

individual, and ROES 1-25, inclusive,)
)
Cross-Defendants)
_____)

THE PARTIES

1. Cross-complainant William F. Scott (“Scott”) is an individual and is the sole owner of The Cinnamon Bay Company, LLC (“Cinnamon Bay”), a Delaware Limited Liability Company. From April, 2003, to the present, Cinnamon Bay has owned an interest in the business and the profits of The Argyll Group, LLC (“Argyll Group”).

2. Scott brings this cross-complaint on his own behalf, and Cinnamon Bay on its own behalf and in the name of and on behalf of The Argyll Group, LLC (“Argyll Group”), a Delaware Limited Liability Company. The direct claims of Scott and Cinnamon Bay arise principally from wrongful denial and repudiation of Cinnamon Bay’s ownership interest in Argyll Group. The derivative claims, on the other hand, arise principally from defendants’ waste and plunder of Argyll Group’s assets, and their mismanagement of Argyll Group. Insofar as his action is brought as a derivative claim, to advance and protect the interests of Argyll Group, an award of reasonable attorneys’ fees is warranted under the law of Delaware, California and Federal law.

3. Defendant James Miceli (“Miceli” or “Cross-Defendant Miceli”) is a resident of San Diego County, California, and resides at 13772 Paseo Valle Alto, in the City of Poway, along with cross-defendant Dona Miceli, his wife (together, “Cross-Defendants Miceli”) Plaintiff Scott’s wife, Gina Scott, is sister to James Miceli, i.e., Scott and Miceli are brothers-in-law.

4. Defendant Douglas A. McClain, Jr. (“McClain” or “Cross-Defendant McClain”) is a resident of Chatham County, Georgia, and resides at 3 Wakefield Place, in the City of Savannah, along with defendant Tracie S. McClain, his wife (“Cross-Defendants McClain”).

5.. Defendants Miceli and McClain each own 45% of Argyll Group and are Members and Managers of Argyll Group. Their 90% collective interest, together with the 10% interest of plaintiff

Cinnamon Bay, constitutes the full 100% ownership of Argyll Group. The formal date of incorporation of Argyll Group, as reflected in the records of the Delaware Department of State, was April 25, 2003.

6. Argyll Group transacts substantial business at its headquarters, located at 4225 Executive Square, Suite 260, La Jolla, California. Argyll Group also has offices in Illinois, Texas and Georgia.

7. The true names and identities of the persons sued fictitiously as ROES 1-25 are unknown to Cross-Complainants at this time and therefore they are sued by such fictitious names. Cross Complainants believe ROES 1-25 participated in the wrongdoing alleged herein. If and when their true names and identities are learned, cross-complainants will amend the cross complaint to state those true names and identities.

8. On information and belief, with respect to the wrongdoing herein alleged, including acts of commission and omission, each cross-defendant acted as the agent of every other cross-defendant, and all wrongful acts and omissions were authorized or ratified by all cross-defendants, with knowledge thereof, and were made as part of a conspiracy in which all cross-defendants participated.

VENUE AND JURISDICTION

9. Venue and jurisdiction is proper in San Diego County because Scott and cross-defendants Miceli and Donna Miceli reside here, because Argyll Group is headquartered here and transacts substantial business from those headquarters, because cross-defendants McClain and Tracie McClain have traveled here for Argyll Group business and pleasure, and because much of the wrongdoing complained of herein occurred in San Diego County.

FACTS COMMON TO ALL CAUSES OF ACTION

Miceli's Prior Financial Problems and the Subsequent Stock Loan Program

10. The events described in this cross-complaint began in approximately 2002. Then the
Amended First Amended Cross-Complaint

age of 35, Cross-Defendant Miceli already had an extensive history of personal financial difficulties, (including bankruptcy) and failed business dealings.

11. Commencing in or about 2002, Cross-Complainant Scott helped his brother-in-law Miceli with due diligence in matters for a business McClain and Miceli were involved in under the names FIT Equities and FIT Management Group (collectively, “the FIT entities”), located at offices in Schaumburg, Illinois.

12. Around this time in or about 2002, the stock loan program that would eventually be one of Argyll Group’s core businesses emerged. On information and belief, Miceli and McClain were introduced to certain individuals who had knowledge of a stock loan program. Miceli investigated specific information obtained from an acquaintance named Al Christy, and Miceli asked Scott to review the loan agreement and other papers for the conceptual enterprise.

13. Scott worked diligently on behalf of the nascent Argyll Group business, increasing his efforts as the business demands required. Scott understood, and was promised by Miceli, that Scott would ultimately become a partner in the new endeavors when the Argyll Group was formally established.

14. In or about June 2002, Scott formed Cinnamon Bay, a limited liability company. The sole purpose of Cinnamon Bay was to protect and hold Scott’s interests in affiliations, to be developed and expanded, relating to his work with Miceli and McClain. Scott told Miceli and McClain, and attorney John T. Franczyk (“Franczyk”), that this was his purpose of forming Cinnamon Bay, and Franczyk helped Scott with the formation of Cinnamon Bay. Franczyk was then doing legal work for the FIT entities referenced in paragraph 11 above.

Formation of Argyll Group

15. In latter half of 2002 and early 2003 Scott and Miceli talked on a daily basis, and sometimes numerous times daily, as they developed the plans for Argyll Group’s business. Scott

was responsible for logistical and administrative details, such as the development of the stock loan agreement from acquired references, while Miceli and McClain chiefly concentrated on sales and marketing. In preparation for the expansion of Argyll Group concepts, Scott developed comprehensive structures. Conceptually, these included the new master company (Argyll Group) and other subsidiary and affiliated entities, a plan for ownership, which included Cinnamon Bay, and operational syllabi of the companies. Scott presented this plan in an ongoing manner, in writing and on a whiteboard to Miceli and McClain and the attorney charged with the company's formation, Franczyk, at the Schaumburg, Illinois, offices on April 21, 2003. Scott was flown from San Diego, California, where he resided, to attend the meeting, at Argyll Group's expense, for this very reason.

