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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ORGANO GOLD INT'L, INC., a Nevada corporation,

Plaintiff,

v.

AUSSIE RULES MARINE SERVICES, LTD., a foreign corporation; GREG NORMAN, a Florida resident, and ABG-SHARK, LLC, a Delaware limited liability company,

Defendants.

NO.

**COMPLAINT FOR DECLARATORY JUDGMENT, BREACH OF CONTRACT, AND INJUNCTIVE RELIEF**

Plaintiff, Organo Gold Int'l, Inc., hereby alleges and complains against defendants as follows:

**I. PARTIES**

1. Plaintiff Organo Gold Int'l, Inc. ("Organo" or "Plaintiff") is, and at all relevant times herein mentioned was, a Nevada corporation with offices in the State of Washington and in British Columbia, Canada.

2. Defendant Greg Norman is a resident of the State of Florida.

3. Defendant Aussie Rules Marine Services, Ltd. is a foreign corporation existing under the laws of the Cayman Islands.

4. Defendant ABG-Shark, LLC is a limited liability company formed under the

1 laws of Delaware with its headquarters in the State of New York.

2 **II. JURISDICTION AND VENUE**

3 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) in that  
4 there is complete diversity between the plaintiff and each defendant and the amount in  
5 controversy exceeds \$75,000.

6 6. This Court has personal jurisdiction over the defendants under the Washington  
7 long-arm statute, RCW 4.28.185, in that defendants have transacted business in Washington by  
8 soliciting business in Washington, performing services in Washington, and promoting their  
9 services, brands and products in Washington. In doing so, defendants have purposefully  
10 availed themselves of the privilege of conducting activities in Washington, and the damages  
11 suffered by plaintiffs arise out of and relate to those activities. Defendants' activities within  
12 Washington are such that the exercise of jurisdiction over the defendants does not offend  
13 traditional notions of fair play and substantial justice.

14 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(3).

15 **III. FACTS**

16 8. Organo is a leader in the field of selling ganoderma-infused beverages, dietary  
17 supplements and other nutraceuticals. Organo has business operations in the United States,  
18 Canada, Mexico and over 40 other countries and distributes its products using a network  
19 marketing system.

20 9. Greg Norman ("Norman") was a professional golfer.

21 10. Aussie Rules Marine Services, Ltd. ("ARMS") is a company controlled by  
22 Norman.

23 11. In July, 2013, Organo entered into a License Agreement with ARMS and  
24 Norman, whereby the parties agreed to develop a specific line of premier coffee products  
25 utilizing Norman's name and likeness (the "Norman Identity") and to promote the product line  
26 and Organo's business.

12. The parties also entered into a Promotion and Services Agreement, whereby,

1 among other things, Norman agreed to make personal appearances and perform certain  
2 professional management consulting services relative to this new product line.

3 13. In consideration of these promises, Organo promised to pay Norman and ARMS  
4 approximately \$5 million over five years under the two contracts.

5 14. Despite Organo's performance of its obligations under the License Agreement  
6 and Promotion and Services Agreement, Norman and ARMS failed to satisfy their obligations  
7 under the two contracts.

8 15. Specifically, under paragraphs 8.2 and 8.4 of the License Agreement, ARMS  
9 and Norman promised to use commercially reasonable efforts to obtain and maintain trademark  
10 registrations for Organo products using the Norman Identity. ARMS and Norman failed to put  
11 forth any effort to obtain and maintain trademark registrations for the Organo products.

12 16. Under paragraphs 2.1 and 2.3 of the Promotion and Services Agreement,  
13 Norman was to make himself available for personal appearances, and meet with Organo to  
14 discuss and arrange his availability for such appearances. Under paragraph 2.4 of that  
15 agreement, Norman was to be available to participate in correspondence connected to Organo's  
16 products. Norman failed to make appearances, meet with Organo or participate in  
17 correspondence.

18 17. Under paragraph 3.2 of the Promotion and Services Agreement, ARMS and  
19 Norman were to put forth reasonable efforts to promote Organo's new product lines, establish a  
20 business plan, and provide professional management consulting services for Organo's business.  
21 ARMS and Norman failed to provide such services.

