

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Court Order transferring title		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Converdia, Inc.		08/16/2012	CORPORATION: MINNESOTA
RECEIVING PARTY DATA			
Name:	Larry Hopfenspinger		
Street Address:	2025 Nicollet Avenue South		
City:	Minneapolis		
State/Country:	MINNESOTA		
Postal Code:	55404		
Entity Type:	INDIVIDUAL: UNITED STATES		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3244925	CONVERDIA	
CORRESPONDENCE DATA			
Fax Number:	6129778650		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	6129778400		
Email:	ip@briggs.com		
Correspondent Name:	Briggs and Morgan, P.A.		
Address Line 1:	80 South Eighth Street		
Address Line 2:	2200 IDS Center		
Address Line 4:	Minneapolis, MINNESOTA 55402		
ATTORNEY DOCKET NUMBER:	37356.4		
NAME OF SUBMITTER:	Audrey J. Babcock		
Signature:	/Audrey J. Babcock/		

Date:

10/19/2012

Total Attachments: 25

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: Contract

Larry Hopfenspirger, individually and as authorized agent for the Jordan Family LLC, the Elmer Salovich Revocable Trust U/A 12/16/96, Kevin P. Smith, Charles Lane and Kent Marthaler,

Court File No. 27-CV-12-12670
Honorable Phillip Carruthers

Plaintiff,

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER FOR DEFAULT
JUDGMENT**

v.

Converdia, Inc.,

Defendant.

The above-entitled matter came on for a default hearing before the undersigned Judge of Hennepin County District Court, on August 1, 2012, on a Motion for Default Judgment by Plaintiff Larry Hopfenspirger, individually and as authorized agent for the Jordan Family LLC, the Elmer Salovich Revocable Trust U/A 12/16/96, Kevin P. Smith, Charles Lane and Kent Marthaler ("Plaintiff") against Defendant Coverdia, Inc. ("Borrower"). Appearances were noted on the record.

As appears from the files and records herein, the Summons and Complaint were duly served on Borrower. Time for Borrower to answer or otherwise plead in response to Plaintiff's Complaint has expired. No answer, pleading or other appearance has been served on, or received by Borrower or its attorneys, and Borrower is in default. Having considered the memoranda, arguments of counsel, and all of the records, files, and proceedings herein, the Court makes the following findings, conclusions, and Order:

FINDINGS OF FACT

1. Hopfenspirger is an individual residing in Hennepin County, Minnesota. Hopfenspirger brought this action on behalf of himself and as the authorized agent for Jordan, Solovich, Smith, Lane and Marthaler pursuant to that certain Intercreditor Agreement defined below.

2. Borrower is a Minnesota corporation with a principal place of business and registered address of 845 Bradford Avenue North, Champlin, Minnesota 55316.

I. JULY 17, 2009 LOAN DOCUMENTS

A. July 17, 2009 Purchase Agreement

3. On or about July 17, 2009, Borrower entered into that certain Class A Convertible Debenture Purchase Agreement ("July 17, 2009 Purchase Agreement") with Hopfenspirger, Jordan, Salovich, and Smith (collectively, the "July 17, 2009 Lenders"). A true and correct copy of the July 17, 2009 Purchase Agreement is attached to Hopfenspirger's Complaint as Exhibit 1.

4. Pursuant to the July 17, 2009 Purchase Agreement, the July 17, 2009 Lenders agreed to loan the sum of \$365,000 to Borrower through the purchase of Class A Convertible Debentures ("July 17, 2009 Loan").

5. Pursuant to Section 6(a) of the July 17, 2009 Purchase Agreement, an Event of Default occurs when, among other things, an event of default occurs under any of the Class A Convertible Debentures issued to the July 17, 2009 Lenders.

6. Pursuant to Section 8 of the July 17, 2009 Purchase Agreement, Borrower is obligated to reimburse the July 17, 2009 Lenders for all costs and expenses, including without limitation reasonable attorneys' fees, as follows:

The Borrower shall reimburse the Lenders, upon demand, for all costs and expenses, including without limitation reasonable attorney's fees, paid or incurred

by the Lenders arising from or in connection with (a) any amendments, modifications, waivers or consents requested by the Borrower (whether or not ultimately granted or entered into) to this Agreement or any of the other Loan Documents and (b) the preservation and enforcement by the Lenders of the rights or remedies of the Lenders hereunder or under any of the other Loan Documents, including without limitation costs and expenses relating to (i) the protection of the Lenders' security interest in the Collateral, (ii) the protection, collection, sale, taking possession of or realization on, any Collateral, (iii) the collection or enforcement of any outstanding Loan and (iv) any litigation, proceeding, dispute, work-out, restructuring or rescheduling related in any way to this Agreement or the other Loan Documents.

B. July 17, 2009 Class A Convertible Debentures

7. As anticipated by the July 17, 2009 Purchase Agreement, Borrower issued and the July 17, 2009 Lenders purchased certain Class A Convertible Debentures totaling \$365,000. Borrower issued the debentures as follows: (a) \$165,000 to Hopfenspirger; (b) \$150,000 to Jordan; (c) \$25,000 to Salovich; and (d) \$25,000 to Smith (collectively, the "July 17, 2009 Debentures"). True and correct copies of the July 17, 2009 Debentures are attached to Hopfenspirger's Complaint as Exhibit 2.