16. Argyll Group was thus formed by oral agreement reached between cross complainant Scott and cross-defendants Miceli and McClain, on or about April 21, 2003. Also present was attorney Franczyk. During this meeting, it was agreed between Scott, Miceli and McClain that they would jointly form Argyll Group, of which they would be the three and only members and managers. They agreed that Argyll Group would be an umbrella entity through which they would own and operate various subsidiary financial services entities, with the initial core business of Argyll Group being stock loans and lending, through the already extant Argyll Equities, which they all agreed would now be owned 100% by Argyll Group, as a subsidiary entity.¹ They agreed that the following titles would be assigned to member/managers of Argyll Group: Miceli would be the Chief Executive Officer, with a 42.5 % interest; McClain would be the President, also with a 42.5% interest; and Scott would be the Chief Financial Officer, with a 15% interest.² They agreed that these

¹ Argyll Equities, LLC ("Argyll Equities"), a Texas Limited Liability company, was formed in or about October 2, 2002. Later, upon the formation of Argyll Group in April of 2003, Argyll Equities became a 100% subsidiary of Argyll Group, and remains such. Attached hereto, as Exhibit "A", is Argyll Equities' publicly filed "Texas Franchise Tax Public Information Report", dated April 30, 2004. This document was printed last week from the Texas Secretary of State Website. Under Section C of the document Argyll Group is properly shown as the parent owner.

² Scott's ownership was to be through Cinnamon Bay, which he had formed in or about June of 2002, with the assistance of attorney Franczyk.

same ownership percentages would apply to whatever subsidiary financial services entities were subsequently formed under the Argyll Group umbrella, largely because the structure operated as a flow-through to the master. At the conclusion of the meeting the three managing members authorized attorney Franczyk to prepare and file with the Delaware Secretary of State an initial certificate of formation of Argyll Group.

17. Scott was and is today employed also as a Federal Aviation Administration air traffic controller, living and working in San Diego, California. His desire to keep this job while managing Argyll Group's financial and administrative affairs (and to help his brother-in-law Miceli) led Scott to agree to accept the lower percentage interest in Argyll Group compared to Miceli and McClain. Scott understood and acknowledged that Miceli and McClain wanted to have larger ownership interests than Scott, and Scott agreed.

18. On information and belief, and according to the records of the Department of State of Delaware, Argyll Group was formally incorporated on April 25, 2003. The company was capitalized with funds borrowed from Director's Performance Fund.

19. Under Delaware law, there is no requirement that the Limited Liability Company Agreement be in writing. To the contrary, under §18.01 of Delaware's Limited Liability Company Act, titled "Definitions", it is provided:

(7) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business. A limited liability company is not required to execute its limited liability company agreement. A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person who is a party to the limited liability company agreement. A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement or another written agreement or writing:

20. The oral Limited Liability Company Agreement for Argyll Group that was made on **Amended First Amended Cross-Complaint**

or about April 21, 2003, (“Argyll Group’s LLC Agreement”) was never reduced to writing. Argyll Group’s LLC Agreement provided that the Members take their interests in the limited liability company according to the ownership percentages specified above immediately upon formation of the LLC; that they would be entitled initially to take as salary distributions of \$10,000 per month, for Miceli, \$10,000 per month, for McClain, and \$2,500 per month, for Scott. It was discussed and understood that Miceli and McClain had a greater immediate need for income, because they had very limited finances or alternative income sources, whereas Scott had his full-time income as an air traffic controller. The members agreed that distributive allocations, as opposed to salary, would be taken in accordance with ownership interest.

21. Under Argyll Group’s LLC Agreement, it was agreed that the Members would participate in the LLC’s management as Managers, under the general supervision of one another with prescribed fiduciary duties, as follows: Cross-Defendant Miceli, as Chief Executive Officer of Argyll Group and its subsidiaries, was responsible for management of the equity portfolios and fulfillment of the investment objectives of Argyll Group; Cross-Defendant McClain, as President of Argyll Group and its subsidiaries, was responsible for tactical negotiations and ongoing business relationships in furtherance of building Argyll Group’s asset bases; and Cross-Complainant Scott (through Cinnamon Bay), as Chief Financial Officer of Argyll Group and its subsidiaries, was responsible for managing the infrastructure of the companies and their operations.

22. Under the Argyll Group LLC Agreement, it was also understood and agreed that Members would limit their distributions to those agreed upon by all of the Members, would not in any way impair the rights of any other Member with respect to his or its status as a Member or Manager, and that all company information would be the property of Argyll Group and available to each member. The Members further agreed that the Argyll Group was to own, control and manage subsidiary companies, which came to include: Argyll Equities, SW Argyll Investments, Argyll Funding Trust I, Argyll Capital, Argyll Energy, and Argyll Management.

The Plundering of Argyll Group

A. Cinnamon Bay and Scott Perform and Miceli and McClain Accept All Benefits of the Agreed Arrangement

23. Promptly after Argyll Group was incorporated, business operations were commenced, with Miceli, McClain and Scott acting in the capacities agreed to, in accordance with Argyll Group's LLC Agreement. Argyll Group opened offices in San Diego on or about June 1, 2003; and hired several employees in 2004. While less than two years old, the enterprise has been successful with revenues from the stock lending program of Argyll Equities.