22 18. Under the terms of both the License Agreement and the Promotion and Services  
23 Agreement, ARMS and Norman were to maintain Organo's confidential business information  
24 and not disclose, disseminate or share such information with third parties. ARMS and Norman  
25 breached these provisions by divulging Organo's confidential business information.

26 19. Both the License Agreement and the Promotion and Services Agreement were  
personal services contracts and the nature of the services to be performed thereunder were  
personal and unique to Norman and ARMS, a company he controlled. As such, the contracts

1 restricted Norman’s ability to transfer the rights to use the Norman Identity and other  
2 contractual obligations to third parties absent the consent of Organo.

3 20. The License Agreement, at paragraph 2.4, expressly provided that the “right to  
4 use the Norman Identity has not been previously granted nor will be granted to anyone other  
5 than Organo Gold for use during the Contract Period within the Contract Territory in  
6 connection with the production and marketing of network marketing for Organo Gold  
7 products.”

8 21. Similarly, the Promotion and Services Agreement provided at paragraph 17.1  
9 that “ARMS and/or Norman will not assign or transfer to third parties any of the [promotional]  
10 obligations” under the contract.

11 22. Sometime before March 23, 2017, Norman sold or otherwise transferred all of  
12 the underlying rights to the subject matter of the License Agreement (the right to exploit the  
13 Norman Identity itself), to defendant ABG-Shark, LLC (“ABG-Shark”).

14 23. Alternatively, both Norman and ARMS sold, assigned or otherwise transferred  
15 their rights and obligations under the License Agreement and Promotion and Services  
16 Agreement to ABG-Shark without the express consent of Organo.

17 24. As a result of that sale, ABG-Shark owned the exclusive right to use the Norman  
18 Identity. As such, the Norman Identity, which was the subject matter of the License  
19 Agreement, was no longer available to Norman or ARMS to license to Organo, thereby  
20 frustrating the purpose of the License Agreement. Further, as a result of this sale, the services  
21 required under the parties’ Promotion and Services Agreement would be controlled by ABG-  
22 Shark, not by Norman and his company ARMS as the parties had expressly agreed.

23 25. On October 4, 2017, Organo gave notice to Norman, ARMS and ABG-Shark of  
24 the various defaults under the License Agreement and Promotion and Services Agreement and  
25 advised that failure to timely cure such defaults would result in termination of the agreements.

26 26. The defendants did not cure the defaults within 30 days, the time provided by  
the agreements for curing defaults.

27. Accordingly, on November 7, 2017, Organo terminated the License Agreement

1 pursuant to paragraph 13.2 thereof and the Promotion and Services Agreement pursuant to  
2 paragraphs 13.3 and 13.4 thereof.

3 **IV. FIRST CAUSE OF ACTION –**  
4 **DECLARATORY RELIEF**

5 28. For its First Cause of Action, Organo realleges and incorporates by reference the  
6 allegations set forth above.

7 29. The License Agreement and Promotion and Services Agreement were valid and  
8 enforceable contracts between Organo, Norman and ARMS, and Organo performed its  
9 obligations under those contracts.

10 30. Defendants Norman and ARMS breached their obligations under the License  
11 Agreement by, among other things:

- 12 a. Conveying to ABG-Shark the exclusive right to use the Norman Identity during  
13 the contract period, in the contract territory and in connection with the  
14 promotion and marketing of Organo products in violation of paragraph 2.4;
- 15 b. Assigning any and all obligations required under the License Agreement to  
16 ABG-Shark without Organo's express consent;
- 17 c. Failing to apply for, obtain and maintain trademark registrations for branded  
18 Organo products using the Norman Identity as required by paragraphs 8.2 and  
19 8.4;
- 20 d. Disclosing Organo's Confidential Information to ABG-Shark in violation of the  
21 provisions in section 15.1.

