the subject of litigation, VegNews, may be effectively destroyed.

15 II. FACTUAL BACKGROUND

16 A. Holland and Connelly Create and Grow VegNews

17 VegNews is and has always been a joint venture of Holland and Connelly, owned and
18 operated by the two of them as equals. Connelly's attempt to re-write history for purposes of
19 this litigation is belied by evidence spanning over a decade.²

20 1. Holland and Connelly Co-Found VegNews

21 Holland and Connelly met in 1999 at an east coast vegetarian conference and started a
22 romantic relationship. They were both active in their respective vegetarian communities and had
23 entrepreneurial aspirations. Holland was employed with a marketing firm in San Francisco, had
24 vegan culinary school training, and contributed to local vegetarian society newsletters.
25 Meanwhile, in addition to holding various unrelated part-time jobs (e.g., dog walking and
26

² (Holland Decl., ¶¶5, 8, 9-14, 16-38.); Declaration of Rey Ortega ("Ortega Decl., ¶¶3, 7 and 12.); Declaration of Al Whaley ("Whaley Decl."), ¶¶3-9.); (Declaration of Davy Davidson ("Davidson Decl., ¶¶1-10.)

1 running a music collectibles store), Connelly had co-founded a local vegetarian group in
2 Syracuse, New York called SAVES. (Holland Decl., ¶¶2 and 3.)

3 In late 1999, Holland joined SAVES and contributed to its quarterly newsletter. In early
4 2000, Holland and Connelly discussed the concept of launching a national vegan publication,
5 and they ultimately agreed to be business partners to launch this joint venture. (Holland, ¶5.)
6 Connelly announced his departure in the SAVES' January, 2000 newsletter. (Holland Decl.,
7 ¶¶6 and 7.) Shortly after, at a meeting with SAVES members that Holland attended, Connelly
8 was accused of running up a debt and embezzling money from the self-proclaimed non-profit
9 (which often asked for volunteers and stamp donations). (Holland Decl., ¶7.) He published a
10 final newsletter dated Spring 2000 in which he announced VegNews and The Vegan News
11 Network ("VNN"). He stated that VegNews was a publication of VNN, and "VNN is a
12 national organization co-directed by SAVES founder Connelly and former San Francisco
13 Vegetarian Society board member Colleen Holland." (SAVES Newsletter, Vol. 5, No. 1
14 (emphasis added)). (Holland Decl., ¶8.)

15 When Holland and Connelly first became involved, Connelly was in debt, in the middle
16 of a divorce, and heading toward financial ruin. He told Holland that he was considering filing
17 for bankruptcy. To help Connelly avoid this, Holland paid for several months of his rent and
18 groceries. She then resigned from her job and used all her resources to fund Connelly's move
19 to California and their transition into self-employment. (Holland Decl., ¶4.)

20 After agreeing on the name "VegNews," Holland purchased the domain for
21 www.vegnews.com on her personal credit card. She and Connelly moved into her mother's
22 house in Los Gatos, California in approximately May 2000. For two years they lived at
23 Holland's mother's house, first occupying two bedrooms upstairs and then running VegNews
24 out of two separate rooms on the main floor. In order to support her daughter's business
25 venture, Holland's mother did not charge them rent. The first issue of VegNews was launched
26 in July 2000. (Holland Decl., ¶¶5 and 9.)

2. **Holland and Connelly Jointly Own and Manage VegNews Since Its Founding**

Connelly and Holland have always agreed that they were equal owners of VegNews, and this is consistent with the manner in which they have presented their business relationship to employees, friends, family, business associates, interviewers, and readers throughout the life of VegNews.³ From an operational standpoint, Holland and Connelly have always run the business jointly.⁴ All employees of VegNews report to Holland and Connelly, and Holland and Connelly have never reported to one another. (Id.)

From the beginning, VegNews has been a textbook joint venture. During its early years, it did not earn much money, and Holland and Connelly each poured resources into the business. Each worked part time jobs and used the earnings to supplement VegNews' capital. Many of the expenses incurred by VegNews were paid out of Holland's personal bank account and using her personal credit. (Holland Decl., ¶¶10 and 11.) In fact, Connelly did not even have a personal credit card until 2006 or personal bank account until 2009. (Holland Decl., ¶12.) Throughout the life of the business, Holland has also been the sole holder on many of the bank accounts as wells as credit cards and other business liabilities. She also is the sole lease holder for the headquarters of VegNews and holds sole title to the automobile that Connelly claims is the "company" car. (Id.). Connelly even introduced Holland as his partner in a meeting with Connelly's counsel in this lawsuit, Donald Karpel, when Mr. Karpel was assisting the couple with a VegNews' project in 2010. (Holland Decl., ¶35.)

