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DISTRICT COURT
CLARK COUNTY, NEVADA

JOHNSON LAW GROUP, P.C., a Nevada
professional corporation; ANAN MARK
ELDREDGE, an individual,

Plaintiffs,

v.

ADVANCED CLIENT SOLUTIONS, LLC, a
Nevada limited liability company; KENNETH
KESTENBAUM, an individual; PAUL
CONSTANTINOU, an individual; DOES I
through X, inclusive; and ROES I through X,
inclusive.

Defendants.

Case No.: A612447
Dept. No.: XXV

(Business Court)

ANSWER AND FIRST AMENDED COUNTERCLAIM

Defendants Advanced Client Solutions, LLC, Kenneth Kestenbaum, and Paul Constantinou through their attorney of record for Answer to Johnson Law Group's and Mark Eldredge's Complaint on file herein, answers, denies and alleges as follows.

1. In answering the allegations contained in paragraphs 1, 2, 3, 4, 5, 10 and 56 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

2. In answering the allegations contained in paragraphs 6, 7, 9, 12, 14, 15, 17, 18, 19, 20, 21, and 57 of Plaintiffs' Complaint, Defendants are without knowledge or information sufficient

1 to form a belief as to the truth of the allegations contained therein; and therefore, deny the same.

2 3. In answering the allegations contained in paragraphs 42, 48, 51, 55, and 60 of
3 Plaintiffs' Complaint, Defendants repeat and re-allege each and every response thereto.

4 4. In answering the allegations contained in paragraphs 8, 11, 13, 16, 22, 23, 24, 25, 26,
5 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 52, 53, 54, 58, 59,
6 61, 62, and 63 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

7 **AFFIRMATIVE DEFENSES**

8 1. Plaintiffs are not entitled to an accounting of answering Defendants.

9 2. Answering Defendant has no duty to account.

10 3. Answering Defendants allege that there has been a stated account.

11 4. Insofar as any alleged breach of contract is concerned, Plaintiffs failed to give these
12 answering Defendants timely notice thereof.

13 5. Answering Defendants have not breached any contract.

14 6. Answering Defendants have substantially performed the contract.

15 7. Answering Defendants were justified in their failure to perform, if any.

16 8. Plaintiffs' claims, and each of them, are barred due to fraud.

17 9. The claims of Plaintiffs have been waived as a result of the acts and the conduct of
18 the Plaintiffs.

19 10. The claim for breach of contract is barred as a result of the failure to satisfy
20 conditions precedent.

21 11. The claims, and each of them, for breach of contract are barred by the failure to
22 satisfy conditions subsequent.

23 12. The claims of Plaintiffs are barred as a result of lack of good faith.

24 13. Answering Defendants at all times herein acted reasonably and in good faith in
25 discharging their obligations and duties, if any.

26 14. These answering Defendants acted in conformity with the law and with
27 reasonableness in discharging their duties.
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1 15. Plaintiffs have received everything they were entitled to receive from their agreement
2 with answering Defendants.

3 16. These answering Defendants have properly and legally fulfilled their duties and
4 obligations, if any, to the Plaintiffs.

5 17. Plaintiffs failed to complete the work they agreed to perform.

6 18. Any and all actions complained of by Plaintiffs were approved or ratified by
7 Plaintiffs.

8 19. Plaintiffs breached their fiduciary duties to answering Defendants.

9 20. Plaintiffs owed fiduciary duties to answering Defendants to exercise due care, a duty
10 of loyalty and a duty to act in answering Defendants' best interest.

11 21. Answering Defendants fulfilled their duty to deal with Plaintiffs in good faith.

12 22. Answering Defendants committed no intentional acts meant to disrupt or harm
13 Plaintiffs.

14 23. No disruption or harm occurred to Plaintiffs.

15 24. Plaintiffs' cause of action for breach of the covenant of good faith and fair dealing is
16 barred because Plaintiffs breached their reciprocal covenant of good faith and fair dealing.

17 25. Answering Defendants have no duty towards Plaintiffs.

18 26. Answering Defendants have committed no acts of dominion over Plaintiffs'
19 property/chattels.

20 27. Answering Defendants' acts of dominion, if any, were not wrongful.