8. The July 17, 2009 Debentures each provide that the Borrower promises to pay each holder of a debenture their respective principal sums, together with interest on the unpaid balance accruing at the rate of ten percent (10%) per annum, on or before July 17, 2010.

9. In addition to the full principal amount payments due on July 17, 2010, the July 17, 2009 Debentures each provide that interest only payments shall be due and payable in quarterly installments commencing on October 17, 2009.

10. Pursuant to Section 9.1 of the July 17, 2009 Debentures, an Event of Default occurs, among other things, upon Borrower's failure to pay any amounts required to be paid under any debenture and such failure to make payment continues for a period of twenty (20) days

after written notice is given to Borrower specifying such default and requesting that it be remedied.

11. Pursuant to Section 9 of the July 17, 2009 Debentures, the holders of the July 17, 2009 Debentures may exercise any and all rights and remedies as follows:

Upon the occurrence of an Event of Default, (i) the outstanding principal balance hereof and accrued interest and all other amounts due hereon shall, at the option of Holder, accelerate and become immediately due and payable, and the same shall thereupon be immediately due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived and (ii) Holder shall have the right to exercise and enforce any and all rights and remedies available under this Debenture, or the other Loan Documents, at law, in equity or otherwise.

12. Pursuant to Section 10.4 of the July 17, 2009 Debentures, the holders of the July 17, 2009 Debentures are entitled to recovery of attorneys' fees as follows:

In the event this Debenture is placed in the hands of an attorney for collection or suit is filed hereon; or if proceedings are had in bankruptcy, receivership, reorganization, or other legal or judicial proceedings for the collection of this Debenture Borrower hereby agrees to pay to Holder all costs of collection incurred in connection with any such collection, suit, or proceeding, in addition to the principal and interest then due, which expenses and costs of collection shall include reasonable attorney's fees. Borrower and any surety, endorser, guarantor, or accommodation party hereon further agree to pay to Holder all expenses and costs, including reasonable attorney's fees, incurred by Holder in collecting any judgment entered on this Note.

C. July 17, 2009 Security Agreement

13. The July 17, 2009 Loan is secured by that certain July 17, 2009 Security Agreement ("July 17, 2009 Security Agreement") executed by Borrower in favor of Hopfenspirger personally and as authorized agent for the July 17, 2009 Lenders. A true and correct copy of the July 17, 2009 Security Agreement is attached to Hopfenspirger's Complaint as Exhibit 3.

14. As security for full payment of all amounts due and owing under the July 19, 2009 Debentures, the July 17, 2009 Security Agreement grants to the July 17, 2009 Lenders a security interest in the following collateral:

All equipment of the Debtor, together with accessions, accessories, attachments, fittings, increases, parts, repairs, returns renewals and substitutions of all or any part thereof, whether now existing or hereafter arising, and whether now owned or hereafter acquired;

All inventory of the Debtor, and all returns of such inventory, whether now existing or hereafter arising, and whether now owned or hereafter acquired;

All accounts (including but not limited to all healthcare insurance receivables), instruments, chattel paper, investment property, letter of credit rights, letters of credit, other rights to payment, documents, deposit accounts, money, trade names, other names, software, payment intangibles, and other general intangibles of the Debtor, together with all good will related to the foregoing property and all rights, liens, security interests and other interests which the Debtor may at any time have by law or agreement against any account debtor, issuer or obligor obligated to make any such payment or against any of the property of such account debtor, issuer, or obligor, and all supporting obligations relating to the foregoing, whether now existing or hereafter arising, and whether now owned or hereafter acquired;

All of the patent and patent applications now owned or hereafter acquired, including, without limitation, those identified in Schedule A attached hereto; all divisions, continuations, continuations in part and renewals of each application; all patents issuing from each application and all reissues, extensions and renewals of each such patent; all copyrights and trademarks (registered and unregistered) identified in Schedule A, together with other trademarks and copyrights not identified on Schedule A and the goodwill of Debtor's business connected with and symbolized by such trademarks; the right to sue for past, present and future infringements of each patented invention, copyright, trademark and trade secret; all confidential know-how and trade secrets relating to the Debtor's business including, without limitation, all unpublished research and development information, unpatented inventions and discoveries, and any and all research, documentation, notes, compilations and other indicia thereof, in any form or media, arising from, in connection with or incident to the foregoing; and

All products and proceeds of the foregoing property, including without limitation all accounts, instruments, chattel paper, investment property, letter of credit rights, letters of credit, other rights to payment, documents, deposit accounts, money, rents, license fees, royalties, insurance proceeds and general intangibles related to the foregoing property, and all refunds of insurance premiums due or to become due under all insurance policies covering the foregoing property.

(collectively, the "Collateral").

15. Schedule A of the July 17, 2009 Security Agreement provides that the Collateral includes the Trademark "Converdia" (Serial No. 78935786) and "Wyrles" (Serial No. 77319738), as well as Patent Application No. 12/105,432.