Holland and Connelly have always received equal compensation, with the possible exception of a brief period when Holland's compensation was raised temporarily to facilitate a

³ (Holland Decl., ¶¶5, 8, 9-14 and 16-38.); (Ortega Decl., ¶¶3, 7 and 12.); ("Whaley Decl., ¶¶3-9.); (Davidson Decl., ¶¶1-10.)

⁴ Connelly has historically been more involved in editorial, printing, distribution, and since 2006, accounts payable. Holland has always had input into these issues, however, and access to all of the same VegNews' business records as Connelly, until he recently took steps to block or limit Holland's access to these records. Holland is in charge of advertising sales (which generates the vast majority of revenues for VegNews) marketing, public relations, digital strategy, accounts receivable, events, trade shows and administrative systems. (Holland Decl., ¶18.)

refinance.⁵ (Holland Decl., ¶¶16 and 17.) However, beginning in 2006, when VegNews contracted with a payroll company, Connelly insisted that Holland be paid through payroll, whereas Connelly would receive an owner's draw. Connelly explained that this was necessary for creditor protection, because Holland had purchased a residence in San Francisco for the couple to live in.⁶ (Holland Decl., ¶¶15 and 16.) Holland and Connelly have always agreed to continue to reinvest in the business by taking low compensation. (Holland Decl., ¶17.); (Whaley Decl., ¶4.); (Davidson Decl., ¶6.) In 2012, Holland and Connelly increased their compensation from \$36,000 to \$42,000 (\$3,500 per month), which is approximately \$8,000 less than their most senior staff member is paid and slightly more than VegNews' two most junior staff members are being paid. (Holland Decl., ¶17.); Declaration of Andrew P. Holland ("APH Decl"), ¶5.)

The fact that VegNews is a joint venture has been well known. Individuals who have been close to Holland and Connelly and have acted as business advisers of VegNews for many years have heard Connelly acknowledge this over and over again. (E.g., Whaley Decl., ¶7: "Joe's claim that he is the sole founder and owner of the business is re-writing history."); (Davidson Decl., ¶9: "I was shocked to learn that Joe is claiming to own VegNews."); Connelly and Holland always presented themselves as co-owners and co-founders. (Ortega Decl., ¶7: According to Joe, "Ownership is not what matters because we both own VegNews; what matters is I founded it, and "it does not matter who owns it because she [Colleen] will always own half of it.") In publications, Connelly has acknowledged that Holland and he were "the two founders" (2005 interview with Quark Technology Partnership; Holland Decl., ¶26.) and stated that Holland was "my partner with VegNews since the planning stages long before the publication of issue #1...She deserves at least as much credit for VegNews' success as I do" (September 2005 VegNews; Holland Decl., ¶27.). In an interview he has described the pair

⁵ Specifically, the higher pay enabled her to qualify for a loan to refinance the residence. Holland's compensation was then readjusted back to \$36,000. Holland also paid a greater share of the parties' expenses and believes that the additional compensation earned was paid back to VegNews. (Holland Decl., ¶17.)

⁶ Holland's mother co-signed the loan. (Holland Decl., ¶15.)

1 launching the magazine together in 2000. (September 25, 2010, interview of Connelly and
2 Holland by Jasmine Singer of Our Hen House, an animal rights media outlet
3 (http://www.ourhenhouse.org/?powerpress_pinw=3930-podcast); Holland Decl., ¶34.) In
4 response to Holland's concern that she was perceived as working long hours for little pay in a
5 for-profit venture, Connelly attempted to console her by explaining that this is the plight of
6 small business owners. (June 26, 2006 email from Connelly to Holland; Holland Decl., ¶28.)
7 In marketing brochures, Holland and Connelly were referred to as "Founders" of VegNews.
8 (e.g., October 19, 2006 email and attachment; Holland Decl., ¶29.) In response to a proposed
9 office space transaction, Connelly stated that he had to talk with his "biz partner," Holland.
10 (April 10, 2007 email; Holland Decl., ¶30.)

