

1 **KRONENBERGER ROSENFELD, LLP**
 2 Karl S. Kronenberger (CA Bar No. 226112)
 3 Virginia Sanderson (CA Bar No. 240241)
 4 Ansel J. Halliburton (CA Bar No. 282906)
 5 150 Post Street, Suite 520
 6 San Francisco, CA 94108
 7 Telephone: (415) 955-1155
 8 Facsimile: (415) 955-1158
 9 karl@KRInternetLaw.com
 10 ginny@KRInternetLaw.com
 11 ansel@KRInternetLaw.com

12 Attorneys for Plaintiffs Proper Media, LLC,
 13 Christopher Richmond, and Drew Schoentrup

14 **SUPERIOR COURT OF CALIFORNIA**
 15 **COUNTY OF SAN DIEGO**

16 **Proper Media, LLC**, a California limited
 17 liability company,
 18 **Christopher Richmond**, an individual,
 19 and **Drew Schoentrup**, an individual,

20 Plaintiffs,

21 v.

22 **Vincent Green**, an individual,

23 Defendants.

Case No. 37-2017-00016433-CU-BC-CTL

COMPLAINT

DEMAND FOR JURY TRIAL



1 Plaintiffs Proper Media, LLC (“Proper Media”), Christopher Richmond
2 (“Richmond”), and Drew Schoentrup (“Schoentrup”) (collectively, “Plaintiffs”), by and
3 through their undersigned counsel, allege as follows:

4 INTRODUCTION

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

12 2. As part of this scheme, Defendant Vincent Green (“Green”) intentionally
13 violated his duties to Plaintiffs and surreptitiously, and now overtly, caused profound
14 damage for Plaintiffs.

15 3. Defendant Green is a former employee and minority member of Plaintiff
16 Proper Media, LLC, a San Diego-based Internet media company. Individual Plaintiffs
17 Richmond and Schoentrup are the majority members of Proper Media. Under Proper
18 Media’s Operating Agreement, each member owes fiduciary duties both to the company
19 and to its other members. These fiduciary duties include duties of loyalty, care, and good
20 faith, and any actions taken adversely to Proper Media are expressly prohibited.

21 4. Proper Media manages several top-ranked web properties, including
22 significant operations of Snopes. Proper Media’s management of Snopes is governed by
23 a written General Services Agreement.

24 5. Snopes is owned by Bardav Inc. Bardav was founded in 2003 by David
25 Mikkelson (“Mikkelson”) and his then wife, Barbara Mikkelson (“Barbara”). Mikkelson and
26 Barbara each owned one share, or 50%, of the equity in Bardav.

27 6. After a contentious divorce, Barbara sold her equity in Bardav to Proper
28 Media, which was already managing significant operations of Snopes.



1 7. Because Bardav elected pass-through tax treatment under Subchapter S of
2 the Internal Revenue Code, Bardav’s shareholders may not be companies (such as
3 Proper Media, which is a limited liability company). 26 U.S.C. § 1361(b)(1)(B). The deal
4 was therefore structured as a sale by Barbara to Proper Media’s individual shareholders
5—including Green, who held a small minority stake in Proper Media. Proper Media’s
6 members would only hold the shares for the benefit of Proper Media. Accordingly, Bardav
7 purported to approve the issuance of fractional shares in the names of Proper Media’s
8 five members, including the individual Plaintiffs and Green. However, no fractional shares
9 were ever actually issued by Bardav.

10 8. Proper Media, Richmond, and Schoentrup have made all the payments
11 under the purchase agreement and related financing agreements. Green, however, has
12 made no payments under the purchase agreement and related financing agreements.

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

19 10. Beginning at least as early as February 2017, Green began blocking Proper
20 Media’s access to the personnel, accounts, tools, and data necessary to manage
21 Snopes. On information and belief, Green—working with Mikkelson—intentionally did so
22 to take over Snopes and to prevent Proper Media from performing under the General
23 Services Agreement.

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

27 12. Through this misconduct, Green breached the Proper Media Operating
28 Agreement as well as his fiduciary duties to Plaintiffs.



1 design, web server management, and internet content management systems.

2 23. Plaintiffs Richmond and Schoentrup co-founded Proper Media in 2015 and,
3 together, are Proper Media's majority equity holders. Until recently, there were three
4 other minority members of Proper Media, including Green.

