

FILED

APR 26 2013

DAVID CREWS, CLERK
BY *[Signature]*
Deputy

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSISSIPPI

MOSSY OAK PROPERTIES, INC.

1:13CV84-A-S
PLAINTIFF

V.

CAUSE NO. 2013-0059BIOVENTURE INVESTMENTS, LLC and
KERRY S. JOHNSON

DEFENDANTS

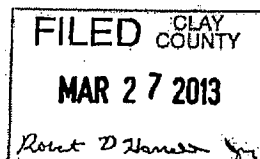
COMPLAINT

COMES NOW Plaintiff, Mossy Oak Properties, Inc. (sometimes referred to herein as "MOP") by and through its attorney, and files this Complaint seeking, among other things: (i) declaratory relief; (ii) permanent injunctive relief against Defendants; (iii) an accounting from Defendants; and (iv) to recover damages and other relief from Defendants Bioventure Investments, LLC (sometimes referred to herein as "Bioventure") and Kerry Johnson (sometimes referred to herein as "Johnson") (Bioventure and Johnson are sometimes referred to herein collectively as "Defendants") arising from the breach by Defendants of two franchise agreements entered into with MOP and Defendant Johnson's breach of the Personal Guaranty (as hereinafter defined), and would show unto the Court the following:

Parties, Jurisdiction and Venue

1. Plaintiff Mossy Oak Properties, Inc. is a corporation in good standing, organized and existing pursuant to the laws of the State of Delaware. MOP is qualified to do business in Mississippi by the Secretary of State of the State of Mississippi and has its principal place of business in Mississippi.

2. Defendant Bioventure Investments, LLC is a limited liability company organized pursuant to the laws of the State of Missouri with its principal place of business in Missouri. Bioventure may be served with process upon its registered agent, Kerry Johnson at 4012 East Jackson Boulevard, Jackson, MO 63755.



3. Upon information and belief, Defendant Kerry S. Johnson is an adult resident citizen of Cape Girardeau County, Missouri and may be served with process at 4012 East Jackson Boulevard, Jackson, MO 63755 or wherever he may be found.

4. This Court has jurisdiction over this action pursuant to Miss. Code Ann. § 9-7-81 and §13-3-57. Additionally, Defendants Bioventure and Johnson have each waived all objections to personal jurisdiction and have consented to the jurisdiction of this Court pursuant to Section 20.1 of the separate Franchise Agreements (as hereinafter defined) as well as the Personal Guaranty (as hereinafter defined) signed by Defendant Johnson.

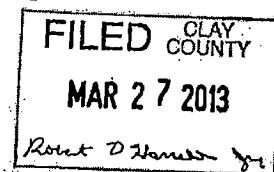
5. Venue is proper in this Court pursuant to Miss. Code Ann. § 11-11-3 because the substantial acts and omissions which are the subject of this litigation occurred in Clay County, Mississippi, Plaintiff is a resident of Clay County, Mississippi and because Defendants have each waived all objections to venue and consented to venue in this Court pursuant to Section 20.1 of the separate Franchise Agreements as well as the Personal Guaranty signed by Defendant Johnson.

Facts

Nature of the Dispute.

6. MOP is a franchisor of "Mossy Oak Properties®" real estate brokerage offices throughout the United States.

7. This is a claim by MOP for declaratory relief, permanent injunctive relief, accounting and damages and other relief arising from multiple material breaches by Defendant Bioventure and Defendant Johnson of two (2) separate Franchise Agreements entered into by and between Defendants Bioventure/Johnson and Mossy Oak Properties, Inc. and from Defendant Johnson's breach of the Personal Guaranty as follows:



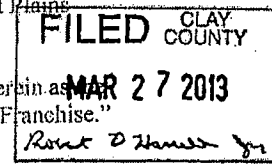
8. Effective as of March 6, 2009, Defendants entered into that certain franchise agreement with MOP whereby Defendants established a Mossy Oak Properties® franchise covering the territory of Howell County, Missouri¹ (the "West Plains Franchise Agreement"). Defendants have failed to pay royalties for 2012 as required under the West Plains Franchise Agreement and have otherwise materially breached Sections 7, 8, 11.3.2, 11.2.7, 11.3.3, 11.3.4, 11.3.9 and 11.3.10 of the West Plains Franchise Agreement necessitating the "for cause" termination of the West Plains Franchise Agreement by MOP. Additionally, upon information and belief and based on certain representations/admissions made by Defendant Johnson², Defendants have also failed to pay royalties as required under Section 7 of the West Plains Franchise Agreement for the years 2009-2011. Defendants' material breaches of and the resultant termination of the West Plains Franchise Agreement have resulted in damage to the Mossy Oak Properties® brand and a loss of future royalties to MOP.

9. Effective as of November 1, 2006, Defendants entered into that certain franchise agreement with MOP whereby Defendants established a Mossy Oak Properties® franchise covering the territory of Cape Girardeau County, Missouri³ (the "Jackson Franchise Agreement"). Defendants have failed to pay royalties for 2012 as required under the Jackson Franchise Agreement and have otherwise materially breached Sections 7, 8, 11.2.7 and 11.3.3 of the Jackson Franchise Agreement (in addition to numerous provisions of the West Plains Franchise Agreement) necessitating the "for cause" termination of the Jackson Franchise Agreement by MOP. Additionally, upon information and belief and based on certain

¹ Because this franchise was based in West Plains, MO, this franchise agreement will be referred to herein as the "West Plains Franchise Agreement" and the franchise itself will be referred to herein as the "West Plains Franchise."