24. Under Argyll Group's Initial LLC Agreement, Cinnamon Bay acted as managing member and Chief Financial Officer. Scott was advised by Argyll Group's counsel that there was nothing to preclude Cinnamon Bay from being a member or from operating as CFO for another LLC. The counsel suggested that Argyll Group and Cinnamon Bay execute a secondment agreement under which Cinnamon Bay would remain as his primary employer but would second his services over to Argyll Group. Cinnamon Bay did second Scott to Argyll Group, and it was in this capacity that Scott acted as Member, Manager and CFO.

25. Argyll Equities held Scott out as one of its Members and Managers. (Example, resolution dated July 1, 2003, for and filed with Bank of America, a copy of which is attached hereto as Exhibit "B"). Miceli, McClain and attorney Franczyk acknowledged that Cinnamon Bay was a Member and Manager of Argyll Group.

26. In or about October 2003, and then again in or about April 2004, the Members orally agreed to change Argyll Group's LLC Agreement with respect to the amounts allotted to the three Managers in lieu of salary. It was then agreed that Cross-Defendant Miceli and Cross-Defendant McClain would be authorized \$20,000.00 monthly, while Cinnamon Bay was authorized \$10,000.00 monthly. Pursuant to legal and tax advice, the salary was recorded as loans against future distributive shares.

27. Scott, on several occasions beginning in the summer of 2003, attempted to have the Argyll Group LLC Agreement reduced to writing but Miceli, McClain and Franczyk failed or refused to do so.

28. In December 2003, Scott, Miceli and McClain discussed again, by telephone, the formalization of written documentation concerning their interests in Argyll Group. Scott had indicated to Miceli that the interests should be formalized in writing and Miceli had so informed McClain. In a three-way conversation, McClain, unexpectedly and irrationally, exclaimed that he would not “give” Cinnamon Bay or Scott any ownership share in Argyll Group, except perhaps 2-3%, although McClain did not object to Scott’s continued share of distributions. Miceli remained silent during this conversation but then immediately thereafter, in a separate call, assured Scott that Cinnamon Bay was entitled to document its interest in ownership and distributions and assured Scott that McClain would so consent. As a result of this and additional discussions, McClain, Miceli and Scott agreed that Cinnamon Bay’s ownership share of Argyll Group would be ten percent (10%) but that Cinnamon Bay would received one third (33 1/3%) of distributions. This was the understanding under which the members subsequently operated.

B. Cross Defendants Miceli and McClain Use Company Resources For Personal Purposes, Including The Purchase of Their Homes

29. Miceli and McClain have used their positions as Managers to divert substantial Argyll Group resources and funds to themselves, to the detriment of the company, and without obtaining all Members’ consent. Their transfers include the following:

a. Purchase of Houses in San Diego and Savannah, Georgia.

In about April and May of 2003, Miceli and McClain sought to purchase homes in San Diego, California, and Savannah, Georgia, respectively. Their credit ratings were insufficient to enable them to qualify for the loans they desired. Although their respective wives could qualify, neither was employed.

Miceli and McClain controlled two “shelf” companies, Hawthorne Energy and Shelburne Capital, neither of which existed for any purpose other than a name in waiting. With the advice and assistance of attorney Franczyk, Miceli and McClain and their wives represented that their wives were the Presidents of these entities, and that the funds used as down payments on the homes to be purchased were obtained as distributive shares from their companies respectively.

These representations were untrue. The companies never did any business of any kind. The wives never worked for, nor owned any part of the companies. There were no offices. However, the mortgage company wanted to call the offices to verify employment. Cross-Defendant Miceli and Cross-Defendant McClain set up temporary telephone numbers and answering services with voice mails at HQ Global Workplaces in Schaumburg, Illinois so that it would appear to the underwriters when they called that the companies did in fact exist. A couple months after the loans were approved, the phone lines were disconnected.

The misrepresentations enabled the Micelis and the McClains to obtain mortgages on their respective home purchases, the prices of which were approximately \$2,000,000 and \$1,200,000, respectively, despite what might otherwise have been viewed as poor credit risk.

In addition, on or about May 2003, Cross-Defendant Miceli transferred, on information and belief, approximately \$800,000.00 from Argyll Equities’ West Suburban (Illinois) banking accounts to John Franczyk's attorney trust account in Chicago to capitalize the purchase of his Poway home, and the funds were so disbursed to effect the closing. The home, at 13772 Paseo Valle Alto, Poway, California 92064, was titled in defendant Dona Miceli's name. Plaintiff Scott was directed by Miceli to sign the paperwork at the title company by power of attorney, and he personally witnessed these events. The Micelis have since occupied the home, the legal description of which is: Lot: 70; Unit: 3; City: Poway; Tract Number: 88-15; Recorder's Map Reference: Map 12467.

Further on information and belief, Miceli also transferred \$400,000.00 from Argyll Equities to John Franczyk's attorney trust account in Chicago to capitalize the purchase of Doug's home in

Amended First Amended Cross-Complaint

Savannah. Franczyk disbursed the funds to close the Savannah residence. The home at 3 Wakefield Place, Savannah, Georgia 31411, is titled in defendant Tracie McClain's name, and its legal description is as follows: Lot 1922, The Landings** (**additional subareas exist pursuant Chatham County Board of Assessors property record identified as parcel 1-0317-01-038)

In addition to the monthly payments on the mortgage for Dona Miceli's house, Miceli has, on information and belief, used company funds in the amount of approximately \$127,000.00 to pay down the principal of the loan.

b. Purchase of Furnishings and Home Improvements

In June and July, 2003, Miceli, through a series of transactions and transfers, furnished his Poway residence at company expense, approaching \$150,000.00, including furniture, lamps, tapestries, vases, tables, chairs, sofas, and bronze statues. In addition, Cross-Defendants Miceli purchased area rugs, custom window furnishings and shutters totaling approximately \$75,000.00, using company funds. Further on information and belief, Cross-Defendants Miceli also used company funds to pay for new wood floors and carpet, painting services, a commercial communications system, custom sound systems, landscape lighting, a solar pool heating system, a custom entertainment center, garage storage cabinets, planting of a citrus grove on the property, installation of numerous fountains and water effects, and a projection television.

