PROPER MEDIA, LLC, a California limited liability company, 
Christopher Richmond, an individual, and 
Drew Schoentrup, an individual,

Plaintiffs,

v.

Bardav Inc., a California corporation, and 
David Mikkelson, an individual,

Defendants.
1 Plaintiffs Proper Media, LLC ("Proper Media"), Christopher Richmond ("Richmond"), and Drew Schoentrup ("Schoentrup") (collectively, "Plaintiffs"), by and through their undersigned counsel, allege as follows:

INTRODUCTION

1. This case involves unlawful jockeying for ownership and control of the fact-checking website Snopes.com ("Snopes"). Snopes advertises itself as “The definitive Internet reference source for urban legends, folklore, myths, rumors, and misinformation” and recently entered into a high-profile agreement with Facebook to integrate fact-checking services into its social media platform. But while Snopes is built entirely around the concepts of transparency and truth, its founder, Defendant David Mikkelson ("Mikkelson") has engaged in a lengthy scheme of concealment and subterfuge to gain control of the company and to drain its profits.

2. Snopes is owned by Bardav Inc. ("Bardav"). Bardav was founded in 2003 by Mikkelson and his then-wife, Barbara Mikkelson ("Barbara"). Mikkelson and Barbara each owned one share, or 50% of the equity in Bardav.

3. After a contentious divorce, Barbara sold her equity in Bardav to Plaintiff Proper Media in July of 2016.

4. Proper Media is a San Diego-based Internet media company. Proper Media manages several top-ranked web properties and, at the time of its purchase of Barbara’s interest, it was already managing a significant amount of the operation of Snopes. Proper Media’s management of Snopes is governed by a written General Services Agreement.

5. Because Bardav elected pass-through tax treatment under Subchapter S of the Internal Revenue Code, Bardav’s shareholders may not be companies (such as Proper Media, which is a limited liability company). 26 U.S.C. § 1361(b)(1)(B). The deal was therefore structured as a sale by Barbara to Proper Media’s individual shareholders. Proper Media’s members would only hold the shares for the benefit of Proper Media. Accordingly, Bardav approved the issuance of fractional shares in the names of Proper Media’s five members, including Vincent Green ("Green"), who was a small minority
member of Proper Media; however, no fractional shares were ever issued by Bardav.

6. As a member and officer of Proper Media, Green owes fiduciary duties both to the company and to its other members under its Operating Agreement. These fiduciary duties include duties of loyalty, care, and good faith, and any actions taken adversely to Proper Media are expressly prohibited.

7. Mikkelson was unhappy that Barbara maintained ownership of half of what he always considered to be his company after the divorce. Thus, after Proper Media’s purchase of Barbara’s share, Mikkelson sought to finally gain control of Bardav by aligning and conspiring with Green. Although Green purportedly holds only a small fraction of Bardav’s equity (which he only holds for the benefit of Proper Media), when combined with Mikkelson’s 50% interest, it would purportedly give Mikkelson majority control of the company.

8. Beginning in February 2017, Mikkelson conspired with Green to block Proper Media’s access to the personnel, accounts, tools, and data necessary to manage Snopes. On information and belief, Mikkelson, in conjunction with Green, intentionally did block Proper Media’s access to personnel, accounts, tools, and data to take over Snopes and to prevent Proper Media from performing under the General Services Agreement. Furthermore, Green instructed three Proper Media employees not to return to the Proper Media office and removed over $10,000 of equipment used by these three employees from the Proper Media office.

9. Shortly thereafter, Green resigned from Proper Media. Green resigned using a Snopes email account, indicating that he was now a direct employee of Mikkelson at Bardav.

10. Accordingly, Mikkelson has induced Green to breach the Proper Media Operating Agreement as well as Green’s fiduciary duties.

11. Mikkelson has also caused Bardav to breach the General Services Agreement.

12. Mikkelson has repeatedly engaged in fraud upon Proper Media, most
recently in an effort to obtain approval for Bardav to pay Mikkelson a sizable salary and large sums of Mikkelson’s personal expenses.