5 24. During the relevant timeframe, the ownership of Proper Media was divided
6 among the members as follows: Plaintiff Schoentrup owned 40%; Plaintiff Richmond
7 owned 40%; non-party Ryan Miller owned 6.66%; Defendant Green owned 6.66%; and
8 non-party Tyler Dunn owned 6.68%.

9 **The Proper Media Operating Agreement**

10 25. Proper Media is governed by the Limited Liability Company Agreement of
11 Proper Media, LLC (the "Operating Agreement"), which all five of its members signed.

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

14 H. Fiduciary Duties of the Members.

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

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

28 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.

1 managing all content and advertising accounts for Snopes. In order to perform these
2 management services, Bardav gave Proper Media control of Snopes' email hosting, web
3 servers, Snopes' content management system and other key accounts and systems.
4 Proper Media also relied on third-party project management tools, such as Slack and
5 Asana, to manage Snopes-related data.

6 33. Proper Media performed all obligations required of it under the General
7 Services Agreement at all times from the inception of the General Services Agreement
8 until prevented from doing so by Green, as outlined below.

9 **Acquisition of Barbara Mikkelson's Equity in Bardav**

10 34. On information and belief, in or about 2014, the Mikkelsons began what
11 would prove to be a contentious divorce. As a result, by 2016, Barbara sought to sell her
12 equity interest in Bardav.

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

20 36. The sale of Barbara's equity in Bardav to Proper Media's five members
21 closed on July 1, 2016 (the "Closing").

22 37. On August 26, 2016, all of Bardav's shareholders—namely, Mikkelson and
23 the five members of Proper Media—signed a shareholder and board resolution permitting
24 the issuance of fractional shares so that Proper Media's members could each hold a
25 fraction of Barbara's single share of Bardav for Proper Media's benefit. This resolution
26 was executed as an amendment to Bardav's original bylaws; however, Plaintiffs have
27 recently discovered those bylaws do not exist. Moreover, no fractional shares were ever
28 issued by Bardav.

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

9 **Defendant’s Misconduct and Withdrawal from Proper Media**

10 39. On information and belief, beginning in or around the start of 2017,
11 Mikkelson conspired with Green to seek to obtain a controlling interest in Bardav and to
12 exclude Proper Media from its operation.

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

18 41. On Saturday, February 18, 2017, Richmond and Schoentrup had an in-
19 person conversation with Green at Proper Media’s offices. When confronted, Green
20 admitted that he was not acting in the best interest of Proper Media. After this
21 conversation, Green never returned to the Proper Media office, and performed no further
22 work for Proper Media. On Tuesday, February 21, 2017—the second business day after
23 the conversation described above—without Richmond’s or Schoentrup’s knowledge or
24 consent, Green removed Richmond’s and Schoentrup’s access to the Snopes content
25 management system. Under the General Services Agreement, Proper Media was, *and*
26 *still is*, responsible for operating this content management system. Without access,
27 Proper Media cannot fulfill its obligations under the General Services Agreement.
28 Furthermore, Green instructed three Proper Media employees not to return to the office,



1 and he removed over \$10,000 of equipment used by these employees from the Proper
2 Media office.

3 42. On or about March 8, 2017, Green added himself to the “Snopes.com Staff”
4 page on Snopes, which lists his role as “Business Development”. *Snopes.com Staff*,
5 <http://www.snopes.com/snopes-staff/> (last accessed Apr. 27, 2017; archived at
6 <https://perma.cc/BRX7-C99L>).

7 43. On March 10, 2017, again without Richmond’s or Schoentrup’s knowledge
8 or consent, Green removed Snopes-related data from Proper Media’s communication
9 and project management tools, including Slack and Asana. Without access to this data,
10 Proper Media cannot fulfill its obligations under the General Services Agreement.

11 44. Also on March 10, 2017, Mikkelson purported to terminate the General
12 Services Agreement, to be effective in 60 days, *i.e.*, on or about May 9, 2017.

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

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

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

22 48. Under Section III.D of the Operating Agreement, Green’s resignation from
23 Proper Media removed him as a member of the company, and invoked a Buy-Sell
24 Agreement which is part of the Operating Agreement. Section III.D reads:

25 D. Withdrawal, Termination or Death of a Member. Should a
26 Member die, be terminated from **or withdraw from the Company by**
27 **choice**, the remaining Members will have the option to buy out that
28 Member's Membership Interest in the Company in accordance with [the
Buy-Sell Agreement].