11 **B. Connelly Tries to Get More Recognition than he Deserves**

12 **1. While not Disputing Ownership, Connelly Demands to be Called the
13 Sole Founder**

14 Connelly had been humiliated by the failure of SAVES and the allegations that he had
15 embezzled funds from a supposed non-profit. Soon after VegNews launched, he asked Holland
16 to include an insert in that publication indicating that VegNews was in some way built upon the
17 quarterly newsletter of the defunct regional vegetarian group. Trying to be a supportive partner,
18 Holland allowed an insert to this effect to be placed in VegNews.⁷ The accommodation seemed
19 harmless, given that it was apparent to everyone – and acknowledged publicly even by Connelly
20 – that Holland and he had co-founded VegNews.⁸

21 However, beginning in about 2005, the couple's romantic relationship began to
22 deteriorate and they discussed the possibility of separating. In approximately 2006, while not
23 disputing ownership or Holland's equal contribution to the business, Connelly began to push to
24 be acknowledged as the sole "founder" of VegNews. (Holland Decl., ¶19; Ortega Decl., ¶¶5-

25 ⁷ The after-the-fact account states, "VegNews and The VegNews Network began as The SAVES Paper and The
26 Syracuse Area Vegetarian Society in 1996. With the success of SAVES, its educational mission broadened enabling
the organization to branch out to an international audience in 2000." (Holland Decl., ¶13.)

⁸ (Holland Decl., ¶¶5, 8, 9-14 and 16-38.); (Ortega Decl., ¶¶3, 7 and 12.); ("Whaley Decl., ¶¶3-9.); (Davidson
Decl., ¶¶1-10.)

7.) Connelly's argument was that he "originated" the concept of a national vegan publication, and that VegNews had re-used the SAVES Tax Identification Number (a step which was actually taken in 2000 simply because the couple didn't have the money to hire professionals). (Holland Decl., ¶¶10 and 19.); (Ortega Decl., ¶¶5 and 6.).

In 2008, the couple elicited the opinion of a mutual friend, Rey Ortega, to try to resolve their purely semantic disagreement over this issue. Connelly acknowledged to Ortega that Holland was an equal owner of the business, but Connelly demanded to be called the sole founder. (Ortega Decl., ¶¶5-7.) After hearing out each of them separately, Ortega let the couple know that he believed Holland was a co-founder. (Ortega Decl., ¶8.) The couple continued to debate this point, and even attempted to meet with a mediator in 2010. This issue was never resolved between the couple, and caused great strain on their romantic relationship.⁹ (Holland Decl., ¶¶19 and 20.)

2. Connelly Adopts the Litigation Posture that He is the Sole Owner - of Everything

As noted above, even when Connelly began pushing to be called the sole founder of VegNews, he still openly acknowledged that Holland was an equal owner of the business. And as recently as one month prior to the lawsuit being filed, counsel for Connelly, Donald Karpel, would not state whether the ownership of VegNews was in dispute. (APH Decl., ¶¶2 and 3.) Now, following the "evolution" of his story through his complaint and First Amended Complaint ("FAC"), Connelly's position strains the imagination.

- Essentially, he now claims that he alone owns VegNews – despite twelve years of evidence to the contrary – and that Holland and Connelly entered into an oral agreement in 2000 whereby she would never be anything more than one of the lowest paid employees of VegNews. (FAC, ¶¶ 11-13). To try to make his story work, Connelly claims that he moved to California in May 2000 for the purpose of "expanding SAVES," despite the fact that he sent a departing letter to SAVES members in January 2000 stating that he had already moved to California to

⁹ For the purpose of displaying their titles on the VegNews website, as a compromise they agreed to be listed as "co-creators" of VegNews. Since filing the lawsuit, Connelly has unilaterally changed the signature lines of his LinkedIn profile, email, and business cards to "Founder and Publisher" of VegNews. (Holland Decl. ¶20.)

1 start new opportunities. (Holland Decl., ¶6; Exhibit 2.).¹⁰

2 • While not alleged in the original complaint, the FAC now further alleges that
3 Holland's purported oral employment agreement¹¹ also contains some type of non-competition
4 clause. To date, Connelly has refused all requests to state the content of this purported clause.

5 • Connelly also claims that he owns more than half of the residence that Holland
6 purchased in 2004 (FAC, ¶29) and that he, as the supposed sole owner of VegNews, owns a
7 website that Holland alone purchased, through her single member limited liability company,
8 VegWeb, LLC in 2009, using a personal loan from her mother. (FAC, ¶20.) Amazingly,
9 Connelly claims that Holland's mother actually loaned the money to him, with Holland assuming
10 all of the personal liability of the financing and operating it without Connelly's involvement.
11 (FAC, ¶¶19-24).