13. Mikkelson’s actions amount to an abuse of control of Bardav and corporate waste.

14. Proper Media now seeks relief for the harm Defendants Bardav and Mikkelson have caused.

PARTIES

15. Plaintiff Proper Media, LLC is a California limited liability company with its principal place of business in San Diego, California.

16. Plaintiff Christopher Richmond is an individual residing in San Juan, Puerto Rico.

17. Plaintiff Drew Schoentrup is an individual residing in San Juan, Puerto Rico.

18. On information and belief, Defendant Bardav Inc. is a California corporation with its principal place of business in San Diego County, California.

19. On information and belief, Defendant Mikkelson is an individual residing in or around Calabasas, California.

JURISDICTION AND VENUE

20. This Court has original jurisdiction over this matter under the California Constitution, Article VI, section 10.

21. This Court has personal jurisdiction over Defendants, and each of them, because (1) a substantial part of Defendants’ misconduct that gave rise to this action occurred in California and the primary injury as a result of Defendants’ misconduct was felt in California; (2) Defendant Bardav is a California corporation, and Defendant Mikkelson is a principal of Bardav; and (3) for all or part of the relevant time period, Mikkelson was a resident of and domiciled in California.

22. Venue is proper in San Diego County because Defendant Bardav maintains its principal place of business within this County.

//

Case No. 3

COMPLAINT
FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

23. Plaintiff Proper Media is an Internet-based media company. Proper Media manages several top-ranked web properties. Proper Media owns, develops, and manages advertising-technology systems and also offers services related to website design, web-server management, and Internet-content management systems.

24. Plaintiffs Christopher Richmond ("Richmond") and Drew Schoentrup ("Schoentrup") co-founded Proper Media in 2015, and together are Proper Media’s majority equity holders. Until recently, there were three other minority members, including Green.

25. At all relevant times, the ownership of Proper Media was divided among its members as follows: Schoentrup owned 40%; Richmond owned 40%; Ryan Miller owned 6.66%; Green owned 6.66%; and Tyler Dunn owned 6.68%.

26. Proper Media is governed by the Limited Liability Company Agreement of Proper Media, LLC (the “Operating Agreement”), which all five of its members signed.

27. Section III.H of the Operating Agreement sets forth the following duties of members to other members as well as Proper Media itself:

H. Fiduciary Duties of the Members.

1. Loyalty and Care. Except to the extent otherwise provided herein, each Member shall have a fiduciary duty of loyalty and care similar to that of members of limited liability companies organized under the laws of California.

2. Competition with the Company. The Members shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority of the Members excluding the interested Member, consents thereto. The Members shall refrain from competing with the Company in the conduct of the Company's business unless a majority of the Members excluding the interested Member, consents thereto. In the event that a Member is the sole Member of the Company, no vote shall be required.

3. Duties Only to the Company. The Member’s fiduciary duties
of loyalty and care are to the Company and not to the other Members. The Members shall owe fiduciary duties of disclosure, good faith and fair dealing to the Company and to the other Members. A Member who so performs their duties shall not have any liability by reason of being or having been a Member.

28. Section VI.C of the Operating Agreement sets forth additional fiduciary duties of officers of Proper Media. The duties enumerated in Section VI.C are identical to those set forth in Section III.H, with the sole difference being that Section III.H applies to members while Section VI.C applies to officers.

Bardav

29. On information and belief, Bardav was founded in 2003 by Mikkelson and his then-wife, Barbara. Mikkelson and Barbara each owned one-half, or fifty percent (50%), of the equity in Bardav. Mikkelson’s and Barbara’s respective ownership interest were each represented by a single share in the company, for a total of two (2) shares.

30. On information and belief, Bardav is and always has been an S Corporation, meaning it has elected pass-through tax treatment under Subchapter S of the Internal Revenue Code.