21 28. The claims, and each of them, for wrongful detention of personal property and
22 conversion, are barred by the failure to satisfy conditions precedent.

23 29. Plaintiffs should not be granted their declaration.

24 30. The claims are barred by Plaintiffs' unclean hands.

25 31. Plaintiffs' claim is barred as a result of its prior wrongful conduct.

26 32. At all times, these answering Defendants acted in a legally permissible way.

27 33. The claims of the Plaintiffs have been waived as a result of the acts and the conduct
28 of the Plaintiffs.

1 34. Answering Defendants made no false representations of material fact which they
2 knew to be false.

3 35. Answering Defendants had no intent to defraud Plaintiffs.

4 36. Answering Defendants did not intend for Plaintiffs to rely on misrepresentations.

5 37. Plaintiffs did not detrimentally rely on misrepresentations.

6 38. Answering Defendants' conduct was not oppressive, fraudulent, nor committed with
7 malice.

8 39. Answering Defendants' acts were not misleading in any material way.

9 40. Plaintiffs have not been injured as a result of any deceptive acts of answering
10 Defendants.

11 41. Answering Defendants committed no deceptive acts directed at customers.

12 42. Answering Defendants have not made any false or misleading statements in a
13 commercial setting.

14 43. Answering Defendants' statements have not actually deceived and are not likely to
15 deceive any part of an intended audience.

16 44. Answering Defendants is not exercising exclusive ownership of the Property.

17 45. Answering Defendants should not be enjoined or restricted from exercising any rights
18 regarding the Property.

19 46. Answering Defendants have not made any threats towards Plaintiffs.

20 47. Answering Defendants' threatened actions, if any, are not wrongful.

21 48. Answering Defendants enjoy a reasonable probability of success.

22 49. No irreparable harm will come to Plaintiffs by not enjoining answering Defendants.

23 50. Irreparable harm will come to answering Defendants if enjoined.

24 51. Answering Defendants committed no intentional acts intended or designed to disrupt
25 contractual relationships of Plaintiffs.

26 52. No actual disruption of contract occurred to Plaintiffs' contracts.

27 53. Plaintiffs do not enjoy any prospective contractual relationships between themselves
28 and third parties.

1 54. The Plaintiffs did not confer any benefit upon answering Defendants by either
2 substantially performing or satisfying conditions precedent to the contract.

3 55. Answering Defendants have not retained any benefit which in equity and good
4 conscience belongs to Plaintiffs.

5 56. To the extent that answering Defendants have not received any benefits from
6 Plaintiffs, answering Defendants have not been unjustly enriched.

7 57. Defendants have not retained any benefit which in equity and good conscience
8 belongs to Plaintiffs.

9 58. Plaintiffs' claims are merely conjecture and speculation.

10 59. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged
11 herein, insofar as sufficient facts were not available after reasonable inquiry upon filing of this
12 Answer, therefore, these answering Defendants reserve the right to amend their Answer to add
13 affirmative defenses should the necessity arise.

14 **DEFENDANTS' COUNTERCLAIM AGAINST PLAINTIFFS**

15 Counterclaimants, Advanced Client Solutions, LLC ("ACS"), Kenneth Kestenbaum
16 ("Kestenbaum") and Paul Constantinou ("Constantinou") by and through their attorney of record,
17 allege and complain as follows:

18 1. Johnson Law Group, P.C. ("JLG") is a Nevada professional corporation authorized to
19 do business in Clark County, Nevada.

20 2. Anan Mark Eldredge ("Eldredge") is an individual and a licensed attorney in the State
21 of Nevada, residing in Clark County, Nevada.

22 **THE CONSUMER DEBT RELIEF BUSINESS**

23 3. Kestenbaum established one of Nevada's first licensed consumer debt services
24 organizations, Consumer Debt Relief Group ("CDRG").

25 4. For years, CDRG operated both legally and ethically to help thousands of distressed
26 consumers.

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1 17. In reliance upon the Service Agreement, ACS has incurred significant liabilities and
2 expenses to provide all the non-legal administrative and back end support services for JLG.