12 **3. Connelly is Unable to Produce Any Evidence in Discovery, and**
13 **Instead Makes Demonstrably False Statements**

14 In discovery, Connelly was asked for all supporting evidence for his claims via written
15 interrogatories. The sum of his factual response to interrogatories, requiring that he state all
16 facts in support of his contention that he is the sole owner and founder of VegNews, is that he
17 filled out certain forms and registered VegNews as a DBA in his name. Connelly has been
18 unable to provide any other "evidence" to support his claims. (APH Decl., ¶¶4 and 6). To
19 repeat, Connelly cannot provide any credible supporting evidence for his self-interested
20 assertions regarding ownership, even though he now claims to have been a sole business owner
21 for over a decade. (By contrast, even apart from her own testimony, Holland, has already
22 provided, inter alia, literally dozens of instances of written and verbal proof (including
23 Connelly's own words and the testimony of three disinterested third parties), records, and other
24

25 ¹⁰ Holland believes that the reason Connelly lied about moving to California as early as January 2000 was so that as a
26 New York resident, he could file for divorce against his ex wife in California, which is a no fault State. In 2000, the
State of New York did not permit no-fault divorce.

¹¹ i.e., to co-found a business with Connelly, sink her own money into it for years, jointly run it for a decade,
receive only nominal compensation, take on massive personal liabilities and then have no ownership stake.

evidence showing that she is a co-owner.)

In addition to verifying under penalty of perjury the false statements in his FAC, Connelly also perjured himself in numerous instances in his verified responses to written discovery. For example, contrary to the admissions that he made in pre-litigation correspondence, newsletters, articles, interviews cited herein and to third parties including Rey Ortega, Davy Davidson and Al Whaley, Connelly testified in his discovery responses that he moved to California to expand SAVES into VegNews, he has never communicated to any person that Holland is or was an owner or founder of VegNews, and Holland has never been anything other than one of the lowest employee of VegNews, who just happens to earn the same amount as Connelly.¹² Connelly can't even keep track of his own lies in a one week period- he testified in written discovery on January 31, 2013 that "Defendant never had any discussions with Defendant [Holland] of a business partnership" and then proceeded to submit a declaration to the Court on February 7, 2013 stating that "on more than one occasion, I did make offers to make her an owner, she always refused." (APH Decl., ¶¶4 and 11, Exhibits B and H, ¶4.) Connelly further testified, under oath, that Holland never "previously ever characterized herself as a "co-founder" or co-owner until this present dispute," despite the evidence cited herein demonstrating that it had been an ongoing disagreement between them for years, including Connelly's own July 8, 2008 email to Holland advocating his position on the issue.¹³

This is not an exaggeration. The Court can verify for itself in minutes, simply referring to the evidence provided in support of this motion that Connelly has lied in discovery. (Id.)

C. Connelly's Recent Actions Seek to Push Holland Out of VegNews and Risk Destroying the Business

Throughout the parties' dispute, Connelly has been systematically attempting to push Holland out of her own business by, e.g., changing passwords and locks, denying her access to

¹² (Connelly's verified, amended responses to Special Interrogatories Nos. 4, 10, 13, 16, 19 and 30 attached as Exhibit ¶B to APH Decl.)

¹³ (Connelly's verified, amended responses to Special Interrogatories No. 191 attached as Exhibit ¶B to APH Decl; APH Decl., ¶11.); (Holland Decl., ¶19, Exhibit 8.)

1 accounts and information, and undermining her in front of staff. These measures have already
2 made it virtually impossible for the business to function, and Connelly is now accelerating his
3 efforts by, e.g., emptying out the company bank account and attempting to have its lease
4 terminated and rewritten into his own name. He is threatening even more dramatic steps, such
5 as firing all the VegNews employees and relocating to the east coast. Simply put, Connelly is in
6 the midst of destroying the business that is at issue in this litigation. (Holland Decl., ¶¶39-64.)