31. Bardav’s web property, Snopes, is one of the 1000 most popular websites in the United States, and is highly profitable, with revenue coming primarily from advertising that appears on the site. On information and belief, in the aftermath of the reported Russian intelligence operation to influence the 2016 election with so-called “fake news” spread through Facebook and other social media websites, Facebook entered into an agreement with Snopes and other media organizations to integrate fact-checking services into Facebook. See, e.g., Mike Isaac, THE NEW YORK TIMES, Facebook Mounts Effort to Limit Tide of Fake News, https://www.nytimes.com/2016/12/15/technology/facebook-fake-news.html?r=0 (Dec. 15, 2016); Jen Weedon, et al., Information Operations and Facebook, https://fbnewsroomus.files.wordpress.com/2017/04/facebook-and-information-operations-v1.pdf (Apr. 27, 2017).

The General Services Agreement

32. In or about August 2015, Proper Media entered into a General Services
Agreement with Bardav (the “General Services Agreement”), under which Proper Media would manage most of the operations of the popular fact-checking website Snopes.

33. Under the General Services Agreement, Proper Media is responsible for managing all content and advertising accounts for Snopes. In order to perform these management services, Bardav gave Proper Media control of Snopes’ email hosting and content-management system. Proper Media also relied on third-party project management tools, such as Slack and Asana, to manage Snopes-related data.

34. Proper Media performed all obligations required of it under the General Services Agreement at all times from the inception of the General Services Agreement until prevented from doing so by Mikkelson, as outlined below.

**Proper Media’s Acquisition of Barbara Mikkelson’s Share of Bardav**

35. On information and belief, in or about 2014, David and Barbara Mikkelson began what would prove to be a contentious divorce. As a result, by 2016, Barbara sought to sell her 50% equity interest in Bardav.

36. During the summer of 2016, Proper Media negotiated to buy Barbara’s 50% equity in Bardav. Because Bardav elected pass-through tax treatment under Subchapter S of the Internal Revenue Code, Bardav’s shareholders may not be companies (such as Proper Media, which is a limited liability company). 26 U.S.C. § 1361(b)(1)(B). The deal was therefore structured as a sale by Barbara to Proper Media’s individual shareholders, but for the benefit of Proper Media. Accordingly, Proper Media’s interest in Bardav was taken in the name of its individual members.

37. It was mutually agreed and expected that a representative of Proper Media would join Bardav’s Board of Directors after the Closing. Indeed, Barbara represented to Schoentrup that a representative of Proper Media would be appointed to the Board of Directors to replace her, as Barbara had a guaranteed board seat. Furthermore, Mikkelson did not object to Barbara’s sale of all of her interest and rights in her Bardav stock to Proper Media. Proper Media’s members entered into the agreement to purchase Barbara’s equity in reliance on this representation.
38. The sale of Barbara’s equity in Bardav to Proper Media’s five members closed on July 1, 2016 (the “Closing”).

39. On the date of the Closing, Barbara resigned in writing from Bardav’s Board of Directors, and from all of her officer roles with Bardav. Barbara sent her resignation to Mikkelson and Schoentrup as the company’s presumptive Directors.

40. On August 26, 2016, all of Bardav’s nominal shareholders—namely, Mikkelson and the five members of Proper Media—signed a shareholder and board resolution permitting the issuance of fractional shares of Bardav to the five Proper Media members. Both Mikkelson and Schoentrup signed this resolution a second time in their separate capacities as directors of Bardav:

This resolution was executed as an amendment to Bardav’s original bylaws; however, Plaintiffs have recently discovered those bylaws do not exist. Moreover, no fractional shares were ever issued by Bardav.