c. Use of Segregated Trading Accounts

Miceli has treated the stock that secures the loans that Argyll Group has made as his personal source of funds. Scott objected when he discovered Miceli tried to move securities from Argyll Equities and SW Argyll accounts into his own name; and Miceli was informed that he could not legally do so. Instead, Miceli moved the securities into newly formed accounts in the company name, but traded them for his benefit.

d. Car Purchases

Miceli has made the following car purchases at company expense:
Amended First Amended Cross-Complaint

1. BMW M3, approximately \$75,000.00.
2. Mercedes S55 AMG, approximately \$110,000.00.
3. Cadillac Escalade, approximately \$65,000.00.
4. Mercedes SL sports car, approximately \$130,000.00.

e. Boat Purchase

Miceli purchased a 45-foot Sea Ray pleasure vessel for approximately \$400,000.00. He formed a corporation called 450 Express, of which he is the owner, to hold the yacht, but Argyll Group funded the purchase of the boat and also pays for recurring for boat cleaning, maintenance, and incidentals, including a \$7,500.00 Zodiac type inflatable.

f. Personal Liabilities and Gifts

In the spring and summer of 2004, Miceli used Argyll Group funds to pay various judgments and settlements related to his prior business failures, tax liabilities and expenses of his mother and father.

g. Nepotism.

In January and February, 2004, despite objections, Miceli hired Antoinette Renella, his mother, to do bookkeeping for Argyll Group, and paid a two year lease for her of an expensive new home in 4S Ranch, San Diego, California, at a cost of approximately \$100,000.00, along with paying her moving expenses, and a new Lexus car, at approximately \$45,000.00.

h. Airplane

In November 2004, on information and belief, Miceli entered into a purchase agreement for a Piper Malibu, registration N4360V, for an amount estimated to be \$410,000.00. Also at company expense, Cross-Defendant Miceli has been taking private flying lessons for the last year.

I. Miscellaneous.

Miceli uses and has used company funds: to pay for a service to come to his home to wash
Amended First Amended Cross-Complaint

and wax his cars; to pay for housecleaning services twice a week; to pay several Rolex watches; during the 2003-2004 school year, to pay for a limousine service to take his daughter to private school in Del Mar; to pay, carte blanche, for expensive clothes and suits, frequent expensive vacations for his family with first class airfare; to pay for computer upgrades costing thousands of dollars for his home computers (including his son's); to pay gambling and entertaining expenses in the tens of thousands of dollars. When Miceli received his 2003 property tax bill, he took an additional check from company funds to pay that bill.

C. Rather Than Answer for Misdeeds, Defendants Freeze Out CB and Scott

30. As CFO and as Member, Scott repeatedly sought to have Miceli account for his expenditures. Miceli refused to do so and continued his pattern of abusing his position as Manager and spending the assets of Argyll Group as if they were his own.

31. On or about September 18, 2004, in retaliation for Scott's objections and refusal to consent to Miceli's misdeeds as hereinabove described, Miceli instructed attorney Franczyk to prepare documentation of the interests in Argyll Group and to exclude Scott and Cinnamon Bay from any interest in Argyll Group and its subsidiaries and affiliates. In addition, on September 24, 2004, Miceli threatened Scott that he should not return to Argyll Group's offices or Miceli would cause a scene and would have Scott "arrested and escorted out of the office." Scott was thereby constructively or actually terminated from his position as CFO.

32. Scott informed McClain of Miceli's continued gross misspending, through an intermediary. On information and belief, said intermediary had provided some assistance to Miceli and McClain when they were doing business through the FIT entities, as alleged at paragraphs 10 and 11 above, principally through introductions to individuals and financing sources, and Scott believed that said intermediary had influence with Miceli and McClain.

33. Despite Scott's protest, on information and belief, Miceli, McClain and Franczyk
Amended First Amended Cross-Complaint

followed through and issued documentation of interests in Argyll Group to the exclusion of Scott. This was done without notice to Scott and without regard to any company formalities.

34. On information and belief, Miceli and McClain have also conspired to manipulate the ownership of the subsidiary companies to deprive Argyll Group of its lawful interests in those companies.

35. Because of the oppression and complete exclusion of Cross-Complainant Scott and Cinnamon Bay by the two other members of Argyll Group, a demand that the company take on any of the derivative causes of action is futile.

FIRST CAUSE OF ACTION

Breach of Fiduciary Duty

(By Cinnamon Bay for itself and on behalf of Argyll Group, against Miceli and McClain)

36. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 35.

37. Cross-Defendants Miceli and McCain had fiduciary duties, as Managers, of loyalty and good faith, to Argyll Group and its members. Pursuant to these duties, Miceli and McClain were required to manage Argyll Group in accordance with Argyll Group's LLC Agreement; to put the interests of Argyll Group ahead of their own; to refrain from doing anything that would harm Argyll Group for their own advantage; and to conscientiously perform their oversight responsibilities to ensure that the company was managed properly.

38. Miceli and McClain violated their fiduciary duties to Argyll Group and its members by gross, intentional and reckless overspending of company assets on their personal behalf, including but not limited to the actions described in paragraph 29 above, and by consciously
Amended First Amended Cross-Complaint

disregarding the plundering and mismanagement of the company's assets.

39. Miceli and McClain further violated their fiduciary duties to Scott in reorganizing Argyll Group and its subsidiary companies to the exclusion of Cinnamon Bay and Scott, in violation of Argyll Group's LLC Agreement.