3 **SERVICE AGREEMENT COMPENSATION AND TERMINATION**

4 18. In exchange for the numerous and extensive duties and services ACS was required to
5 provide to JLG, JLG agreed to compensate ACS by way of monthly administration fees (the
6 “Administration Fee”).

7 19. The Service Agreement set the Administration Fee as \$500,000 per month.

8 20. As JLG’s monthly expenses vary dramatically between months, JLG and ACS
9 developed a course of conduct whereby they would regularly agree to adjust the Administration Fee
10 based upon monthly expenses.

11 21. In the event that either party agreed to terminate the Service Agreement, 30 days
12 written notice was required.

13 22. Because ACS’s capital investment greatly eclipsed that of JLG, JLG agreed that if it
14 wished to terminate the Service Agreement, a one-time termination fee of \$2,000,000 (“Termination
15 Fee”) would be due to ACS.

16 **THE INCEPTION OF JLG UNDER CROWDER**

17 23. With the Service Agreement in place, ACS and JLG began working together.

18 24. The business between JLG and ACS grew rapidly and before long Crowder decided
19 to hire another full-time Nevada licensed attorney to assist in maintaining JLG’s various legal and
20 ethical contractual duties and obligations.

21 25. In Fall of 2006, Crowder hired Eldredge, who was a recent law school graduate with
22 no prior experience of which to speak.

23 26. Because Eldredge was a recent law school graduate, Crowder assured Kestenbaum,
24 Constantinou and Eldredge that Eldredge would be able to perform the duties required of him with
25 adequate supervision and training.

26 27. Under the supervision of Crowder and as a result of the Service Agreement, the day-
27 to-day operations of the business grew substantially over the next year.

28 28. In Spring 2007, Crowder agreed to sell a portion of his interest in JLG to Eldredge.

1 29. On August 31, 2007, Eldredge acquired a 25% interest in JLG.

2 30. Ultimately, by the end of 2007, Crowder agreed to sell his remaining interest in JLG
3 to Eldredge.

4 **THE DIFFICULTIES OF THE BUSINESS UNDER ELDREDGE**

5 31. Eldredge was unable to manage JLG.

6 32. After acquiring Crowder's interests, Eldredge failed to keep regular hours in the
7 office, showing up on an inconsistent basis and for only a few hours a day.

8 33. In response to Eldredge's refusal to work, Kestenbaum and ACS expressed concerns
9 over Eldredge's refusal to maintain a regular business schedule.

10 34. Eldredge promised to improve his work ethic.

11 35. Despite promises that he would increase his work ethic, Eldredge was simply
12 unprepared and incapable of managing JLG.

13 36. Indeed, Eldredge's incompetence has drawn the attention of various state bar
14 associations.

15 **THE DISPUTE**

16 37. By September 2009, the parties knew they needed to part ways with Eldredge.

17 38. ACS, Kestenbaum, and Constantinou approached Eldredge with a proposal to sell
18 ACS to Eldredge to which Eldredge was receptive.

19 39. After providing Eldredge all the access to ACS's accounting records, Eldredge was
20 ultimately unwilling or unable to secure financing and the deal fell through.

21 40. Desperate to part ways with Eldredge, Kestenbaum, Constantinou and JLG's part
22 time attorney Laurel A. Duffy ("Duffy") began negotiating with Eldredge to broker a deal whereby
23 Duffy would purchase Eldredge's interest in JLG in February 2010.

24 41. The parties exchanged drafts of an agreement and Eldredge even accepted \$20,000 as
25 cash for payment of the transaction.

26 42. During negotiations for the sale of JLG company to Duffy, Eldredge and
27 Constantinou met, along with Kestenbaum, ACS employee Dan Demonte, and attorney Josh Corelli
28 of the firm Marquis & Aurbach and Eldredge's attorney's Cami Perkins and Joseph Ganley of the

1 firm Hutchison & Steffen.

2 43. At this meeting in early January 2010, the parties agreed that, among other terms,
3 ACS would pay \$50,000.00 cash to Eldredge as an incentive for Eldredge to sell his law firm to
4 another lawyer.

5 44. As negotiations continued Eldredge expressed his impatience for the length of time it
6 was taking to complete the deal.

7 45. In order to placate Eldredge and keep the deal from falling through Constantinou
8 agreed to loan Eldredge twenty-thousand dollars (\$20,000.00) as bridge financing until the deal
9 could be finalized.