7 **1. Connelly Attempts to Upend the Status Quo by Pushing Holland Out**
8 **of Her Own Company**

9 Over the course of a number of months, Connelly has attempted to push Holland out of
10 the business she founded and has co-managed for over a decade. As is set forth more fully in
11 the declaration of Colleen Holland, examples of his actions include: changing on-line passwords;
12 blocking Holland's access to VegNews financials; locking Holland out of email accounts and
13 business records; draining the company bank account; charging personal expenses to VegNews
14 and refusing to account for them; removing Holland from VegNews credit card accounts and
15 VegNews' bank account; and unilaterally changing Holland's status and title on VegNews'
16 website. (Id.) Through this campaign, Connelly is literally making it impossible for Holland to
17 maintain her role in operating the business, or even to have sufficient information to preserve
18 her rights as a co-owner. (Id.)

19 Meanwhile, Connelly has also been undermining Holland in front of their staff, while
20 attempting to convince the staff (and others) that he is the sole owner of and authority at
21 VegNews. For example, numerous times in the past few months Connelly has literally
22 screamed at Holland in front of staff members (e.g., **"it's my intention to embarrass you!"**).
23 (Holland Decl., ¶59.) In response to a staff member emailing Connelly and Holland of her new
24 address, Connelly emailed insisting that Holland not be copied on emails about financial matters
25 – even though information of this sort has been sent to both Connelly and Holland for years.
26 (Holland Decl., ¶60.) The office atmosphere has become so toxic that the highest ranking

1 employee, Elizabeth Castoria, has called multiple meetings with Connelly and Holland to
2 attempt to find ways to maintain a tolerable office atmosphere. In particular, at one such
3 meeting on January 31, 2013, she suggested hiring a “neutral” to help the two co-owners make
4 decisions about the business and then she followed up with an email recommending a third party
5 neutral to help manage the business. (Holland Decl., ¶62.)

6 2. Connelly Risks Destroying the Business

7 In addition to damaging VegNews by rejecting the parties’ co-management relationship
8 that has existed for over a decade, Connelly has begun taking and threatening actions that could
9 bring about its demise much more quickly.

10 After blocking Holland’s access to corporate funds and information about VegNews
11 finances, Connelly now appears to be draining the funds and putting VegNews in financial
12 peril.¹⁴ For example, the company checking account that has been in use since 2000 had a
13 balance of nearly \$60,000 one month ago; its current balance is approximately \$30. (Holland
14 Decl., ¶54.) Connelly routinely refuses to pay vendors of VegNews, which recently resulted in
15 at least one judgment awarded against the company for over \$150,000 which includes an adverse
16 award of attorney’s fees. (Holland Decl., ¶39.)

17 Without access to company records¹⁵, Holland cannot determine where the missing funds
18 are going. However, she can calculate that it is mathematically impossible for Connelly to be
19 keeping up with his personal financial obligations on their agreed rate of pay, \$3,500 per month
20 each. In addition to making payments on two properties, and any payments required to Mr.
21 Karpel, Connelly is paying for tax accountants and a separate set of lawyers in connection with
22 his failure to pay income taxes, past creditors (and, presumably, the IRS), at least four personal
23 vacations in 2012, and living expenses. (Holland Decl., ¶¶56 and 68.) (APH Decl., ¶5.)
24 (Connelly has also been litigating a dispute against a landlord in connection with a separate
25

26 ¹⁴ This is exactly the sort of conduct SAVES members accused Connelly of in 2000, when he was on the verge of
declaring bankruptcy. (Holland Decl., ¶7.)

¹⁵ Connelly has also refused to provide this information through discovery, forcing Holland to file a motion to compel
which is scheduled to be heard on February 19, 2013.

1 apartment that he rents and falsely claims to reside in; Holland does not know whether that
2 litigation is still ongoing.) (Holland Decl., ¶57.)

3 In sum, it appears that Connelly is in another personal financial spiral. Meanwhile, he
4 has made it a priority to block Holland's access to financial information, while money has been
5 disappearing from the VegNews bank account and VegNews has become unable to reliably pay
6 its bills on time. (Holland Decl., ¶¶4, 39, 42-46 and 54.) This is not a good state of affairs for
7 the business. In addition, Connelly has, directly and through letters sent by counsel, threatened
8 various further extreme actions that could immediately damage VegNews beyond repair. These
9 include firing all of its employees, moving it out of its current offices (unless the landlord will
10 rewrite the existing lease, which is and has always been in Holland's name), and relocating it to
11 the east coast. APH Decl., ¶¶7, 8 and 10.)