22 31. Defendants Norman and ARMS breached their obligations under the Promotion  
23 and Services Agreement by, among other things,

- 24 a. Failing to make Norman available for promotional appearances as required by  
25 paragraph 2.1;
- 26 b. Failing to meet in person or by phone to discuss Norman's availability for  
promotional services and appearances as required by paragraph 2.3;
- c. Failing to make Norman available for correspondence as required by paragraph

1 2.4;

- 2 d. Failing to use reasonable efforts to promote Organo's business, including  
3 developing a business plan, consulting about product development and  
4 positioning, offering access to merchandising partners, identifying new  
5 distribution territories and maximizing vendor relationships as required by  
6 paragraph 3.2;
- 7 e. Failing to provide any of the professional management consulting services to  
8 Organo as required under paragraph 3.2;
- 9 f. Assigning and transferring to ABG-Shark the requirement to perform the  
10 promotional obligations which were to be personally performed by Norman and  
11 ARMS, in violation of paragraph 17.1;
- 12 g. Disclosing Organo's confidential information to ABG-Shark, in violation of  
13 paragraph 12.2 and 12.3.

14 32. The breaches by Norman and ARMS constituted defaults under the License  
15 Agreement and Promotion and Services Agreement.

16 33. In addition, the sale or transfer by Norman to ABG-Shark of the exclusive right  
17 to exploit the Norman Identity frustrated the primary commercial purpose of the contracts. The  
18 License Agreement and the Promotion and Services Agreement are personal services contracts.  
19 Organo intended to contract directly for the personal services of Norman and his company,  
20 ARMS, for the exclusive use of the Norman Identity to promote Organo products. Organo  
21 considered the nature of the services to be performed under the License Agreement and  
22 Promotion and Services Agreement to be personal and unique to Norman, and this was  
23 reflected in the terms of the two contracts. Organo specifically did not intend, and did not  
24 agree, to allow third parties to control the use of the Norman Identity in conjunction with the  
25 promotion of Organo products.

26 34. Organo gave notice of default to Norman and ARMS, and Norman and ARMS  
did not timely cure such defaults.

35. Based on Norman's and ARMS' failure to cure the defaults, Organo exercised

1 its right to terminate the License Agreement and Promotion and Services Agreement.

2 36. Despite their defaults, their failure to cure such defaults, and Organo's right to  
3 terminate, Norman and ARMS assert that the License Agreement and Promotion and Services  
4 Agreement were not terminated, and are still enforceable.

5 37. There is a justiciable controversy between the parties as to whether the License  
6 Agreement and Promotion and Services Agreement were terminated. The parties have adverse  
7 interests with respect to this issue, the controversies between them are actual and concrete, and  
8 the parties' disputes are subject to specific relief through a declaratory judgment.

9 38. Accordingly, Organo requests a declaratory order adjudging:

- 10 a. That Norman and ARMS defaulted on their obligations under the License  
11 Agreement and Promotion and Services Agreement, and, after receiving notice  
12 of default, failed to timely cure such defaults;
- 13 b. That based on such failure to timely cure the defaults, Organo properly  
14 terminated the License Agreement and Promotion and Services Agreement  
15 pursuant to the terms thereof;
- 16 c. That the defaults by Norman and ARMs frustrated the primary commercial  
17 purpose of the License Agreement and Promotion and Services Agreement such  
18 that, independent of the terms of the contracts, Organo was entitled to terminate  
19 the License Agreement and Promotion and Services Agreement based on the  
20 doctrine of commercial frustration; and
- 21 d. That, the contracts being terminated, Organo owes no further obligations under  
22 the License Agreement and the Promotion and Services Agreement.

23 **V. SECOND CAUSE OF ACTION –**  
24 **BREACH OF CONTRACT**

25 39. For its Second Cause of Action, Organo realleges and incorporates by reference  
26 the allegations set forth above.

40. If the License Agreement and Promotion and Services Agreement were not  
terminated, then, in the alternative, Norman, ARMS and ABG-Shark breached the terms of

1 those agreements, such breaches being described above.

2 41. The breaches by Norman, ARMS and ABG-Shark proximately caused damage  
3 to Organo, such damages to be proven with specificity at trial but in no event less than the  
4 approximately \$4,300,000 paid to Norman, ARMS and ABG-Shark under the License  
5 Agreement and Promotion and Services Agreement.

6 42. Norman, ARMS and ABG-Shark are liable for the damages proximately caused  
7 by their breach.