40. As a result of Cross-Defendants' breach of their fiduciary duties, Cross-Complainants have been harmed in an amount to be determined at trial, but believed to be in excess of \$5,000,000.00.

SECOND CAUSE OF ACTION

Conversion and Waste

(By Cinnamon Bay for itself and on behalf of Argyll Group, against Miceli and McClain)

41. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 40.

42. Miceli and McClain, wrongfully and in violation of Del. Corp. Code section 18607, took funds from the company far in excess of allowed distributions. Miceli and McClain wrongfully appropriated funds from Argyll Group that they applied toward their purchase of their respective homes.

43. In so doing, Miceli and McClain committed conversion, gross waste and mismanagement of the assets of Argyll Group.

44. As a result of Cross-Defendants' waste and mismanagement, Argyll Group has been damaged and its assets and net worth have been diminished in an amount to be determined at trial, but believed to be in excess of \$3,000,000.00. In addition, the acts of Cross-Defendants were fraudulent, willful, wanton, malicious, and oppressive, and were intended to cause injury to Argyll Group. Argyll Group is therefore entitled to an award of punitive damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

Amended First Amended Cross-Complaint

For an Accounting

(By Cinnamon Bay for itself and on behalf of Argyll Group, against Miceli and McClain)

45. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 44.

46. As a Member, Scott is entitled to have an accounting of Argyll Group's affairs, including the affairs of its subsidiaries. Likewise, Argyll Group is so entitled since Cross-Defendants made the aforementioned expenditures with its funds.

47. This accounting is made necessary by the continued and flagrant abuse of the company's assets by Miceli and McClain.

48. Therefore Cross-Complainants demand a full accounting from Miceli and McClain of all of the Argyll Group's (and included entities') assets, income, expenses, and transfers of money or real property made to Cross-Defendants and any third parties since April, 2003.

FOURTH CAUSE OF ACTION

Breach of Contract -the Argyll Group LLC Agreement

(By All Cross-Complainants against Miceli and McClain)

49. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 48.

50. Under Argyll Group's LLC Agreement, Miceli and McClain expressly agreed with Scott that they would form the Argyll Group, that Miceli and McClain would each have an interest of 42.5% and that Scott or Cinnamon Bay LLC, at his option, would be a member with a 15% interest (later reduced to 10%). The parties agreed that they would not take distributions from the company except as agreed by the Members. At this time, the parties were legally capable of contracting; there was mutual consent, a lawful objective and sufficient consideration. The parties agreed that this agreement would be binding upon them without the need for a written agreement.

51. On Cinnamon Bay's part, Scott agreed that he would contribute his energy and
Amended First Amended Cross-Complaint

intellectual property to the enterprise, and he did so contribute. It was understood and agreed among the parties that, while Cinnamon Bay was the legal entity through which Scott was contracting with Miceli and McClain, Scott was an intended beneficiary of their contracts.

52. The parties agreed that none would do anything to deprive the others of the benefits of the ownership of the Argyll Group, including access to information about the Group's affairs.

53. Scott and Cinnamon Bay performed all obligations on their part to be performed. Miceli and McClain willingly accepted the benefit of all of the work that Scott performed.

54. In or about December, 2003, the parties agreed that Cinnamon Bay's percentage interest in Argyll Group LLC would be 10% rather than 15%.

55. Miceli and McClain breached the agreement by withdrawing funds from the company at a much greater rate than agreed.

56. In or about September, 2004, Miceli instructed Argyll Group's attorney John Franczyk to issue documentation of interests held in the Argyll Group to Miceli and McClain in the amount of 50% each and to exclude the 10% ownership interest by Cross-Complainant Cinnamon Bay. This was a material breach of the agreement of the parties.

57. Miceli and McClain have also breached Argyll Group's LLC Agreement by failing to provide the information to Cinnamon Bay that Scott has requested and failing and refusing to keep Scott current with operations and finances at Argyll Group.

58. As a result of Cross-Defendants' breach, Scott and Cinnamon Bay has been damaged in an amount to be proven at trial, but believed to be in excess of \$3,000,000, including the loss of the profits and fair value of its interest in Argyll Group and the distributions in equal shares to which it was entitled.

59. As a result of Cross-Defendants' breach, Argyll Group has been damaged in an amount to be proven at trial.

Amended First Amended Cross-Complaint

FIFTH CAUSE OF ACTION

Fraudulent Conveyance

(By Cinnamon Bay for itself and on behalf of Argyll Group against all Cross-Defendants)

60. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 59.

61. Cross-Defendants used Argyll Group's funds and misrepresented their employment by Argyll Group and its subsidiaries and affiliates in order to make their purchases of homes in San Diego and Savannah, Georgia, titled in the names of Cross-Defendants Dona Miceli and Tracie McClain (the "Properties"):

a. Purchase of Dona Miceli, May 28, 2003, of 13772 Paseo Valle Alto, Poway, California 92064, the legal description of which is: Lot: 70; Unit: 3; City: Poway; Tract Number: 88-15; Recorder's Map Reference: Map 23467.

b. Purchase of Tracie S. McClain, July 10, 2003, of 3 Wakefield Place, Savanna Georgia 31411, the legal description of which is: Lot 1922 The Landings, Parcel 1-0317-01-038**, Additional subareas exist, See draw summary screen, Recorder's Map References: 254M 0156 0703 and 214X 433 0800 and 203H 0322 0599

62. Argyll Group received less than reasonably equivalent value in exchange for the transfer of the money and property to Cross Defendants and was insolvent at the time of the transfer or became insolvent as a result of the transfers.

63. The use of Argyll Group's funds in this way was a transfer made either with actual intent on the part of Cross-Defendants to hinder, delay, or defraud creditors. Cross-Defendants Dona Miceli and Tracie McClain are the recipients of unlawful transfers of the property of Argyll Group.