1 (emphasis added)

2 49. In his resignation notice, Green expressly invoked the Buy-Sell Agreement.
3 Under the terms of the Buy-Sell Agreement, effective as of his resignation, Green was
4 deemed to have offered to sell his equity in Proper Media to its remaining members, and
5 the remaining members were deemed to have agreed to buy that equity in proportion to
6 their holdings.

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

10 51. Richmond and Schoentrup have jointly offered to mediate with Green. As of
11 the filing of this lawsuit, Green has not agreed to a mediation session.

12 **FIRST CLAIM FOR RELIEF**

13 **Breach of Contract**

14 **(By Plaintiffs Richmond and Schoentrup Against Green)**

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

17 53. The Operating Agreement is a valid written contract.

18 54. Plaintiff Richmond, Plaintiff Schoentrup, and Defendant Green are each
19 parties to the Operating Agreement.

20 55. Plaintiffs performed all of their obligations under the Operating Agreement.

21 56. Green's actions as stated herein, including, among other things, conspiring
22 with Mikkelson against Plaintiffs, intentionally excluding Plaintiffs from the personnel,
23 accounts, tools, and data necessary to fulfill Proper Media's obligations under the
24 General Services Agreement, conspiring with Mikkelson to frustrate and/or terminate the
25 General Services Agreement, and concealing the foregoing from Plaintiffs, constitute a
26 breach of the Operating Agreement in that Green has broken his promise not to act
27 adversely to Proper Media.

28 57. As a direct and proximate result of Green's conduct, Plaintiffs have suffered



1 actual damages, in an amount to be determined according to proof at trial.

2 **SECOND CLAIM FOR RELIEF**

3 **Breach of Fiduciary Duty**

4 **(By All Plaintiffs Against Green)**

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

7 59. Under California statutory and common law, as well as under section III.H.1
8 of the Operating Agreement, Green owed fiduciary duties of loyalty and care to Proper
9 Media.

10 60. Under California statutory and common law, as well as under section III.H.2
11 of the Operating Agreement, Green owed a fiduciary duty of loyalty to Proper Media to
12 refrain from competing with Proper Media or otherwise acting on behalf of a party having
13 an adverse interest to Proper Media.

14 61. Under section III.H.3 of the Operating Agreement, Green had fiduciary
15 duties of disclosure, good faith, and fair dealing to Plaintiffs, and each of them.

16 62. Under section VI.C of the Operating Agreement, as an officer of Proper
17 Media, Green had additional fiduciary duties to Plaintiffs, and each of them.

18 63. Green's actions as stated herein, including, among other things, conspiring
19 with Mikkelson against Plaintiffs, intentionally excluding Plaintiffs from the personnel,
20 accounts, tools, and data necessary to fulfill Proper Media's obligations under the
21 General Services Agreement, conspiring with Mikkelson to frustrate and/or terminate the
22 General Services Agreement, and concealing these and other acts from Plaintiffs,
23 constitute a breach of Green's fiduciary duties to Plaintiffs.

24 64. As a direct and proximate result of Green's conduct, Plaintiffs have suffered
25 substantial economic loss and other general and specific damages, all in an amount to
26 be determined according to proof at trial.

27 65. Green acted maliciously, oppressively, and fraudulently, and Plaintiffs are
28 entitled to punitive and exemplary damages.

1 **FOURTH CLAIM FOR RELIEF**

2 **Civil Conspiracy**

3 **(By Plaintiff Proper Media Against Green)**

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

6 76. Sometime between January 2017 and the present, Green knowingly and
7 willfully conspired with Mikkelson, and attempted to (1) convert a portion of Proper
8 Media's interest in Bardav into Green's individual interest, (2) join forces such that,
9 together, Mikkelson and Green would purportedly own a controlling share of Bardav, (3)
10 frustrate and/or prevent Plaintiffs' access to the personnel, tools, data, and accounts
11 necessary for Proper Media to perform under the General Services Agreement, and (4)
12 terminate the General Services Agreement.