16. Section 5 of the July 17, 2009 Security Agreement provides the July 17, 2009 Lenders, who are defined as the "Secured Party" under the July 17, 2009 Security Agreement, with the following remedies upon Borrower's default:

If any default hereunder, or under the Debenture or the Purchase Agreement has occurred, the Secured Party may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code, as adopted in the State of Minnesota, and, in addition, the Secured Party may, without being required to give any notice, except as herein provided or as may be required by mandatory provisions of law, (a) apply the cash, if any, then held by it as Collateral in the manner specified in Section 6 hereof, and (b) if there is no such cash or if such cash is insufficient to pay all of the Obligations in full, sell the Collateral, or any part thereof, at public or private sale, for cash, upon credit or for future delivery, and at such price or prices as the Secured Party may deem satisfactory. The Secured Party shall give the Debtor not less than ten (10) days' prior written notice of the time and place of any sale or other intended disposition of any of the Collateral. The Secured Party may require the Debtor to assemble all or any part of the Collateral and make it available to the Secured Party at a place to be designated by the Secured Party which is reasonably convenient to the Debtor and the Secured Party. Any holder of the Debenture may be the purchaser of any or all of the Collateral so sold at any public sale (or, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, at any private sale) and thereafter hold same, absolutely free from any right or claim of whatsoever kind. Upon any such sale, the Secured Party will have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale will hold the Collateral so sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption of the Debtor. Any such public sale will be held at such time or times within ordinary business hours and at such place or places as the Secured Party may fix in the notice of such sale. At any such sale, the Collateral may be sold in one lot as an entirety or in separate parcels, as the Secured Party may determine. The Secured Party is not obligated to make such sale pursuant to any such notice. The Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the

sale, and such sale may be made at any time or place to which the same may be adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by the Secured Party until the selling price is paid by the purchaser thereof, but the Secured Party will not incur any liability in the case of the failure of such purchaser to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may again be sold upon like notice. The Secured Party, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to foreclose the Security Interest and sell the Collateral, or any portion thereof, under a judgment or decree of a court of competent jurisdiction.

17. Pursuant to Section 6 of the July 17, 2009 Security Agreement, the proceeds of any sale or realization of the Collateral is to be applied as follows:

- a. first, to pay the expenses of such sale or other realization, and all expenses, liabilities and advances incurred or made by the Secured Party in connection therewith, and any other unreimbursed expenses for which the Secured Party is to be reimbursed pursuant to Section 7 hereof;
- b. second, to the payment of the Obligations in such order or manner as the Secured Party, in its sole discretion, determines;
- c. third, to the payment of claims secured by any subordinate security interest against the Collateral if the holder of such security interest provides to the Secured Party a timely authenticated demand for payment out of the sale proceeds; and
- d. finally, to pay to the Debtor, or its successors or assigns, or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds.

18. Pursuant to Section 7 of the July 17, 2009 Security Agreement, Borrower is responsible for "any and all taxes or other charges or reasonable out of pocket expenses, including the reasonable fees and disbursements of its counsel and of any agents not regularly in its employ, which the Secured Party may incur in connection with (i) the collection, sale or other disposition of any of the Collateral, (ii) the exercise by the Secured Party of any of the powers conferred upon it hereunder, and/or (iii) any default on the Debtor's part hereunder or under the Debenture."

19. The July 17, 2009 Lenders perfected their interest in the Collateral by filing with the Minnesota Secretary of State on July 21, 2009 a UCC Financing Statement No. 200916804568 ("UCC Statement"). A true and correct copy of the UCC Statement is attached to Hopfenspirger's Complaint as Exhibit 4.

20. The July 17, 2009 Lenders perfected their interest in the Collateral by filing with the United States Patent and Trademark Office on July 29, 2009 a Trademark Assignment ("Trademark Assignment") and a Patent Assignment ("Patent Assignment"). True and correct copies of the Trademark Assignment and Patent Assignment are attached to Hopfenspirger's Complaint as Exhibit 5.

D. July 17, 2009 Intercreditor Agreement

21. On July 17, 2009, the July 17, 2009 Lenders entered into that certain Intercreditor Agreement ("Intercreditor Agreement"). A true and correct copy of the Intercreditor Agreement is attached to Hopfenspirger's Complaint as Exhibit 6.

22. Pursuant to Section 2.01 of the Intercreditor Agreement, Jordan, Salovich and Smith appointed Hopfenspirger to act as their authorized agent to exercise their rights under the July 17, 2009 Loan Documents.

23. Section 4.03 of the Intercreditor Agreement provides that monies collected by Hopfenspirger as agent shall be applied as follows:

(a) First, to the costs and expenses of Agent (including attorneys' fees and disbursements) incurred in administering and carrying out its obligations under this Agreement or the Transaction Documents, in exercising or attempting to exercise any right or remedy hereunder or thereunder or in taking possession of, protecting, preserving or disposing of any item of Collateral, and to all amounts against or for which Agent is to be indemnified or reimbursed hereunder;

(b) Second, to the reimbursement of any advances made by the Purchasers to effect performance of Borrower's covenants under any of the Transaction Documents in accordance with the Pro-Rata Percentage of each and if any

Purchaser has made advances in excess of its Pro-Rata Percentage of all such advances, first to such Purchaser until the unreimbursed advances shall be owing to each of the Purchasers shall be in accordance with the Pro-Rata Percentage of each;

(c) Third, in case the entire unpaid principal of the Debentures shall not have become due and payable (whether at the stated maturity or by notice of optional prepayment or by declaration or otherwise): (i) first to the payment of all interest due and payable to the Purchasers in accordance with the Pro-Rata Percentage of each Purchaser, in the order of the maturity of the installments of such interest; provided, however, that in the event that any one or more Purchasers receives less than its Pro-Rata Percentage of all interest collected or received with respect to any month, the application of monies set forth in this subparagraph (c) shall instead be to the payment of all interest payable with respect to such month (whether or not the same was due at the time of receipt or collection thereof) in accordance with the Pro-Rata Percentage of each Purchaser; and (ii) second, to the payment of all amounts of principal then payable to the Purchasers in accordance with the Pro-Rata Percentage of each Purchaser, in order of the maturity of installments of such principal;

(d) Fourth, to the payment of all other Obligations payable to the Purchasers in accordance with each Purchaser's Pro-Rata Percentage of such Obligations; and

(e) Fifth, to the payment of any surplus then remaining to the party or parties entitled thereto or as a court of competent jurisdiction may direct.