64. By reason of the foregoing, the transfers of money and property are avoidable pursuant to California Civil Code sections 3439.04(b), 3439.05 and 3439.07.

Amended First Amended Cross-Complaint

65. Cinnamon Bay is entitled to back distributions and has the status of a creditor pursuant to Delaware Code Section 18-606. Cinnamon Bay is therefore entitled to an attachment of the Properties and avoidance of the transfers.

66. Argyll Group is entitled to attach the Properties and to avoidance of the transfer of its funds to purchase the Properties.

SIXTH CAUSE OF ACTION

For Unjust Enrichment and for a Constructive Trust

(By All Cross-Complainants against all Cross-Defendants)

67. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 66.

68. Cross-Defendants purchased their homes with more than approximately \$1.2 million in funds that belonged to Argyll Group.

69. Cross-Defendants falsely represented to the mortgage lender for their homes, Countrywide Mortgage, that Cross Defendant Dona Miceli was an employee of Shelburne Capital and that Cross Defendant Tracie McClain was an employee of Hawthorne Energy.

70. On information and belief, Cross-Defendants Miceli used millions of dollars of Argyll Group's money to buy personal belongings.

71. On information and belief, Cross-Defendant McClain aided, assisted advised and/or encouraged Cross-Defendant Miceli, and vice versa, to undertake the acts complained of herein with the knowledge and intent of deceiving and/or defrauding Argyll Group's creditors, including Cross-Complainants Cinnamon Bay and Scott.

72. By virtue of these fraudulent acts, Cross Defendants hold the property described herein in a constructive trust for Cross-Complainants' benefit.

SEVENTH CAUSE OF ACTION

Amended First Amended Cross-Complaint

Intentional Misrepresentation/Fraud

(By Cinnamon Bay and Scott against Miceli and McClain)

73. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 72.

74. Prior to and during the meeting of the members in April 2003, and again in December 2003, Miceli and McClain represented to Scott that he was a Member and held an ownership interest in Argyll Group, and that Argyll Group was the sole Member and owned the Argyll Group entities, including but not limited to Argyll Group Equities, SW Argyll Group Investments, Argyll Group Funding Trust I, Argyll Group Capital, Argyll Group Energy, and Argyll Group Management; and that neither they nor Scott needed a written operating agreement to document these facts.

75. These representations were untrue, according to the positions now taken by Miceli and McClain.

76. The representations were material to Scott's decision to invest his time and effort in developing the business plan and helping Argyll Group (including subsidiaries) business succeed, and his continued efforts to see to it that Argyll Group complied with appropriate practices.

77. Miceli and McClain either knew that their representations were false or made the representations without believing them to be true and without knowing whether they were true or false.

78. Miceli and McClain made the representations intending that Scott would rely on them in rendering his services to the business and in having Cinnamon Bay make its contributions.

79. Scott did rely on these representations when he developed and presented his business plan to the Members at the April 2003 meeting, and agreed to have the business run without a formal written LLC Agreement; when he invested his time and effort in setting up the business administratively and recruited employees for it; and when he continued to work on behalf of the business and sought to ensure that its operations were conducted in an appropriate way.

Amended First Amended Cross-Complaint

80. Cross Complainants were justified in relying on the representations.

81. As a result of agreeing to the arrangements the extensive efforts Scott put in to manage Argyll Group business, Cross Complainants suffered damages including those attendant to what Miceli and McClain claim was and is his lack of an ownership interest in the business.

EIGHTH CAUSE OF ACTION

Interference with Prospective Economic Advantage

(By Scott and Cinnamon Bay against Miceli and McClain)

82. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 81.

83. An economic relationship existed between Scott and Argyll Group, and between Cinnamon Bay and Argyll Group, containing a probable future economic benefit or advantage to Scott and Cinnamon Bay.

84. Miceli and McClain knew of the existence of the relationships.

85. Miceli and McClain intentionally engaged in acts or conduct designed to interfere with or disrupt these relationships

86. The economic relationship was actually interfered with or disrupted, as Scott was deprived of any future relationship and Cinnamon Bay was deprived of its interest in Argyll Group and its subsidiary companies; and

87. The acts of the Miceli and McClain caused damage to Scott and Cinnamon Bay in an amount to be proved at trial.

NINTH CAUSE OF ACTION

For Declaratory Relief

(By all Cross-Complainants against Miceli and McClain)

Amended First Amended Cross-Complaint

88. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 87.

89. A real and present controversy exists over the rights and duties of the parties to the Argyll Group LLC Agreement.

90. Therefore Cross-Complainants seek a declaration that: Cinnamon Bay is a member of Argyll Group and is entitled to its "Limited liability company interest," which means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets, by definition under the Delaware Limited Liability Company Act, section 18-101(8); and further that Argyll Group is the sole Member of its various subsidiaries, including but not limited to Argyll Group Equities, SW Argyll Group Investments.

TENTH CAUSE OF ACTION

For Temporary and Permanent Injunction

(By all Cross-Complainants against all Miceli and McClain)

91. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 90.

92. Cross-Complainants are informed and believe that unless and until Miceli and McClain are restrained and enjoined by order of this Court, they will transfer funds and/or other property that would have otherwise been available to satisfy Cross-Complainants' judgment to various transferees for the purpose of hindering, delaying and obstructing efforts to satisfy the judgment from such funds and/or other property.

93. Cross Complainants will suffer irreparable injury if Miceli and McClain are not restrained and enjoined. In the alternative, Cross Complainant will be forced to institute a multiplicity of suits to obtain adequate compensation for their injuries.