13 77. In furtherance of this conspiracy and agreement, Green engaged in
14 fraudulent representations, omissions, and concealment of facts, acts of cover-up, and
15 statements calculated to obtain Plaintiffs' trust for Green's and Mikkelson's benefit.

16 78. Green's actions were in violation of the rights of Plaintiffs, and committed in
17 furtherance of the above conspiracies and agreements. Moreover, Green lent aid and
18 encouragement and knowingly ratified and adopted the acts of his co-conspirator.

19 79. As a proximate result of the wrongful acts herein alleged, Plaintiffs have
20 suffered substantial economic loss and other general and specific damages, all in an
21 amount to be determined according to proof at trial.

22 80. Green acted maliciously, oppressively, and fraudulently, and Plaintiffs are
23 entitled to punitive and exemplary damages.

24 **FIFTH CLAIM FOR RELIEF**

25 **Constructive Trust**

26 **(By Plaintiff Proper Media Against Green)**

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



1 82. A constructive trust is an equitable remedial device by which a court
2 adjudges specific restitution of a received benefit. Constructive trusts may be imposed
3 when a defendant has acquired legal title to property or money under such
4 circumstances that he or she may not in good conscience retain the beneficial interest in
5 the property, and in such a situation, equity converts the legal titleholder into a trustee
6 holding the title for the benefit of those entitled to the ownership thereof.

7 83. Proper Media bought Barbara Mikkelson's single share, i.e., 50% of the
8 equity in Bardav.

9 84. Proper Media, Richmond, and Schoentrup have made all payments on the
10 financing and purchase of Barbara Mikkelson's equity in Bardav. Green has paid nothing,
11 but Proper Media, Schoentrup, and Richmond have paid over \$35,000 for the Bardav
12 equity he holds for Proper Media's benefit.

13 85. By agreement of all parties, Proper Media's equity in Bardav was held in
14 the names of the individual members of Proper Media solely because, as an LLC, Proper
15 Media was incapable of owning an interest in Bardav, an S Corporation.

16 86. At all times, Green understood that a portion of the equity in Bardav,
17 although held in his name, belonged to Proper Media.

18 87. Green has now tortiously and unlawfully conspired with Mikkelson
19 regarding the Bardav equity held in Green's name in order to give Mikkelson a controlling
20 interest in Bardav.

21 88. A constructive trust should be imposed for the purpose of preventing unjust
22 enrichment by Green in the value of the equity in Bardav held nominally by Green for the
23 benefit of Proper Media.

24 89. Green will gain an unconscionable advantage if he retains the value of the
25 Bardav equity he holds for Proper Media's benefit. A constructive trust should be
26 imposed to prevent this unjust enrichment. It is against equitable principles to permit
27 Green to keep his equity in Bardav when he obtained it by conspiring against its true
28 owner, Proper Media.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

90. Green's wrongful acts, as stated herein, have caused and will continue to cause Green to be unjustly enriched.

91. Proper Media will be irreparably harmed if Green is allowed vote against Proper Media's interests using the voting power of the equity in Bardav that he holds nominally but for Proper Media's benefit.

PRAYER FOR RELIEF

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

- 1. A declaration that Green is no longer a member of Proper Media;
- 2. A declaration that Proper Media is the beneficial owner of the Bardav equity that Green holds from the purchase of Barbara's equity;
- 3. Imposition of a constructive trust over Green's shares in Bardav for the benefit of Proper Media;
- 4. Compensatory damages in an amount to be proved at trial;
- 5. Exemplary damages pursuant to California Civil Code § 3294;
- 6. The costs of the suit;
- 7. Interest on the sum of the compensatory and exemplary damages; and
- 8. Such other relief as the Court may deem proper.

Respectfully Submitted,

DATED: May 4, 2017

KRONENBERGER ROSENFELD, LLP

By: *Karl S. Kronenberger*
Karl S. Kronenberger


Attorneys for Plaintiffs Proper Media, LLC,
Christopher Richmond, and Drew
Schoentrup

1 **REQUEST FOR JURY TRIAL**

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

4
5 DATED: May 4, 2017

KRONENBERGER ROSENFELD, LLP

6
7 By: 
Karl S. Kronenberger

8 Attorneys for Plaintiffs Proper Media, LLC,
9 Christopher Richmond, and Drew
10 Schoentrup