8 **VI. THIRD CAUSE OF ACTION –**  
9 **INJUNCTIVE RELIEF**

10 43. For its Third Cause of Action, Organo realleges and incorporates by reference  
11 the allegations set forth above.

12 44. The License Agreement and Promotional and Services Agreement both provide  
13 that Norman and ARMS (a) will not assign or grant to any third parties the right to use the  
14 Norman Identity in connection with the promotion of Organo products, and (b) will not  
15 disclose or disseminate any of Organo's confidential business information to third parties.

16 45. Organo has invested substantial money, resources and effort to develop products  
17 and business strategies that are suited to, and can benefit from, the promotional value of the  
18 Norman Identity, and, in doing so, relied on Norman and ARMS observing and satisfying their  
19 obligations under the agreements.

20 46. By breaching their contractual obligations, Norman and ARMS have disrupted  
21 Organo's business strategies and jeopardized Organo's investment in products utilizing the  
22 Norman Identity.

23 47. ABG-Shark participated in the breaches and, as a result, now possesses  
24 Organo's confidential business information and has improperly asserted itself into the personal  
25 services contract between Organo, Norman and ARMS.

26 48. The wrongful conduct of the defendants as alleged above poses an imminent,  
continuing, existential threat to Organo. Unless that conduct is permanently enjoined, Organo  
will suffer irreparable injury.

1 49. Monetary damages are insufficient because, unless enjoined by this Court,  
2 defendants will, upon information and belief, continue to utilize and misappropriate Organo's  
3 confidential business information, and interfere and disrupt Organo's contractual relationship  
4 with Norman and ARMS. Further, the parties agreed under the License Agreement and the  
5 Promotion and Services Agreement that irreparable harm will result and injunctive relief is  
6 appropriate if any party fails to perform in accordance with the specific terms of those  
7 contracts.

8 50. Accordingly, Organo requests that the Court enjoin (a) ABG-Shark from using  
9 and/or disseminating Organo's confidential business information, (b) ABG-Shark from using  
10 the Norman Identity in connection with the production and marketing of Organo products, and  
11 (c) all defendants from further assigning or transferring any right to use the Norman Identity in  
12 connection with the production and marketing of Organo products.

13 **VII. REQUEST FOR RELIEF**

14 WHEREFORE, Organo respectfully requests that the Court grant the following relief:

- 15 1. Judgment declaring the parties' rights and obligations under the Licensing  
16 Agreement and Promotion and Services Agreement, and specifically adjudging:
- 17 a. That Norman and ARMS defaulted on their obligations under the License  
18 Agreement and Promotion and Services Agreement, and after receiving notice  
19 of default, failed to timely cure such defaults;
  - 20 b. That based on such failure to timely cure the defaults, Organo properly  
21 terminated the License Agreement and Promotion and Services Agreement  
22 pursuant to the terms thereof;
  - 23 c. That the defaults by Norman and ARMs frustrated the primary commercial  
24 purpose of the License Agreement and Promotion and Services Agreement such  
25 that, independent of the terms of the contracts, Organo was entitled to terminate  
26 the License Agreement and Promotion and Services Agreement based on the  
doctrine of commercial frustration; and

1 d. That, the contracts being terminated, Organo owes no further obligations under  
2 the License Agreement and the Promotion and Services Agreement.

3 2. Alternatively, judgment against Norman, ARMS, and ABG-Shark, jointly and  
4 severally, for all damages proximately caused by their breach of the terms of the Licensing  
5 Agreement and Promotion and Services Agreement, such damages to be in an amount to be  
6 proven at trial;

7 3. Injunctive relief enjoining:

8 a. ABG-Shark from using and/or disseminating Organo's confidential business  
9 information, and requiring ABG-Shark to return all Organo confidential business information  
10 received from Norman or ARMS;

11 b. ABG-Shark from using the Norman Identity in connection with the production  
12 and marketing of Organo products, and

13 c. All defendants from further assigning or transferring any right to use the  
14 Norman Identity in connection with the production and marketing of Organo products.

15 4. An award of cost and attorneys' fees to the extent allowed by applicable statute,  
16 agreement, or court rule;

17 5. For such other and further relief as this Court deems just and proper.

18 DATED this 24<sup>th</sup> day of January, 2018.

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