

CHRIS DEROSE
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Description	Amount
CASE# CV2018-010869	
CIVIL NEW COMPLAINT	333.00
TOTAL AMOUNT	333.00
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Power From Above LLC, an Arizona limited
 liability company; S. Gardner, Inc., an
 Arizona corporation,

Plaintiffs,

vs.

Kendall Oltrogge and Joni Oltrogge, husband
 and wife; Premier Lab Solutions, LLC, an
 Arizona limited liability company,

Defendants.

No. CV 2018-010869
COMPLAINT

(breach of fiduciary duty; breach of
 contract; accounting; appointment of
 receiver; breach of good faith and fair
 dealing)

**ELIGIBLE FOR COMMERCIAL
 COURT**

(Jury Trial Demanded)

For their Complaint, Plaintiffs, allege as follows:

1. Plaintiff, Power From Above LLC ("PFA"), is an Arizona limited liability company doing business in Maricopa County, State of Arizona.
2. Plaintiff, S. Gardner, Inc. ("SGI"), is an Arizona corporation doing business in Maricopa County, State of Arizona.
3. PFA and SGI are collectively referred to herein as "Plaintiffs."

1
2 4. Defendants, Kendall Oltrogge ("Mr. Oltrogge") and Joni Oltrogge ("Mrs.
3 Oltrogge"), are a married couple, and their acts and omissions, as described herein, were
4 done for the benefit of the marital community between them. Mr. Oltrogge and Mrs.
5 Oltrogge caused acts and events to occur in Maricopa County, State of Arizona out of which
6 Plaintiffs' claims arise.

7 5. Defendant, Premier Lab Solutions, LLC ("Premier"), is an Arizona limited
8 liability company doing business in Maricopa County, State of Arizona.

9 6. Jurisdiction and venue are proper in this Court pursuant to A.R.S. §§ 12-123
10 and 12-401.

11 **Background**

12 7. Premier is in the business of providing medical laboratory testing services.

13 8. Upon information and belief, Premier was formed in or around September
14 2015 by Mr. Oltrogge and Mrs. Oltrogge.

15 9. In or around December of 2016, Dan Wheeler, acting on behalf of Premier,
16 solicited Sevrin Gardner, President of SGI, about the opportunity to acquire an ownership
17 interest in Premier.

18 10. In or around December of 2016, Dan Wheeler, acting on behalf of Premier,
19 solicited Shane Power, manager of PFA, about the opportunity to acquire an ownership
20 interest in Premier.

21 11. In or around December of 2016, SGI and PFA, through representatives Sevrin
22 Gardner and Shane Power, participated in discussions and exchanged correspondence with
23 Premier representatives Dan Wheeler, Mike Skupin, and Mr. Oltrogge regarding the
24 possibility of purchasing ownership interests in Premier. At this time, Mr. Oltrogge
25 represented to SGI and PFA that:

26 A. Cash investments in Premier represented an equity interest that would be
27 tracked, allocated and accounted for properly.
28

- 1 B. Cash investments in Premier would, whenever practicable, be paid out on a
2 first money in, first money out basis.

3 12. On December 20, 2016, Dan Wheeler sent an email to Sevrin Gardner that
4 included the following representations:

- 5 A. "I have attached an extremely conservative ROI with projected P&L for
6 Premier Lab Solutions, showing 1,000 samples being processed for month one
7 ending with 3,000 samples the final month. The reality is I have
8 contract for 4,000 Medicare samples to process and my partner controls
9 5,000 samples. I prefer to be ultra conservative with my numbers as
10 you will see."
11 B. "Each machine can handle 3,000 samples per month and we will need 3-4
12 LCMS machines in a short period of time based on our orders that have been
13 committed to us."
14 C. "I built two companies from the start up phase to
15 nearly a billion in revenue, and one hundred and fifty million in
16 revenue."

17 13. A spreadsheet attached to Dan Wheeler's December 20, 2016 email to Sevrin
18 Gardner projected year one revenues for Premier of \$6,342,500. The same spreadsheet
19 projected total year one expenses of \$1,294,525.

20 14. In late 2016, reasonably relying on representations that had been made to PFA
21 by Premier representatives Dan Wheeler, Mike Skupin, and Mr. Oltrogge, PFA acquired a
22 24.5% ownership interest in Premier in exchange for \$125,000. Subsequently, PFA
23 contributed additional capital to Premier and/or paid expenses of Premier in an amount not
24 less than \$40,000.