24. The July 17, 2009 Purchase Agreement, July 17, 2009 Debentures, July 17, 2009 Security Agreement, UCC Financing Statement, Trademark Assignment, and Patent Assignment and July 17, 2009 Intercreditor Agreement are herein after referred to collectively as the "July 17, 2009 Loan Documents."

II. JULY 31, 2009 LOAN DOCUMENTS

A. July 31, 2009 Purchase Agreement

25. On or about July 31, 2009, Borrower entered into that certain Class A Convertible Debenture Purchase Agreement ("July 31, 2009 Purchase Agreement") with Hopfenspirger, Marthaler and Lane (collectively, the "July 31, 2009 Lenders"). A true and correct copy of the July 31, 2009 Purchase Agreement is attached to Hopfenspirger's Complaint as Exhibit 7.

26. Pursuant to the July 31, 2009 Purchase Agreement, the July 31, 2009 Lenders agreed to loan to Borrower the sum of \$55,000 through the purchase of Class A Convertible Debentures ("July 31, 2009 Loan").

27. Pursuant to Section 6(a) of the July 31, 2009 Purchase Agreement, an Event of Default occurs when, among other things, an event of default occurs under any of the Class A Convertible Debentures issued to the July 31, 2009 Lenders.

28. Pursuant to Section 8 of the July 31, 2009 Purchase Agreement, Borrower is obligated to reimburse the July 31, 2009 Lenders for all costs and expenses, including reasonable attorneys' fees as follows:

The Borrower shall reimburse the Lenders, upon demand, for all costs and expenses, including without limitation reasonable attorney's fees, paid or incurred by the Lenders arising from or in connection with (a) any amendments, modifications, waivers or consents requested by the Borrower (whether or not ultimately granted or entered into) to this Agreement or any of the other Loan Documents and (b) the preservation and enforcement by the Lenders of the rights or remedies of the Lenders hereunder or under any of the other Loan Documents, including without limitation costs and expenses relating to (i) the protection of the Lenders' security interest in the Collateral, (ii) the protection, collection, sale, taking possession of or realization on, any Collateral, (iii) the collection or enforcement of any outstanding Loan and (iv) any litigation, proceeding, dispute, work-out, restructuring or rescheduling related in any way to this Agreement or the other Loan Documents.

B. July 31, 2009 Class A Convertible Debentures

29. As anticipated by the July 31, 2009 Purchase Agreement, Borrower issued, and the July 31, 2009 Lenders purchased, certain Class A Convertible Debentures totaling \$55,000. Borrower issued the debentures as follows: (a) \$25,000 to Hopfenspirger; (b) \$15,000 to Lane; and (c) \$15,000 to Marthaler (collectively, the "July 31, 2009 Debentures"). True and correct copies of the July 31, 2009 Debentures are attached to Hopfenspirger's Complaint as Exhibit 8.

30. The July 31, 2009 Debentures each provide that the Borrower promises to pay the holder of a debenture their respective principal sums, together with interest on the unpaid balance accruing at the rate of ten percent (10%) per annum, on or before July 17, 2010.

31. In addition to the full principal amount payments due on July 17, 2010, the July 31, 2009 Debentures each provide that interest only payments shall be due and payable in quarterly installments commencing on October 17, 2009.

32. Pursuant to Section 9.1 of the July 31, 2009 Debentures, an Event of Default occurs, among other things, upon Borrower's failure to pay any amounts required to be paid under any debenture and such failure to make payment continues for a period of twenty (20) days after written notice is given to Borrower specifying such default and requesting that it be remedied.

33. Pursuant to Section 9 of the July 31, 2009 Debentures, the holders of the July 31, 2009 Debentures may exercise any and all rights and remedies as follows:

Upon the occurrence of an Event of Default, (i) the outstanding principal balance hereof and accrued interest and all other amounts due hereon shall, at the option of Holder, accelerate and become immediately due and payable, and the same shall thereupon be immediately due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived and (ii) Holder shall have the right to exercise and enforce any and all rights and remedies available under this Debenture, or the other Loan Documents, at law, in equity or otherwise.

34. Pursuant to Section 10.4 of the July 31, 2009 Debentures, the holders of the July 31, 2009 Debentures are entitled to recovery of attorneys' fees as follows:

In the event this Debenture is placed in the hands of an attorney for collection or suit is filed hereon; or if proceedings are had in bankruptcy, receivership, reorganization, or other legal or judicial proceedings for the collection of this Debenture Borrower hereby agrees to pay to Holder all costs of collection incurred in connection with any such collection, suit, or proceeding, in addition to the principal and interest then due, which expenses and costs of collection shall include reasonable attorney's fees. Borrower and any surety, endorser, guarantor,

or accommodation party hereon further agree to pay to Holder all expenses and costs, including reasonable attorney's fees, incurred by Holder in collecting any judgment entered on this Note.