41. A significant portion of the purchase price for Barbara’s equity was financed by Diamond Creek Capital, LLC (“DCC”). Proper Media is a party to the financing and loan agreements with DCC, and is also a party to a promissory note with Barbara. The individual members of Proper Media are not parties to the promissory note with Barbara. From the Closing through April 2017, Proper Media, Richmond, and Schoentrup exclusively made all payments to DCC and Barbara. To be clear, Green has not personally made any payments related to Proper Media’s acquisition of ownership interests in Bardav.

**Mikkelson’s Misuse of Bardav Funds**

42. Throughout Proper Media’s business relationship with Mikkelson, despite
being paid handsomely, Mikkelson has claimed to be underpaid. Mikkelson has also submitted large expenses for reimbursement by Bardav.

43. In the second half of 2016, Mikkelson’s purported business expenses included tens of thousands of dollars in legal fees, which, on information and belief, were not for Bardav’s benefit, but rather for personal legal representation in his ongoing and contentious divorce proceeding with Barbara.

44. Mikkelson’s purported business expenses in the second half of 2016 also included tens of thousands of dollars in travel expenses, which, on information and belief, were actually for personal travel—including a honeymoon to Asia with Mikkelson’s new wife (and Bardav/Snopes employee) Elyssa Young in November or December 2016.¹

45. Through February 2017, Mikkelson and the other shareholders in Bardav discussed how to close out Bardav’s financial books for 2016, including what compensation Mikkelson was due, culminating in a draft document titled the “Bardav, Inc. 2016 Compensation Agreement” (the “2016 Compensation Agreement”).

46. On information and belief, Mikkelson knowingly and falsely represented to Bardav’s shareholders, including Richmond and Schoentrup, that all the claimed expenses listed in the draft 2016 Compensation Agreement were for business purposes.

47. Relying on this representation, and the representation by Mikkelson that he would thereafter enter into a compensation agreement for 2017, all of Bardav’s shareholders except Mikkelson signed the 2016 Compensation Agreement. On May 4, 2017, both Richmond and Schoentrup expressly revoked their agreement to the 2016 Compensation Agreement, which at the time of the revocation was still unsigned by Mikkelson.

**Mikkelson’s Conspiracy with Green**

48. On information and belief, beginning as early as the start of 2017, Mikkelson conspired with Green to obtain a controlling interest in Bardav and to exclude

---

¹ Notably, Barbara made similar accusations against Mikkelson in their divorce proceedings, namely, that he improperly used company funds for personal travel and paid escort services, including services from Elyssa Young.
Proper Media from its operation.

49. Green was an employee and member of Proper Media from approximately March 2015 through April 3, 2017. Green was also an officer of Proper Media, with his most recent title being Vice President of Operations. Throughout his employment, Green worked extensively on the Snopes website, and, as a result, came to personally know and befriend Mikkelson.

50. On Saturday, February 18, 2017, Richmond and Schoentrup had an in-person conversation with Green at Proper Media’s offices. When confronted, Green admitted that he was not acting in the best interest of Proper Media. After this conversation, Green never returned to the Proper Media office, and performed no further work for Proper Media. On Tuesday, February 21, 2017—the second business day after the conversation described above—without Richmond’s or Schoentrup’s knowledge or consent, Green removed Richmond’s and Schoentrup’s access to the Snopes content-management system, instructed three Proper Media employees not to return to work, and removed over $10,000 of computer equipment from the Proper Media offices used by these three employees. On information and belief, Green did so in conspiracy with and at the direction of Mikkelson.

51. Under the General Services Agreement, Proper Media was, and still is, responsible for operating this content-management system. Without access, Proper Media cannot fulfill its obligations under the General Services Agreement.


53. On March 10, 2017, again without Richmond’s or Schoentrup’s knowledge or consent, Green removed Snopes-related data from Proper Media’s communication and project-management tools, including Slack and Asana. On information and belief, Green did so in conspiracy with and at the direction of Mikkelson.
54. Without access to this Snopes-related data in Slack and Asana, Proper Media cannot fulfill its obligations under the General Services Agreement.