25 15. In early 2017, reasonably relying on representations that had been made to SGI
26 by Premier representatives Dan Wheeler, Mike Skupin, and Mr. Oltrogge, SGI acquired a
27 24.5% ownership interest in Premier in exchange for \$125,000. Subsequently, SGI
28

1 contributed additional capital to Premier and/or paid expenses of Premier in an amount not
2 less than \$40,000.

3 16. Upon information and belief, at the time PFA and SGI initially acquired their
4 ownership interests in Premier, Mr. Oltrogge and Mrs. Oltrogge controlled, either
5 individually or through a business entity, the remaining 51% of Premier.

6 17. Mr. Oltrogge is, and at all times material hereto was, the Manager of Premier.

7 18. In his capacity as Manager of Premier, Mr. Oltrogge owes PFA, SGI, and
8 Premier fiduciary duties to, among other things, conduct the affairs of Premier in the best
9 interests of Premier and its owners, to the exclusion of his own personal interests.

10 19. Despite demand, PFA and SGA have been given little to no access to the
11 complete financial records of Premier.

12 20. In or around March of 2017, Mr. Oltrogge caused PFA and SGA's ownership
13 interests in Premier to be diluted when he allowed Mark and Chantel Peterson (together
14 "Peterson") to acquire a 9% ownership interest in Premier. Despite Peterson's acquisition
15 of a 9% ownership interest in Premier, Mr. Oltrogge and Mrs. Oltrogge's 51% controlling
16 interest in Premier remained unchanged.

17 21. Upon information and belief, Mr. Oltrogge caused Premier to hire an outside
18 billing company owned by one of his personal friends. Mismanagement of billing issues has
19 plagued Premier, resulting in uncollectable receivables, including one receivable in excess
20 of \$1,100,000.

21 22. Upon information and belief, without the knowledge or consent of PFA and
22 SGI, Mr. Oltrogge has caused Premier to incur disproportionately high operating costs,
23 including labor expenses in excess of \$305,000 per month.

24 23. Upon information and belief, without the knowledge or consent of PFA and
25 SGI, Mr. Oltrogge has caused Premier to incur indebtedness in amounts in excess of \$5,000.

26 24. Upon information and belief, without the knowledge or consent of PFA and
27 SGI, Mr. Oltrogge has caused Premier to pledge assets of Premier as collateral for
28 indebtedness in excess of \$5,000.

25. Upon information and belief, without the knowledge or consent of PFA and SGI, Mr. Oltrogge has caused Premier to incur indebtedness and liability by defaulting on payment obligations to creditors, including employees and sales representatives.

Count One
BREACH OF FIDUCIARY DUTY
(Against Kendall Oltrogge and Joni Oltrogge)

26. Plaintiffs incorporate, by reference, the foregoing paragraphs as if fully set forth herein.

27. By virtue of the agreement between the owners/members of Premier, Mr. Oltrogge, as Manager of Premier, owes fiduciary duties to Plaintiffs.

28. Mr. Oltrogge breached his fiduciary duties to Plaintiffs, by among other things, his acts and omissions as described herein.

29. As a direct and proximate result of the breaches of fiduciary duty by Mr. Oltrogge, Plaintiffs incurred direct damages in an amount to be proven at time of trial.

30. Plaintiffs request an award of their costs and attorneys' fees incurred herein pursuant to Section 12.14 of the Operating Agreement (defined *infra*), A.R.S. §§ 12-341, 12-341.01, or any other applicable statute, rule, or contract provision.

31. Mr. Oltrogge's acts and omissions as described herein constitute willful and intentional misconduct, done with a complete disregard for Plaintiffs' interests.

32. Mr. Oltrogge's conduct justifies an award of punitive damages sufficient to punish Mr. Oltrogge and deter future similar conduct.

Count Two
BREACH OF CONTRACT
(Against Kendall Oltrogge, Joni Oltrogge, and Premier Lab Solutions, LLC)

33. Plaintiffs incorporate, by reference, the foregoing paragraphs as if fully set forth herein.

34. Plaintiffs were parties to various agreements with Mr. Oltrogge, including the Amended and Restated Operating Agreement of Premier Lab Solutions, LLC dated March 1, 2017 ("Operating Agreement").

35. Mr. Oltrogge breached his contractual obligations to Plaintiffs by among other things, his acts and omissions as described herein.

36. As a direct and proximate result of the breaches of contract by Mr. Oltrogge, Plaintiffs incurred direct damages in an amount to be proven at time of trial.

37. Plaintiffs are entitled to their direct damages, or in the alternative, for rescission of their investments in Premier.