ELEVENTH CAUSE OF ACTION

Amended First Amended Cross-Complaint

Wrongful Termination in Violation of Public Policy

(By Scott against Miceli and McClain)

94. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 93.

95. Scott, Cinnamon Bay and Argyll Group had an agreement under which Scott was employed as Chief Financial Officer of Argyll Group.

96. In performing his duties as CFO, Scott was directed by and reported to the President of Argyll Group, McClain, and the CEO of Argyll Group, Miceli.

97. Scott complained repeatedly to the CEO Miceli that the expenditures that Miceli was making of Argyll Group funds were out of line and not permitted under law. Scott also reported this to McClain through his father, Douglas McClain, Senior.

98. The public policy of the state of California is to encourage employees to observe and report violations of law.

99. Scott was terminated in retaliation for his reporting of the excessive disbursements made to Miceli and his attempt to prevent further fraud, waste and mismanagement.

100. By reason of the termination, Scott has been deprived of the agreed upon compensation for his services, \$10,000/month, loss of future income from activities of the companies now underway including funding vehicles for ATP Oil & Gas Corporation and Argyll P3 Management, a domestic and international hedge fund partnership with Joseph Salvani. Scott has also suffered consequential economic losses; and emotional distress.

TWELFTH CAUSE OF ACTION

Breach of Covenant of Good Faith and Fair Dealing

(By Scott and Cinnamon Bay against Miceli and McClain)

101. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 100.

Amended First Amended Cross-Complaint

102. In every contract there is an implied covenant of good faith and fair dealing providing that no party to the contract will engage in conduct for the purpose of denying to the other the benefits of the contract. If any party to the contract violates that obligation, that party is in breach of the contract and is liable for damages.

103. Miceli and McClain breached this covenant by preventing Scott and Cinnamon Bay from enjoying the benefits of the Argyll Group LLC Agreement and the Secondment Agreement between Cinnamon Bay and Argyll Group.

104. As a result of these breaches, Scott and Cinnamon Bay have been damaged by economic loss in an amount to be proved at trial.

THIRTEENTH CAUSE OF ACTION

Intentional Infliction of Severe Emotional Distress

(By Scott against Miceli and McClain)

105. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 104.

106. Because Scott's wife is Miceli's sister, Scott treated Miceli as a family member. Scott sought to help Miceli through his legal troubles and associated problems. Scott regarded the relationship as one of mutual trust and Miceli knew this.

107. Miceli and McClain have engaged in outrageous conduct, by denying Cinnamon Bay and Scott the interest and benefits to which they were entitled, by denying that they have ever so agreed to Cinnamon Bay's interest in Argyll Group by denying that Argyll Group owns its subsidiaries in accordance with the Argyll Group LLC Agreement, by plundering the assets of the company for which they were all responsible despite Scott's protests, and by falsely claiming that Scott was making unfounded claims regarding his ownership and their malfeasance to the estrangement of his extended family as well as business acquaintances.

108. In so acting, Miceli and McClain intended to cause Scott severe emotional distress, or
Amended First Amended Cross-Complaint

acted with reckless disregard of the probability of causing Scott to suffer emotional distress, given that they had the power or claimed to have the power to deny Scott and Cinnamon Bay any of the interest to which they were entitled. In so acting, Miceli and McCain knew and intended that they would not only threaten Scott's financial interests and well being, and that of his family, but that they would effectively drive a wedge between Scott and his wife, on the one hand, and the rest of Miceli's family, including between their respective children, and they knew and intended that this would cause Scott severe emotional harm.

109. Scott was witness to the outrageous conduct, as Miceli and McCain were aware.

110. By reason of their actions, Scott suffered severe emotional distress, mental distress, mental suffering, mental anguish, nervousness, anxiety, worry, mortification, shock, humiliation and indignity, as well as physical pain.

111. Scott therefore seeks reasonable compensation for the fears, anxiety and other emotional distress he has suffered and for the consequential financial losses he has incurred.

FOURTEENTH CAUSE OF ACTION

Money Had and Received

(By Cinnamon Bay on behalf of Argyll Group against all Cross-Defendants)

112. Cross-Complainants reallege and incorporate as if fully rewritten herein, the allegations of Paragraphs 1 through 111.

113. Cross Defendants have taken money from Argyll Group in amounts believed to exceed \$3,000,000.00. Argyll Group had possession of these funds through its subsidiary Argyll Group Equities, and that money was for the use or benefit of Argyll Group.

114. Cross Defendants have failed to pay any part of the \$3,000,000.00 to Argyll Group. Argyll Group is entitled to be paid back the full amount.

WHEREFORE, Cross-Complainants request a jury trial on all causes of action which entitle **Amended First Amended Cross-Complaint**

them to jury trial, and pray for judgment as follows:

AS TO THE FIRST CAUSE OF ACTION

(For Breach of Fiduciary Duty)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Cross-Complainants' losses in the principal amount of \$3,000,000 plus interest thereon, plus additional damages in an amount to be proven at trial.

2. For attorneys' fees and costs of suit incurred herein;

3. For such other and further relief as the Court may deem proper.

AS TO THE SECOND CAUSE OF ACTION

(For Conversion and Waste)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Cross-Complainants' losses in the principal amount of \$3,000,000 plus interest thereon, plus additional damages in an amount to be proven at trial.

2. For attorneys' fees and costs of suit incurred herein;

3. For such other and further relief as the Court may deem proper.

AS TO THE THIRD CAUSE OF ACTION

(For an Accounting)

1. For an accounting;

2. For attorneys' fees and costs of suit incurred herein;

3. For such other and further relief as the Court may deem proper.

AS TO THE FOURTH CAUSE OF ACTION

(For Breach of Contract)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Cross-Complainants' losses in the principal amount of \$3,000,000, plus interest thereon, plus **Amended First Amended Cross-Complaint**

additional damages in an amount to be proven at trial.