C. July 31, 2009 Amendment to Security Agreement

35. On July 31, 2009, Borrower and Hopfenspirger, for himself and as agent for Jordan, Salovich, Smith, Marthaler, and Lane, executed an amendment to the Security Agreement ("First Amendment to Security Agreement"). A true and correct copy of the First Amendment to Security Agreement is attached to Hopfenspirger's Complaint as Exhibit 9.

36. Pursuant to the First Amendment to Security Agreement Amendment, the July 17, 2009 Lenders consent to the addition of Marthaler and Lane to the Security Agreement.

37. Pursuant to the First Amendment to Security Agreement, the July 31, 2009 Loan is secured by the Security Agreement.

38. The Security Agreement, as amended by the First Amendment to Security Agreement, is hereinafter referred to as the "Security Agreement."

D. July 31, 2009 Amendment and Joinder to Intercreditor Agreement

39. On July 31, 2009, Borrower and Hopfenspirger, Jordan, Salovich, Smith, Marthaler, and Lane entered into an Amendment and Joinder to Intercreditor Agreement ("Amendment and Joinder to Intercreditor Agreement"). A true and correct copy of the Amendment and Joinder to Intercreditor Agreement is attached to Hopfenspirger's Complaint as Exhibit 10.

40. Pursuant to the Amendment and Joinder to Intercreditor Agreement, the July 31, 2009 Lenders consented to the joinder of Marthaler and Lane as parties to the Intercreditor Agreement and recognized the July 31, 2009 Loan.

41. Pursuant to Section 5 of the Amendment and Joinder to Intercreditor Agreement,

Marthaler and Lane appoint Hopfenspirger to act as their authorized agent.

42. The Intercreditor Agreement, as amended by the Amendment and Joinder to Intercreditor Agreement, is hereinafter referred to as the "Intercreditor Agreement."

43. The July 31, 2009 Purchase Agreement, July 31, 2009 Debentures, First Amendment to Security Agreement, and Amendment and Joinder to Intercreditor Agreement are hereinafter referred to collectively as the "July 31, 2009 Loan Documents."

III. OCTOBER 16, 2009 LOAN DOCUMENTS

A. October 16, 2009 Purchase Agreement

44. On or about October 16, 2009, Borrower entered into that certain Class A Convertible Debenture Purchase Agreement ("October 16, 2009 Purchase Agreement") with Hopfenspirger, Jordan, Salovich, Smith, Marthaler, and Lane (collectively, the "October 16, 2009 Lenders"). A true and correct copy of the October 16, 2009 Purchase Agreement is attached to Hopfenspirger's Complaint as Exhibit 11.

45. Pursuant to the October 16, 2009 Purchase Agreement, the October 16, 2009 Lenders agreed to loan to Borrower the sum of \$100,000 through the purchase of Class A Convertible Debentures ("October 16, 2009 Loan").

46. Pursuant to Section 6(a) of the October 16, 2009 Purchase Agreement, an Event of Default occurs when, among other things, an event of default occurs under any of the Class A Convertible Debentures issued to the October 16, 2009 Lenders.

47. Pursuant to Section 8 of the October 16, 2009 Purchase Agreement, Borrower is obligated to reimburse the October 16, 2009 Lenders for all costs and expenses, including reasonable attorneys' fees as follows:

The Borrower shall reimburse the Lenders, upon demand, for all costs and expenses, including without limitation reasonable attorney's fees, paid or incurred

by the Lenders arising from or in connection with (a) any amendments, modifications, waivers or consents requested by the Borrower (whether or not ultimately granted or entered into) to this Agreement or any of the other Loan Documents and (b) the preservation and enforcement by the Lenders of the rights or remedies of the Lenders hereunder or under any of the other Loan Documents, including without limitation costs and expenses relating to (i) the protection of the Lenders' security interest in the Collateral, (ii) the protection, collection, sale, taking possession of or realization on, any Collateral, (iii) the collection or enforcement of any outstanding Loan and (iv) any litigation, proceeding, dispute, work-out, restructuring or rescheduling related in any way to this Agreement or the other Loan Documents.

B. October 16, 2009 Class A Convertible Debentures

48. As anticipated by the October 16, 2009 Purchase Agreement, Borrower issued, and the October 16, 2009 Lenders purchased, certain Class A Convertible Debentures totaling \$100,000. Borrower issued the debentures as follows: (a) \$45,238.10 to Hopfenspirger; (b) \$35,714.30 to Jordan; (c) \$5,952.38 to Salovich; (d) \$5,952.38 to Smith; (e) \$3,571.42 to Lane; and (f) \$3,571.42 to Marthaler (collectively, the "October 16, 2009 Debentures"). True and correct copies of the October 16, 2009 Debentures are attached to Hopfenspirger's Complaint as Exhibit 12.

49. The October 16, 2009 Debentures each provide that the Borrower promises to pay each holder of a debenture their respective principal sums, together with interest on the unpaid balance accruing at the rate of ten percent (10%) per annum, on or before July 17, 2010.

50. In addition to the full principal amount payments due on July 17, 2010, the October 16, 2009 Debentures each provide that interest only payments shall be due and payable in quarterly installments commencing on January 17, 2010.