10 46. This oral agreement and the surrounding discussion was heard and witnessed by two
11 individuals, Dan Demonte, an employee of ACS and friend to both Constantinou and Eldredge and
12 by Marc Segal the accountant for ACS and JLG.

13 47. On January 26, 2010, Constantinou handed Eldredge twenty-thousand dollars
14 (\$20,000.00) cash and Eldredge signed a receipt for this money. A true and correct copy of this
15 receipt is attached hereto as Exhibit 1.

16 48. The receipt was witnessed by Marc Segal who signed the receipt as a witness.

17 49. As Eldredge backed out of the deal that was being negotiated and the transaction was
18 never finalized Constantinou has requested on multiple occasions that Eldredge return the twenty
19 thousand dollars however to date Eldredge has refused to return Constantinou's money.

20 50. Unbeknownst to Duffy, Kestenbaum, Constantinou and ACS, Eldredge never
21 intended to sell his interest.

22 51. Eldredge intended to acquire ACS without having to use any of his own money, or
23 pay ACS the \$2,000,000 termination fee.

24 **ELDREDGE AND JLG'S BAD FAITH LITIGATION**

25 52. Despite knowing that ACS, Kestenbaum and Constantinou were all represented by
26 counsel, JLG and Eldredge filed a complaint and obtained an ex parte temporary restraining order
27 against ACS, Kestenbaum and Constantinou.

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1 taking away all of ACS's administrative services, transferring ACS's services to another law firm,
2 failing to provide a notice of termination of the Service Agreement, and failing to pay the \$2 million
3 termination fee.

4 79. Counterclaimants have performed all duties as required by the Service Agreement
5 and satisfied all conditions precedent.

6 80. As a direct and proximate cause of the acts of Eldredge and JLG, Counterclaimants
7 have been damaged in excess of \$10,000.

8 81. It has become necessary for Counterclaimants to engage the services of an attorney to
9 prosecute this action, and therefore, Counterclaimants are entitled to costs and attorneys fees as
10 special damages.

11 **SECOND CAUSE OF ACTION**

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

12 82. Defendants/Counterclaimants repeat and re-allege each and every allegation
13 contained above and incorporates the same here by reference.

14 83. Every contract contains a covenant of good faith and fair dealing.

15 84. The parties entered into the valid and binding Service Agreement.

16 85. JLG and Eldredge have repeatedly and continuously breached the Service Agreement.

17 86. Under the guise of cooperation and maintaining the status quo while the parties are in
18 litigation, JLG and Eldredge misrepresented and gained access to ACS's records and office only to
19 transfer all of its assets and ACS' stolen property to another company.

20 87. It has become necessary for Counterclaimants to engage the services of an attorney to
21 prosecute this action, and therefore, Counterclaimants are entitled to costs and attorneys fees as
22 special damages.

23 **THIRD CAUSE OF ACTION**

(Fraud by Eldredge)

24 88. Defendants/Counterclaimants repeat and re-allege each and every allegation
25 contained above and incorporates the same here by reference.

26 89. Eldredge made material misrepresentations to ACS, Constantinou and Kestenbaum.

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1 144. Defendant/Counterclaimant Constantinou repeats and re-alleges each and every
2 allegation contained above and incorporates the same here by reference.

3 145. Constantinou and Eldredge entered into a valid and enforceable agreement under
4 which Constantinou loaned twenty-thousand dollars (\$20,000) to Eldredge in order to bridge the gap
5 until the contemplated transaction could be completed.

6 146. Constantinou performed all conditions, covenants, and promises required on his part
7 to be performed in accordance with the terms and conditions of the oral contract by delivering the
8 twenty-thousand dollars (\$20,000) to Eldredge.

9 147. Eldredge breached the oral agreement by failing to return the money to Constantinou.
10 Constantinou has repeatedly requested that Eldredge return his money but to date Eldredge has
11 refused to return the money to Constantinou.

12 **148.** As a result of Eldredge's breach of the oral contract, Constantinou has been deprived
13 of twenty-thousand dollars (\$20,000).