2. For such other and further relief as the Court may deem proper.

AS TO THE FIFTH CAUSE OF ACTION

(For Avoidance and Recovery of Fraudulent Transfers)

1. That the transfer(s) of funds and/or other property be annulled and declared void to the extent necessary to satisfy Cross-Complainant Argyll Group's claim, or alternatively, that Cross-Complainants recover the value of all funds and/or other property transferred to Cross-Defendants to the extent necessary to restore Argyll Group's losses;

2. That a temporary restraining order, preliminary injunction, and permanent injunction restraining Cross-Defendants from using, selling, transferring, hypothecating or otherwise dissipating or disposing of the funds and/or other property transferred to them;

3. That the judgment herein be declared a lien on the funds and/or other property transferred;

4. That an Order be entered declaring that the Cross-Defendants hold the funds and/or other property in trust for Cross-Complainants;

5. That Cross-Defendants be required to account to Argyll Group for all profits, rents, and proceeds earned from or taken in exchange for the funds and/or other property;

6. For punitive damages in an amount to be proven at trial;

7. For attorneys' fees and costs of suit incurred herein;

8. For such other and further relief as the Court may deem proper.

AS TO THE SIXTH CAUSE OF ACTION

(For Imposition of a Constructive Trust)

1. That an Order be entered declaring that Cross Defendants hold the funds and/or other property in trust for Cross- Complainants;

2. That an Order be entered compelling Cross Defendants to convey the funds and/or
Amended First Amended Cross-Complaint

other property to Cross Complainants;

3. For attorneys' fees and costs of suit incurred herein;
4. For such other and further relief as the Court may deem proper.

AS TO THE SEVENTH CAUSE OF ACTION

(For Intentional Misrepresentation)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Cross-Complainants' losses in the principal amount of \$3,000,000, plus interest thereon, plus additional damages in an amount to be proven at trial.

2. Punitive damages in an amount to be proven at trial;
3. For such other and further relief as the Court may deem proper.

AS TO THE EIGHTH CAUSE OF ACTION

(For Intentional Interference with Prospective Economic Advantage)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Cross-Complainants' losses in the principal amount of \$3,000,000 plus interest thereon, plus additional damages in an amount to be proven at trial.

2. For such other and further relief as the Court may deem proper.

AS TO THE NINTH CAUSE OF ACTION

(For Declaratory Relief)

1. For a declaration that Cinnamon Bay is a member of Argyll Group and is entitled to its "Limited liability company interest," which means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets, by definition under the Delaware Limited Liability Company Act, section 18-101(8); and further that Argyll Group is the sole Member of Argyll Equities, SW Argyll Group Investments, Argyll Funding Trust I, Argyll Capital, Argyll Energy, and Argyll Management, and any other subsidiaries that may have been formed.

Amended First Amended Cross-Complaint

2. For such other and further relief as the Court may deem proper.

AS TO THE TENTH CAUSE OF ACTION

(For Injunctive Relief)

1. For injunctive relief restraining Cross-Defendants from transferring, encumbering, dissipating or otherwise disposing of any of the funds or other property received by them from Argyll Group or any entity thereof;
2. For attorneys' fees and costs of suit incurred herein;
3. For such other and further relief as the Court may deem proper.

AS TO THE ELEVENTH CAUSE OF ACTION

(For Wrongful Termination in Violation of Public Policy)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Cross-Complainant's losses in the principal amount of \$1,000,000, plus interest thereon, plus additional damages in an amount to be proven at trial.
2. For such other and further relief as the Court may deem proper.

AS TO THE TWELFTH CAUSE OF ACTION

(For Breach of the Implied Covenant of Good Faith and Fair Dealing)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Cross-Complainants' losses in the principal amount of \$3,000,000, plus interest thereon, plus additional damages in an amount to be proven at trial.
2. For such other and further relief as the Court may deem proper.

AS TO THE THIRTEENTH CAUSE OF ACTION

(For Intentional Infliction of Emotional Distress)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Cross-Complainants' losses in the principal amount of \$1,000,000, plus interest thereon, plus
Amended First Amended Cross-Complaint

additional damages in an amount to be proven at trial.

2. Punitive damages in an amount to be proven at trial;
3. For attorneys' fees and costs of suit incurred herein;
4. For such other and further relief as the Court may deem proper.

AS TO THE FOURTEENTH CAUSE OF ACTION

(For Money Had and Received)

1. Damages in an amount to be proven at trial; but no less than the amount necessary to restore Argyll Group's losses in the principal amount of \$3,000,000, plus interest thereon, plus additional damages in an amount to be proven at trial.

2. For attorneys' fees and costs of suit incurred herein;
3. For such other and further relief as the Court may deem proper.

Dated: May 11, 2005

SHUSTAK JALIL & HELLER

By: _____
Erwin J. Shustak
Stephen S. Lux
Teresa M. Gillis
James P. Jalil (New York office)
Attorneys for Defendant William Scott and Cross
Complainants William Scott and Cinnamon Bay
Company LLC, on its own behalf and derivatively for
Argyll Group LLC

VERIFICATION

I, William F. Scott, declare:

1. I am a named defendant in this action, and I am also a cross-complainant. I am also the owner and sole manager of Cinnamon Bay Company, LLC, (“Cinnamon Bay”) a Delaware Limited Liability Company, which is also a cross-complainant herein.

2. I have read the attached Amended First Amended Cross-Complaint and the factual allegations contained therein are known by me to be true, unless otherwise stated on information and belief, in which instances I am so informed and do so believe.

This verification was made in San Diego, California, under penalty of perjury under the laws of the State of California, this ____day of August, 2005.

William F. Scott, individually
and on behalf of Cinnamon Bay