51. Pursuant to Section 9.1 of the October 16, 2009 Debentures, an Event of Default occurs, among other things, upon Borrower's failure to pay any amounts required to be paid under any debenture and such failure to make payment continues for a period of twenty (20) days

after written notice is given to Borrower specifying such default and requesting that it be remedied.

52. Pursuant to Section 9 of the October 16, 2009 Debentures, the holders of the October 16, 2009 Debentures may exercise any and all rights and remedies as follows:

Upon the occurrence of an Event of Default, (i) the outstanding principal balance hereof and accrued interest and all other amounts due hereon shall, at the option of Holder, accelerate and become immediately due and payable, and the same shall thereupon be immediately due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived and (ii) Holder shall have the right to exercise and enforce any and all rights and remedies available under this Debenture, or the other Loan Documents, at law, in equity or otherwise.

53. Pursuant to Section 10.4 of the October 16, 2009 Debentures, the holders of the October 16, 2009 Debentures are entitled to recovery of attorneys' fees as follows:

In the event this Debenture is placed in the hands of an attorney for collection or suit is filed hereon; or if proceedings are had in bankruptcy, receivership, reorganization, or other legal or judicial proceedings for the collection of this Debenture Borrower hereby agrees to pay to Holder all costs of collection incurred in connection with any such collection, suit, or proceeding, in addition to the principal and interest then due, which expenses and costs of collection shall include reasonable attorney's fees. Borrower and any surety, endorser, guarantor, or accommodation party hereon further agree to pay to Holder all expenses and costs, including reasonable attorney's fees, incurred by Holder in collecting any judgment entered on this Note.

C. October 16, 2009 Amendment to Security Agreement

54. On October 16, 2009, the Borrower and the October 16, 2009 Lenders entered into that certain Second Amendment to Security Agreement ("Second Amendment to Security Agreement"). A true and correct copy of the Second Amendment to Security Agreement is attached to Hopfenspirger's Complaint as Exhibit 13.

55. Pursuant to the Second Amendment to Security Agreement, the October 16, 2009 Loan is secured by the Security Agreement.

56. The Security Agreement, as amended by the First Amendment to Security Agreement and Second Amendment to Security Agreement, is hereinafter referred to as the "Security Agreement."

D. October 16, 2009 Amendment to Intercreditor Agreement

57. On October 16, 2009, Hopfenspirger, Jordan, Salovich, Smith, Marthaler, and Lane entered into that certain Second Amendment to Intercreditor Agreement ("Second Amendment to Intercreditor Agreement"). A true and correct copy of the Second Amendment to Intercreditor Agreement is attached to Hopfenspirger's Complaint as Exhibit 14.

58. The Second Amendment to Intercreditor Agreement recognizes the October 16, 2009 Loan and the Second Amendment to Security Agreement.

59. The October 16, 2009 Purchase Agreement, the October 16, 2009 Debentures, the Second Amendment to Security Agreement, and Second Amendment to Intercreditor Agreement are herein after referred to collectively as the "October 16, 2009 Loan Documents."

60. The July 17, 2009 Lenders, the July 31, 2009 Lenders and the October 16, 2009 Lenders are hereinafter referred to collectively as the "Lenders."

IV. THE FORBEARANCE AGREEMENT

61. On April 23, 2011, Borrower and Lenders entered into a Forbearance Agreement. A true and correct copy of the Forbearance Agreement is attached to Hopfenspirger's Complaint as Exhibit 15.

62. The July 17, 2009 Loan Documents, July 31, 2009 Loan Documents and October 16, 2009 Loan Documents and the Forbearance Agreement are referred to collectively as the "Loan Documents."

63. Pursuant to the Forbearance Agreement, Borrower admitted that events of default

occurred under the July 17, 2009 Loan Documents, July 31, 2009 Loan Documents, and October 16, 2009 Loan Documents due to Borrower's failure to make payments of principal and interest when due.

64. Pursuant to the Forbearance Agreement, Borrower admitted that the following amounts were due and owing to the Lenders as of April 23, 2011:

<u>Lender</u>	<u>Outstanding Balance</u>	
Larry Hopfenspirger	Principal	\$ 235,238.10
	Interest	\$ 6,011.65
Jordan Family, LLC	Principal	\$ 185,714.30
	Interest	\$ 4,746.04
Elmer Salovich Revocable Trust U/A 12/16/96	Principal	\$ 30,952.28
	Interest	\$ 791.00
Kevin P. Smith	Principal	\$ 30,952.08
	Interest	\$ 791.00
Kent Marthaler	Principal	\$ 18,571.42
	Interest	\$ 474.60
Charles Lane	Principal	\$ 18,571.42
	Interest	\$ 474.60

65. Pursuant to Section 3 of the Forbearance Agreement, Lenders agreed to forebear from exercising any of their rights and remedies under the Loan Documents until either (a) payment in full; or (b) an event of default occurs under the Forbearance Agreement.

66. Pursuant to Section 9 of the Forbearance Agreement, Borrower is required to make payments as follows:

- (a) Monthly payments in the aggregate amount of \$2,500 per month on or before May 10, 2011, and June 10, 2011;
- (b) Monthly payments in the aggregate amount of \$4,500 per month on or before July 10, 2011, and August 10, 2011;
- (c) Monthly payments in the aggregate amount of \$7,000 per month on or before September 10, 2011, October 10, 2011, and November 10, 2011; and
- (d) A final payment in an amount equal to the total remaining amounts owed to the Lenders under the Debentures on or before December 10, 2011.