12 With the ownership and control of VegNews in dispute, it is imperative that one party to
13 the litigation not be entitled to unilaterally push the other out of the company, empty out the
14 company coffers, or fire all the employees, close up shop and move operations to the other side
15 of the country. Such actions imperil VegNews' value and would render any solution more
16 difficult. (Holland Decl., ¶¶63-64.) Accordingly, through counsel, Holland has made repeated
17 attempts to informally resolve this issue without involving the court by proposing stipulated,
18 neutral operating guidelines as well as the appointment of a third party to oversee accounting
19 issues. Unfortunately, these efforts have been unsuccessful. Connelly's inappropriate conduct
20 continues to escalate, to the detriment of Holland and VegNews, and he will only agree to
21 operating guidelines if they give him sole control over Holland and VegNews' resources. (APH
22 Decl., ¶9.)

23 **III. ARGUMENT**

24 **A. A Preliminary Injunction is Warranted**

25 Injunctive relief is appropriate when necessary to preserve the status quo. (CCP
26 § 526(a)(2)-(3).) In ruling on this motion, the Court "must weigh two" interrelated factors:

(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or non-issuance of the injunction. The trial court's determination must be guided by a "mix" of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." *Newlife Sciences, LLC v. Weinstock* (2011) 197 Cal. App. 4th 676, 686 quoting cases, including *Butt v. State of Cal.* (1992) 4 Cal. 4th 668, 677-678. Thus, the Court should grant relief "upon a sufficiently strong showing of likelihood of success even when the party seeking the injunction cannot show that the balance of harm[] 'tips' in its favor." *Id.*, at 687-688 (quoting *White v. Davis* (2003) 30 Cal. 4th 528, 561).

As set forth above, the status quo has existed for over a decade. It involves Holland and Connelly running the business jointly with Holland being, by far, the main revenue generator. Connelly's actions and threatened actions - pushing Holland out of her own company and seizing sole control, firing all of its employees, relocating it across the country, and the like - would all upend the status quo. Absent injunctive relief, Connelly will end the business in its current form. On the other hand, Connelly will not suffer any harm by simply being enjoined from continuing to shut Holland out of the business with harassment and self-help measures that are interfering with her ability to generate revenues for VegNews.

To hold that a party is likely to prevail, the court must find that there is a reasonable probability that the moving party will be successful; the moving party need not win the case outright in order to obtain the injunction. (*Continental Baking Co. v. Katz* (1968) 68 Cal. 2d 512, 528.) Holland has already produced voluminous evidence that she is a co-owner of VegNews, including Connelly's own written and verbal statements, third party testimony as well as that of Holland, a string of financial records and transactions, and the consistent compensation she and Connelly received as co-owners. Meanwhile, Connelly's position that Holland is a mere employee is not just self-serving, but absurd. Mere employees do not pour their own money into the business, have its accounts titled in their own name, personally enter

1 into the lease for the company office, and accept minimal compensation (exactly tracking that
2 of the other owner) for a decade. That is what owners do. Put differently, a “reasonable
3 deduction of the acts and declarations of [Holland and Connelly]” is that they have been
4 engaged in a joint venture.¹⁶

5 It is also already apparent that Connelly’s convenient allegations of oral contracts, oral
6 non-competition clauses, oral loans, and the like are implausible. He has been unable to
7 provide evidence in discovery, and where he has provided answers he has already pushed
8 several demonstrable falsehoods. Again, this is not exaggeration – the Court can verify in
9 minutes that Connelly has made statements that are not true.

10 The irreparable harm Holland and VegNews will suffer if an injunction does not issue
11 is obvious. Connelly has blocked Holland’s access to VegNews’ funds and credit, preventing
12 her from continuing to generate revenues for the business and pay vendors, which if unpaid
13 will result in further expensive judgments. Also, as a matter of law, the threat to relocate a
14 business is grounds to issue a preliminary injunction. (*City of Oakland v. Oakland Raiders*
15 (1985) 174 Cal. App. 3d 414, 417 (discussing *City of Oakland v. Superior Court* (1982) 136
16 Cal.App.3d 565).) Here, as set forth above, Connelly is threatening and attempting to do
17 much worse than that. All of his actions are designed to render it difficult to impossible for
18 Holland to remain an active owner and principal of the business. He appears to be indifferent
19 to whether the business is destroyed in the process of satisfying his personal vendetta (or
20 perhaps in such dire personal financial straits that he simply is not thinking beyond how to get
21 immediate control of cash).