14 **TWELTH CLAIM FOR RELIEF**
15 (Fraud by Eldredge as to Constantinou)

16 149. Defendant/Counterclaimant Constantinou repeats and re-alleges each and every
17 allegation contained above and incorporates the same here by reference.

18 150. Eldredge knowingly made false statements, concealed material facts and made false
19 promises to Constantinou. Specifically, Eldredge induced Constantinou to enter into the agreement
20 and tender money, by stating to Constantinou that Eldredge would complete the transaction that was
21 contemplated between the parties and return Constantinou's money at that time or if the transaction
22 was not completed return the money to the Constantinou. At the time Eldredge made these
23 representations to Constantinou, he knew them to be false, and had no intention of ever returning
24 Constantinou's money.

25 151. Eldredge intended for Constantinou to rely on his misrepresentations and concealed
26 the material fact that he was not intending to ever complete the transaction nor return Constantinou's
27 money.

28 152. Constantinou actually relied on Eldredge's misrepresentations and concealment of

1 material facts when deciding to enter into the Agreement and tender money to Eldredge.

2 153. Eldredge's conduct was a substantial factor in causing damage to Constantinou.

3 154. Constantinou's reliance on Eldredge's misrepresentations was justified due to the fact
4 that Constantinou had no means by which to verify Eldredge's claim. Constantinou could not have,
5 with reasonable inquiry, discovered Eldredge's deceit prior to tendering the money.

6 155. Constantinou has been damaged by Eldredge's misrepresentations and concealment
7 of material fact in the amount of twenty-thousand dollars (\$20,000) Further, Eldredge acted with
8 fraud, oppression and malice such that Constantinou is entitled to exemplary damages.

9 **THIRTEENTH CLAIM FOR RELIEF**
10 (Conversion by Eldredge for the \$20,000)

11 156. Defendant/Counterclaimant Constantinou repeats and re-alleges each and every
12 allegation contained above and incorporates the same here by reference.

13 157. Eldredge was given the sum of twenty-thousand dollars (\$20,000) for the purpose of
14 completing the contemplated transaction between the party's respective companies.

15 158. Eldredge did not use the money for the agreed upon purpose and instead converted
16 the money to his own use and for other purposes.

17 159. Eldredge failed to use the money for the purpose for which it was given and failed to
18 return the money to Constantinou.

19 160. Constantinou has been denied his rightful possession, use and enjoyment of his
20 twenty-thousand dollars (\$20,000) by the Eldredge.

21 161. Constantinou has been damaged by Eldredge's act of conversion in the amount of
22 twenty-thousand dollars (\$20,000).

23 **FOURTEENTH CLAIM FOR RELIEF**

(Rescission of the Oral Contract between Eldredge and Constantinou)

24 162. Defendant/Counterclaimant Constantinou repeats and re-alleges each and every
25 allegation contained above and incorporates the same here by reference.

26 163. Constantinou and Eldredge entered into an oral agreement whereby Constantinou
27 agreed to give Eldredge t money in exchange for Eldredge completing the transaction that was being
28 negotiated between the parties.

1 173. Counterclaimant could not, in the exercise of reasonable diligence, have discovered
2 Eldredge's secret intention to take his \$20,000 and never complete the deal and therefore
3 Constantinou acted reasonably in giving the \$20,000 to Eldredge. Had Constantinou known that
4 Eldredge planned to keep the property and never complete the deal nor return the property than
5 Constantinou would not have given the \$20,000 to Eldredge.

6 174. By virtue of his fraudulent acts, Plaintiff holds Counterclaimant's \$20,000 as a
7 constructive trustee for Counterclaimant's benefit.

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9 **PRAYER FOR RELIEF**

10 WHEREFORE, Counterclaimants pray as follows:

11 **First Cause of Action: Breach of Contract**

- 12 1. For damages in excess of \$10,000;
13 2. For interest;
14 3. For reasonable attorney's fees according to proof;
15 4. For costs of suit; and,
16 5. For such other and further relief as the court may deem proper.

17 **Second Cause of Action: Breach of Implied Covenant of Good Faith and Fair Dealing**

- 18 1. For damages in excess of \$10,000;
19 2. For interest;
20 3. For reasonable attorney's fees according to proof;
21 4. For costs of suit; and,
22 5. For such other and further relief as the court may deem proper.