67. Pursuant to Section 5 of the Forbearance Agreement, Borrower is obligated to issue Lenders certain common stock of Borrower ("Stock") upon default as follows:

In addition to any other rights or consequences set forth in this Agreement, in the event that Borrower shall fail to pay any amounts required to be paid by Borrower to Lenders pursuant to Section 9 hereof (a "Payment Default"), then Borrower shall issue to each of the Lenders, or his/her/its assigns, additional shares of common stock of Borrower in an amount equal to (i) the total unpaid principal balance and accrued interest outstanding under the Debenture(s) held by such Lender as of the date of such default, divided by (ii) \$0.375. Borrower shall be obligated to issue shares of its common stock to Lenders pursuant to this Section 5 upon each occurrence of a Payment Default; provided, however, that Borrower's obligation to issue shares of its common stock to Lenders pursuant to this Section 5 shall be limited to two occurrences of a Payment Default.

V. BORROWER'S DEFAULT UNDER THE LOAN DOCUMENTS

68. Borrower has defaulted under the Loan Documents for, among others, the following reasons: (a) Borrower has failed, refused and neglected to make payments due and owing under the Forbearance Agreement after August 2011; (b) Borrower has failed, refused and neglected to make payments due and owing under the July 17, 2009 Debentures, (c) Borrower has failed, refused and neglected to make payments due and owing under the July 31, 2009 Debentures; and (d) Borrower has failed, refused and neglected to make payments due and owing under the October 16, 2009 Debentures.

69. The occurrence of an event of default entitles Hopfenspirger, individually and on behalf of and as authorized agent for the July 17, 2009 Lenders, to exercise all of his rights and remedies under the July 17, 2009 Loan Documents, including, but not limited to, (a) obtaining a money judgment against Borrower (plus all interest and accrued charges, attorneys' fees, and costs), (b) recovering immediate possession of all Collateral, and (c) enforcing its security interests under the Uniform Commercial Code.

70. The occurrence of an event of default entitles Hopfenspirger, individually and on behalf of and as authorized agent for the July 31, 2009 Lenders, to exercise all of his rights and remedies under the July 31, 2009 Loan Documents, including, but not limited to, (a) obtaining a money judgment against Borrower (plus all interest and accrued charges, attorneys' fees, and costs), (b) recovering immediate possession of all Collateral, and (c) enforcing its security interests under the Uniform Commercial Code.

71. The occurrence of an event of default entitles Hopfenspirger, individually and on behalf of and as authorized agent for the October 16, 2009 Lenders, to exercise all of his rights and remedies under the October 16, 2009 Loan Documents, including, but not limited to, (a) obtaining a money judgment against Borrower (plus all interest and accrued charges, attorneys' fees, and costs), (b) recovering immediate possession of all Collateral, and (c) enforcing its security interests under the Uniform Commercial Code.

72. On or about March 28, 2012, Hopfenspirger, on behalf of himself and the July 17, 2009 Lenders, the July 31, 2009 Lenders and the October 16, 2009 Lenders, gave Borrower written notice of its default ("Default Notice"). A true and correct copy of the Default Notice is attached to Hopfenspirger's Complaint as Exhibit 16.

73. Borrower has failed to timely cure its defaults.

74. As of March 19, 2012, the amount due and owing under the July 17, 2009 Loan Documents was \$423,990.18.

75. As of March 19, 2012, the amount due and owing under the July 31, 2009 Loan Documents was \$63,888.93.

76. As of March 19, 2012, the amount due and owing under the October 16, 2009 Loan Documents was \$116,161.69.

77. Moreover, pursuant to Section 5 of the Forbearance Agreement, Borrower's default entitles each of the Lenders additional shares of common stock of Borrower "in an amount equal to (i) the total unpaid principal balance and accrued interest outstanding under the Debenture(s) held by such Lender as of the date of such default, divided by (ii) \$0.375." As of March 19, 2012, the Borrower was required to issue certificates of Stock as follows:

<u>Lender</u>	<u>Shares</u>
Larry Hopfenspirger	1,137,119
Jordan Family, LLC	897,728
Elmer Salovich Revocable Trust U/A 12/16/96	149,621
Kevin P. Smith	149,621
Kent Marthaler	89,770
Charles Lane	89,770

CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction over this action and personal jurisdiction over Borrower.
2. Venue is proper under Minn. Stat. §§ 542.09 and 542.06.
3. Rule 55.01 of the Minnesota Rules of Civil Procedure provides that default judgment shall be entered against a party who fails to plead or otherwise defend a claim within the time allowed by law. Minn. R. Civ. P. 55.01. "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefore by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party." *Id.* (emphasis added).

4. Borrower was properly served but failed to answer or otherwise plead in the time allowed by the Minnesota Rules of Civil Procedure. As such, an entry of default is proper.

As to Counts I, II, III, IV, V (Breach of Loan Documents)

5. The Loan Documents are valid and binding contracts.

6. The Lenders have performed all of their obligations under the Loan Documents.

7. By its actions and inactions described herein, Borrower has breached its obligations under the Loan Documents.

8. Borrower's failure to make payments as required by the Loan Documents constitutes an events of default thereunder.

9. Borrower's defaults constitute material breaches Loan Documents.

10. As a direct and proximate result of Borrower's material breaches, the Lenders have suffered and continue to suffer, damages.