22 B. The Appointment of a Receiver is Warranted

23 In situations like this, a court may appoint a receiver to manage the business and affairs

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25 ¹⁶ "A joint venture is an undertaking by two or more persons jointly to carry out a single business enterprise for
26 profit." (*Weiner v Fleischman* (1991) 54 Cal.3d 476, 482.) As with a partnership, "[a] joint venture may be formed orally..., or assumed to have been organized from a reasonable deduction of the acts and declarations of the parties." (*Id* at 482-483.) "The distinction between joint ventures and partnerships is not sharply drawn. From a legal standpoint, both relationships are virtually the same." (*Id* at 482; *Alliance Payment Systems, Inc v Walczer* (2007) 152 Cal App.4th 620, 639).

1 of a business. CCP Section 564(b) provides that a receiver may be appointed by the court in
2 which an action or proceeding is pending, or by a judge thereof where necessary to preserve
3 the property or rights of any party. "If it appears that the party seeking the appointment 'has
4 at least a *probable* right or interest in the property and that 'there is danger of its being lost or
5 destroyed or misappropriated,'" the appointment of a receiver is appropriate. (*Republic of*
6 *China v. Chang* (1955) 134 Cal.App.2d 124, 130-131 (citing *Armbrust v. Armbrust* (1946) 75
7 Cal.App.2d 272).)

8 The court does not have to determine Holland's ownership of VegNews in order to
9 appoint a receiver; the probable right established by her testimony is sufficient basis to order a
10 receiver and preserve VegNews.¹⁷ Moreover, in this case, Holland clearly has an ownership
11 stake in VegNews. She was involved from the founding, and prior to this action, Connelly
12 regularly admitted her ownership role. Other employees and outsiders also understood that
13 Holland was an owner of VegNews. This history of VegNews, supported by Holland's
14 testimony and the testimony of other witnesses, establishes a probable right for Holland as an
15 owner.

16 There is also serious risk of misappropriation from or destruction of VegNews assets.
17 A threat to destroy a business, even if evidence of the threat is contradicted, is sufficient basis
18 for a court to find danger of misappropriation or destruction of the asset to be placed under
19 receivership. (*Baldwin v. Baldwin*, 67 Cal.App.2d at 175, 178.) If the Court does not assert
20 control of this situation through the appointment of a receiver, Connelly will irreparably harm
21 VegNews. Along with effectively depriving Holland of any role in her own business,
22 Connelly has already damaged relations with employees (to the point where, e.g., they have
23 affirmatively suggested bringing in a neutral to assist with management) and vendors (to the
24 point where, e.g., at least one has won a suit for its damages and attorney fees). Corporate

25
26 ¹⁷ The *probable right* standard for appointment of a receiver is more lenient than the *likelihood of success* standard considered for a preliminary injunction. Although both standards are part of tests involving balancing of equities, the relationship between these standards indicates that if this court finds likelihood of success when evaluating the arguments for a preliminary injunction, the same facts should be sufficient to find a probable right.

1 funds have disappeared, Connelly is blocking Holland from being able to determine the
2 financial health of the business, and Connelly is threatening to move the company and fire
3 everyone who works for it. This is a very dangerous situation for VegNews.

4 **C. The Role of the Appointed Receiver Can Be Clearly Defined**

5 A receivership is an appropriate remedy when ownership is uncertain. (*Neider v.*
6 *Dardi* (1955) 130 Cal.App.2d 646, 649 (citing *Moore v. Oberg* (1943) 61 Cal.App.2d 216
7 (joint venture); *Armbrust v. Armbrust* (1946) 75 Cal.App.2d 272.) As the court in *Neider*
8 explained, where one party excludes the other and threatens the business, appointment of a
9 receiver should issue. (*Neider*, 130 Cal.App.2d at 649-50.)

10 The appointed receiver need not become a full-time manager of VegNews. Rather,
11 because the business is owned and operated by two people who, given the present lawsuit, are
12 deadlocked in the decision making process, an appointed receiver can simply be tasked with
13 (1) providing a third vote on business decisions where an impasse is reached, and (2)
14 managing the finances of VegNews and accounting for the missing funds that Connelly has
15 absconded with.

16 **IV. CONCLUSION**

17 There is overwhelming evidence that Holland and Connelly are co-owners of VegWeb
18 and have been running it jointly for many years. The status quo will be destroyed, and
19 irreparable harm will result to Holland and VegNews, unless injunctive relief is immediately
20 granted and a receiver is appointed.

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