55. Also on March 10, 2017, Mikkelson purported to terminate the General Services Agreement, to be effective in 60 days, \textit{i.e.}, on or about May 9, 2017.

56. On or about April 1, 2017, Mikkelson removed Richmond’s and Schoentrup’s access to the bank account used for Snopes business by Bardav and Proper Media.

57. On April 3, 2017, Green gave written notice—from his Snopes email account—of his resignation from Proper Media.

58. During the weeks between February 18, 2017 and April 3, 2017, Green admitted that he was doing no work for Proper Media, and was instead working with Mikkelson at Bardav. Despite doing no work, until April 3, 2017, Proper Media continued to pay Green, and contributed to Green’s health-insurance premiums.

59. Under the express terms of Sections III.H and VI.C the Operating Agreement, and under California law, Green owed fiduciary duties both to the other members of Proper Media and to Proper Media as a company.

60. Through the actions cited above, and in conspiracy with Mikkelson, Green breached his fiduciary duties to Proper Media and its members.

**FIRST CLAIM FOR RELIEF**

**Breach of Contract**

(By Plaintiff Proper Media Against Defendant Bardav)

61. Plaintiff realleges and incorporates by reference the allegations in each of the preceding Paragraphs as if fully set forth herein.

62. The General Services Agreement is a valid written contract between Proper Media and Bardav.

63. Until Defendants’ actions made Proper Media’s performance impossible, Proper Media performed all of its obligations under the General Services Agreement.

64. Bardav’s actions as stated herein, including, among other things,
intentionally excluding Plaintiffs from the accounts, tools, and data necessary to fulfill
Proper Media’s obligations under the General Services Agreement, constitute a breach
of the General Services Agreement.

65. As a direct and proximate result of Bardav’s conduct, Proper Media has
suffered actual damages, in an amount to be determined according to proof at trial.

SECOND CLAIM FOR RELIEF

Intentional Interference with Contract
(By All Plaintiffs Against Defendant Mikkelson)

66. Plaintiffs reallege and incorporate by reference the allegations in each of
the preceding Paragraphs as if fully set forth herein.

67. A written agreement exists between Proper Media and Bardav—namely,
the General Services Agreement.

68. Mikkelson knew about the General Services Agreement.

69. Mikkelson has intentionally excluded Proper Media from the accounts,
tools, and data necessary to fulfill Proper Media’s obligations under the General Services
Agreement, and has conspired with Green to frustrate and/or terminate the General
Services Agreement.

70. Mikkelson undertook the actions alleged herein with the intent and
understanding that Proper Media would be unable to fulfill its obligations under the
General Services Agreement and/or that Bardav would terminate the General Services
Agreement.

71. As a result of Mikkelson’s actions, Bardav has terminated the General
Services Agreement.

72. Similarly, Mikkelson knew about the Proper Media Operating Agreement, to
which Plaintiffs Proper Media, Schoentrup, and Richmond are parties.

73. Mikkelson has intentionally induced Green to breach the Operating
Agreement by conspiring with Green to take actions adverse to Proper Media, including
by intentionally excluding Proper Media from the accounts, tools, and data necessary to
fulfill Proper Media’s obligations under the General Services Agreement.

74. Mikkelson undertook the actions alleged herein with the intent and understanding that Green would breach the Operating Agreement.

75. As a result of Mikkelson’s actions, Green has breached the Operating Agreement.

76. As a direct and proximate result of Mikkelson’s conduct, Plaintiffs have suffered substantial economic loss and other general and specific damages, all in an amount to be determined according to proof at trial.

77. Mikkelson acted maliciously, oppressively, and fraudulently, and Plaintiffs are entitled to punitive and exemplary damages.

THIRD CLAIM FOR RELIEF

Civil Conspiracy

(By Plaintiff Proper Media Against Defendant Mikkelson)

78. Proper Media realleges and incorporates by reference the allegations in each of the preceding Paragraphs as if fully set forth herein.