23 **Third Cause of Action: Fraud by Eldredge**

- 24 1. For general damages according to proof;
25 2. For reasonable attorney's fees according to proof;
26 3. For punitive damages;
27 4. For costs of suit; and,
28 5. For such other and further relief as the court may deem proper.

1 **Fourth Cause of Action: Constructive Fraud by Eldredge**

- 2 1. For general damages according to proof;
- 3 2. For reasonable attorney's fees according to proof;
- 4 3. For punitive damages;
- 5 4. For costs of suit; and,
- 6 5. For such other and further relief as the court may deem proper.

7 **Fifth Cause of Action: Intentional Interference with Contractual Relations**

- 8 1. For general damages according to proof;
- 9 2. For reasonable attorney's fees according to proof;
- 10 3. For punitive damages;
- 11 4. For costs of suit; and,
- 12 5. For such other and further relief as the court may deem proper.

13 **Sixth Cause of Action: Fraud by Intentional Misrepresentation by Eldredge**

- 14 1. For general damages according to proof;
- 15 2. For reasonable attorney's fees according to proof;
- 16 3. For punitive damages;
- 17 4. For costs of suit; and,
- 18 5. For such other and further relief as the court may deem proper

19 **Seventh Cause of Action: Constructive Trust**

- 20 1. For an order declaring Plaintiffs/Counterdefendants hold all funds owed to
- 21 Defendants/Counterclaimants in trust;
- 22 2. For such other and further relief as the court may deem proper.

23 **Eighth Cause of Action: Conversion of Property by Eldredge**

- 24 1. For damages in the amount of \$158,221.68;
- 25 2. For interest;
- 26 3. For reasonable attorney's fees according to proof;
- 27 4. For costs of suit; and,
- 28 5. For such other and further relief as the court may deem proper.

1 **Ninth Cause of Action: Constructive Trust as to Eldredge for property taken**

- 2 3. For an order declaring Plaintiff/Counterdefendant Eldredge hold all property taken
3 from Defendants/Counterclaimants in trust;
4 4. For such other and further relief as the court may deem proper.

5 **Tenth Cause of Action: Intentional Infliction of Emotional Distress by Eldredge**

- 6 1. For damages in an amount according to proof;
7 2. For reasonable attorney's fees according to proof;
8 3. For costs of suit; and,
9 4. For such other and further relief as the court may deem proper.

10 **Eleventh Cause of Action: Breach of Oral Contract by Eldredge**

- 11 1. For damages \$20,000;
12 2. For interest;
13 3. For reasonable attorney's fees according to proof;
14 4. For costs of suit; and,
15 5. For such other and further relief as the court may deem proper.

16 **Twelfth Cause of Action: Fraud by Eldredge**

- 17 6. For damages of \$20,000;
18 7. For reasonable attorney's fees according to proof;
19 8. For punitive damages;
20 9. For costs of suit; and,
21 10. For such other and further relief as the court may deem proper.

22 **Thirteenth Cause of Action: Conversion by Eldredge of the \$20,000**

- 23 1. For damages in the amount of \$20,000;
24 2. For interest;
25 3. For reasonable attorney's fees according to proof;
26 4. For costs of suit; and,
27 5. For such other and further relief as the court may deem proper.

28 **Fourteenth Cause of Action: Rescission of the Oral Contract between Eldredge and**

1 **Constantinou**

- 2 1. For compensatory damages according to proof;
- 3 2. For interest;
- 4 3. For restitution and other equitable relief;
- 5 4. For reasonable attorney's fees according to proof;
- 6 5. For costs of suit; and,
- 7 6. For such other and further relief as the court may deem proper.

8 **Fifteenth Cause of Action: Constructive Trust as to Eldredge for the \$20,000**

- 9 1. For an order declaring Plaintiff/Counterdefendant Eldredge hold Constantinou's
- 10 \$20,000 in trust for his benefit;
- 11 2. For such other and further relief as the court may deem proper.

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13 Respectfully submitted this 4th day of February.

14 By: /s/ Sarah de Diego

15 Sarah de Diego, Esq.

16 Attorney for Defendants/Counterclaimants

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