11. Borrower's default entitles Hopfenspinger, individually and on behalf of the Lenders, to exercise all of his rights and remedies under the Loan Documents, including, but not limited to, the right to recover the total indebtedness, plus all additional accrued interest, charges, reasonable attorneys' fees and costs.

12. Hopfenspinger, individually and on behalf of the Lenders, is entitled to judgment on Counts I, II, III, IV and V of its Complaint against Borrower in the total amount of \$604,040.80.

As to Count VI (Claim and Delivery)

13. The Security Agreement constitutes a valid and binding contract.

14. The July 17, 2009 Lenders, the July 31, 2009 Lenders, and the October 16, 2009 Lenders have a security interest in all of the Collateral, and have perfected those security interests, as evidenced by the UCC Statements, Trademark Assignment and Patent Assignment.

15. Pursuant to the Loan Documents, Hopfenspirger, individually and as agent for the secured parties, is entitled to take immediate possession and title of the Collateral and Stock upon the occurrence of an event of default.

16. By the actions and inactions described in the preceding paragraphs, Borrower has defaulted on its obligations under the Loan Documents.

17. All conditions precedent to the right to immediate possession and title of the Collateral and Stock have been met.

18. Hopfenspirger, individually and as agent for the secured parties, has an absolute right to take immediate possession of the Collateral and Stock and to sell and dispose of the same.

19. By reason of the events of default and pursuant to Minn. Stats. §§ 336.9-101 *et seq.*, Chapter 565 of Minnesota Statutes, the terms of the Loan Documents and the common law, Hopfenspirger is entitled to immediate possession and ownership of the Collateral and Stock. Hopfenspirger may dispose of the collateral in accordance with the requirements of Chapter 565 of Minnesota Statutes and any other applicable law.

As to Count VII (Specific Performance)

20. The Forbearance Agreement is a valid and enforceable contract.

21. Borrower materially breached the Forbearance Agreement by failing to deliver to Lenders the Stock upon its default of the Forbearance Agreement.

22. Lenders are ready, willing and able to receive the Stock pursuant to the terms of the Forbearance Agreement.

23. Borrower shall within 30 days of this Order, issue Stock as follows:

<u>Lender</u>	<u>Shares</u>
Larry Hopfenspirger	1,137,119
Jordan Family, LLC	897,728
Elmer Salovich Revocable Trust U/A 12/16/96	149,621
Kevin P. Smith	149,621
Kent Marthaler	89,770
Charles Lane	89,770

With Respect to Attorneys' Fees and Costs

24. "Where loan documents authorize a lender to recover legal expenses associated with collection . . . Minnesota courts will enforce the provision as long as the fees are reasonable." *State Bank of Cokato v. Ziehwein*, 510 N.W.2d 268, 270 (Minn. Ct. App. 1994), *review denied* (Mar. 15, 1994) (citing *O'Donnell v. McGee Trucks, Inc.*, 199 N.W.2d 432, 434-35 (Minn. 1972)).

25. The \$604,040.80 judgment against Borrower shall include additional costs and attorneys' fees in the amount of \$7,166.33, which are unambiguously recoverable under the Loan Documents.

26. This Court has reviewed the Affidavit of Amount Due regarding the costs and attorneys' fees and concludes that such fees and costs are reasonable and necessary given the circumstances.

With Respect to Post-Judgment Interest

27. Lender is further entitled to post-judgment interest on the total amount of the judgment at the highest rate permitted by law from the date of the judgment until the judgment, with interest, is paid in full. Such interest is provided for by Minn. Stat. § 549.09, subd. 2, which

states that "[d]uring each calendar year, interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid [at the statutory rate]."

ORDER FOR JUDGMENT AND JUDGMENT

It is hereby ordered that Hopfenspirger's motion for default judgment is granted as follows:

1. A money judgment shall be entered in favor of Hopfenspirger and against Borrower in the amount of \$611,207.13 ("Judgment"). Interest shall accrue at the post judgment interest provided at law.

2. Lender may move the Court at a later time to determine additional attorneys' fees and costs incurred after the date of this Order, and to have such costs and fees added to the Judgment.

3. Title to the Collateral is now transferred to Hopfenspirger. Hopfenspirger may take immediate possession of the Collateral and may liquidate the Collateral in accordance with the requirements of Chapter 565 of Minnesota Statutes and other applicable law.

4. Borrower shall within 30 days of this Order, issue Stock as follows:

<u>Lender</u>	<u>Shares</u>
Larry Hopfenspirger	1,137,119
Jordan Family, LLC	897,728
Elmer Salovich Revocable Trust U/A 12/16/96	149,621
Kevin P. Smith	149,621
Kent Marthaler	89,770
Charles Lane	89,770

THERE BEING NO JUST REASON FOR DELAY, THE COURT ADMINISTRATOR IS HEREBY ORDERED TO ENTER JUDGMENT IMMEDIATELY PURSUANT TO THIS ORDER. LET JUDGMENT BE ENTERED ACCORDINGLY WITHOUT STAY.

Dated: Aug 16, 2012

BY THE COURT:



Judge Phillip Carruthers
Hennepin County District Court Judge

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