79. Sometime between January 2017 and the present, Mikkelson did knowingly and willfully conspire and agree with Green, and attempted to (1) convert a portion of Proper Media’s interest in Bardav into Green’s individual interest, (2) join forces such that, together, Mikkelson and Green would purportedly own a controlling share of Bardav, (3) frustrate and/or prevent Proper Media’s access to the tools, data, and accounts necessary for Proper Media to perform under the General Services Agreement, and (4) terminate the General Services Agreement.

80. In furtherance of this conspiracy and agreement, Mikkelson engaged in fraudulent representations, omissions, and concealment of facts, acts of cover-up, and statements calculated to obtain Proper Media’s trust for the Defendants’ and Green’s benefit.

81. Mikkelson’s actions were in violation of the rights of Proper Media, and committed in furtherance of the above conspiracies and agreements. Moreover,
Mikkelson lent aid and encouragement and knowingly financed, ratified, and adopted the acts of his co-conspirator.

82. As a proximate result of the wrongful acts herein alleged, Proper Media has suffered substantial economic loss and other general and specific damages, all in an amount to be determined according to proof at trial.

83. Mikkelson acted maliciously, oppressively, and fraudulently, and Proper Media is entitled to punitive and exemplary damages.

FIFTH CLAIM FOR RELIEF

Abuse of Control

(By Plaintiff Proper Media Against Defendant Mikkelson)

84. Proper Media realleges and incorporates by reference the allegations in each of the preceding Paragraphs as if fully set forth herein.

85. By virtue of his position and financial holding in Bardav, Mikkelson exercised control over Bardav and its operations, and owed duties as a controlling person to Bardav and its shareholders not to use his position of control within Bardav for his own personal interests and contrary to the interest of Bardav and its shareholders.

86. Mikkelson’s conduct amounts to an abuse of his control of Bardav, in violation of his obligations to Bardav and its shareholders. Mikkelson knowingly aided, encouraged, cooperated, and/or participated in this abuse of control.

87. As a proximate result of the abuse of control herein alleged, Proper Media has suffered substantial economic loss and other general and specific damages, all in an amount to be determined according to proof at trial.

SIXTH CLAIM FOR RELIEF

Corporate Waste

(By Plaintiff Proper Media Against Defendant Mikkelson)

88. Proper Media realleges and incorporates by reference the allegations in each of the preceding Paragraphs as if fully set forth herein.

89. By virtue of his position and financial holding in Bardav, Mikkelson had a
fiduciary duty to exercise good faith and diligence in the administration of the affairs of
Bardav and in the use and preservation of its property and assets, and the highest
obligation of fair dealing.

90. Mikkelson wasted Bardav's corporate assets by using them to pay for personal expenses.

91. As a result of Mikkelson's actions, Bardav's shareholders, including Proper Media, have suffered losses.

92. As a proximate result of the corporate waste herein alleged, Proper Media has suffered substantial economic loss and other general and specific damages, all in an amount to be determined according to proof at trial.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment in favor of Plaintiffs and against Defendants, and award the following relief to Plaintiffs and against Defendants:

1. Compensatory damages in an amount to be proved at trial;

2. Exemplary damages pursuant to California Civil Code § 3294;

3. A declaration that Proper Media is the beneficial owner of 50% of the equity in Bardav;

4. An order for specific performance that Bardav issue stock certificates to Proper Media's members as nominal owners of equity in Bardav, but with legends stating that Proper Media is the beneficial owner of that equity;

5. The costs of the suit;

6. Interest on the sum of the compensatory and exemplary damages; and

7. Such other relief as the Court may deem proper.

DATED: May 4, 2017

KRONENBERGER ROSENFELD, LLP

By: Karl S. Kronenberger

Attorneys for Plaintiffs
REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a trial of this action by jury of all issues that may be tried to the jury.

DATED: May 4, 2017

KRONENBERGER ROSENFELD, LLP

By: Karl S. Kronenberger

Attorneys for Plaintiffs