38. Plaintiffs request an award of their costs and attorneys' fees incurred herein pursuant to Section 12.14 of the Operating Agreement, A.R.S. §§ 12-341, 12-341.01, or any other applicable statute, rule, or contract provision.

Count Three **ACCOUNTING**

(Against Kendall Oltrogge, Joni Oltrogge, and Premier Lab Solutions, LLC)

39. Plaintiffs incorporate, by reference, the foregoing paragraphs as if fully set forth herein.

40. Based upon the acts and omissions of Mr. Oltrogge as described herein, Plaintiffs are entitled to a full accounting of the affairs of Premier.

41. Plaintiffs are entitled to, and seek an immediate order of the Court directing Defendants to provide Plaintiffs with, complete access to the books and records of Premier, including, but not limited to, the following:

- A. All records of Premier's debts, from its inception to date, including: (i) a description of the purpose or cause of each debt, (ii) copies of all loan applications, promissory notes, security instruments, payment records, and calculations of accrued interest, (iii) all communication records - electronic and otherwise - with Premier's creditors; and (iv) copies of all documents related to any encumbrances on any property owned by Premier.

- B. All sales data, including a copy of the sales database of Premier;
- C. Copies of all profit and loss statements, and any other financial reporting information in whatever format maintained (QuickBooks or otherwise) for Premier;
- D. All tax records, including information showing the payment of all sales and income taxes applicable to Premier;
- E. Complete records of all Premier bank accounts and transactions involving Premier from its inception to date.

42. This action arises out of a contract and, therefore, Plaintiffs are entitled to the reasonable attorneys' fees and court costs they incur in pursuing this action in accordance with Section 12.14 of the Operating Agreement, A.R.S. §§ 12-341 or 12-341.01, or any other applicable law, rule or contract provision.

Count Four
APPOINTMENT OF RECEIVER

(Against Kendall Oltrogge, Joni Oltrogge, and Premier Lab Solutions, LLC)

43. Plaintiffs incorporate, by reference, the foregoing paragraphs as if fully set forth herein.

44. In order to prevent the assets of Premier from being further disposed of, encumbered, or dissipated in violation of Plaintiffs' rights, a Receiver should be appointed to take control of Premier and to protect and preserve its assets.

45. Mr. Oltrogge should be removed as Manager of Premier and should be directed to turn over, to the Receiver, all books, records, and bank accounts of Premier.

46. This action arises out of a contract and, therefore, Plaintiffs are entitled to the reasonable attorneys' fees and court costs they incur in pursuing this action in accordance with Section 12.14 of the Operating Agreement, A.R.S. §§ 12-341 or 12-341.01, or any other applicable law, rule or contract provision.

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Count Five
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(Against Kendall Oltrogge and Joni Oltrogge)

47. Plaintiffs incorporate, by reference, the foregoing paragraphs as if fully set forth herein.

48. In Arizona, every contract implies a covenant of good faith and fair dealing.

49. The acts and omissions of Mr. Oltrogge as described herein constitute a breach of the covenant of good faith and fair dealing implied in the various agreements between Plaintiffs and Mr. Oltrogge, including the Operating Agreement.

50. As a direct and proximate result of the breach of the covenant of good faith and fair dealing by Mr. Oltrogge, Plaintiffs incurred direct damages in an amount to be proven at time of trial.

51. Plaintiffs are entitled to their direct damages, or in the alternative, for rescission of their investments in Premier.

52. Plaintiffs request an award of their costs and attorneys' fees incurred herein pursuant to Section 12.14 of the Operating Agreement, A.R.S. §§ 12-341, 12-341.01, or any other applicable statute, rule, or contract provision.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, Kendall Oltrogge, Joni Oltrogge, and Premier Lab Solutions, LLC, jointly and severally, as follows:

- A. For an award of Plaintiffs' direct damages as may be established at the trial of this matter and/or rescission of Plaintiffs' agreement to purchase ownership interests in Premier;
- B. For punitive damages;
- C. For an award of Plaintiffs' costs and attorneys' fees incurred herein pursuant to Section 12.14 of the Operating Agreement of Premier, A.R.S. §§ 12-341, 12-341.01, or any other applicable statute, rule, or contract provision;
- D. For an award of pre- and post-judgment interest on the foregoing amounts at the highest lawful rate;

- 1 E. For the appointment of a receiver;
- 2 F. For a trial by jury on all issues so triable; and
- 3 G. For such other and further relief as the court deems just and proper.
- 4

5 Dated this 21st day of August, 2018

7 **WARNER ANGLE HALLAM JACKSON**
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