² See Exhibit 10.

³ Because this franchise was based in Jackson, MO, this franchise agreement will be referred to herein as the "Jackson Franchise Agreement" and the franchise itself will be referred to herein as the "Jackson Franchise."



representations/admissions made by Defendant Johnson⁴, Defendants have also failed to pay royalties as required under Section 7 of the Jackson Franchise Agreement for the years 2007-2011. Defendants' material breaches of and the resultant termination of the Jackson Franchise Agreement have resulted in damage to the Mossy Oak Properties® brand and a loss of future royalties to MOP.

10. In addition to claims against Defendant Johnson for breach of the Franchise Agreements⁵, MOP's claim against Defendant Johnson is also based on the "Guaranty and Assumption of Obligations" (hereinafter referred to as the "Personal Guaranty") that was executed by Johnson, whereby Johnson personally, absolutely and unconditionally guaranteed all obligations under each of the Franchise Agreements. Defendant Johnson has breached the Personal Guaranty and such breach has resulted in damage to MOP.

11. Upon information and belief, Defendants have in practice, accepted and ratified the separate terminations of both Franchise Agreements, by abandoning both franchises and by no longer using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks" as those terms are defined in the Franchise Agreements.

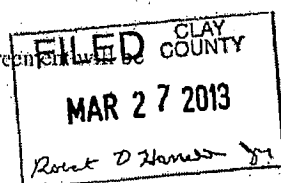
Defendants' Breaches of the West Plains Franchise Agreement.

12. Effective as of March 6, 2009, MOP and Defendants entered into the West Plains Franchise Agreement whereby Defendants established a Mossy Oak Properties® franchise in Howell County, Missouri. The West Plains Franchise Agreement was for a term of ten (10) years and at all times relevant hereto, the West Plains Franchise Agreement was a valid, enforceable contract between Defendants and MOP. See Exhibit 1.

13. Additionally and on March 6, 2009, Defendant Johnson executed the "Guaranty

⁴ See Exhibit 10.

⁵ When referenced together, the West Plains Franchise Agreement and the Jackson Franchise Agreement will be referred to herein collectively as the "Franchise Agreements."



and Assumption of Obligations" personally, absolutely and unconditionally guaranteeing all obligations whatsoever under the West Plains Franchise Agreement, as well as any/all other franchise agreement(s) between the parties. See Exhibit 2.

14. Prior to the execution of the West Plains Franchise Agreement, Defendant Johnson transferred/assigned forty-nine percent (49%) of his interest in the West Plains Franchise to Curt Dobbs thereby making Curt Dobbs a minority owner of the West Plains Franchise. See Exhibit 3.

15. At all times relevant hereto, Defendant Johnson was the majority owner and sole personal guarantor of the West Plains Franchise however, Curt Dobbs was the managing broker of the West Plains Franchise and responsible for the day-to-day operation of the franchise.

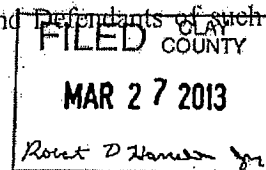
16. On May 4, 2010, Defendant Johnson and Curt Dobbs executed the "Ownership Assignment" whereby MOP consented to Johnson's transfer/assignment to Curt Dobbs and whereby Curt Dobbs agreed to abide by the terms and conditions set forth in the West Plains Franchise Agreement. See Exhibit 4.

17. Section 11.3.2 of the West Plains Franchise Agreement requires the franchisee (Defendants) to:

"Diligently, faithfully and continuously conduct a Mossy Oak Properties franchise at the Approved Office Location, which shall be open during regular business hours that are customary in your area."

See West Plains Franchise Agreement, §11.3.2.

18. On or about March 30, 2012, MOP learned that Curt Dobbs and Defendants had failed to comply with Section 11.3.2 of the West Plains Franchise Agreement resulting in a default by Defendants of Section 11.3.2 of the West Plains Franchise Agreement. Pursuant to the West Plains Franchise Agreement, MOP notified Curt Dobbs and Defendants of such default.



See Exhibit 5.

19. Despite written notice of such default, Curt Dobbs and Defendants failed to cure their violation/default of Section 11.3.2 of the West Plains Franchise Agreement within the allowed thirty (30) day cure period thereby materially breaching Section 11.3.2 of the West Plains Franchise Agreement.

20. Section 11.2.7 of the West Plains Franchise Agreement prohibits any franchisee (or "Affiliate") from engaging in any action that would be considered a "Conflict of Interest" under the West Plains Franchise Agreement. Section 11.2.7 states in pertinent part:

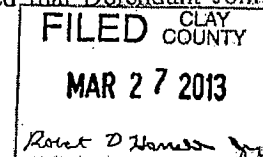
"Without our prior written consent, neither you nor your Affiliates shall, during the term of this Agreement, directly or indirectly (individually, or as an officer, director, shareholder, partner, Responsible Broker or otherwise) operate, manage, own or have an interest in (1) any real estate business other than the business to be operated under this Agreement or under another agreement with us or (2) any other business that may be in competition with us."

See West Plains Franchise Agreement, §11.2.7.

21. On or about April 19, 2012, MOP learned that Curt Dobbs (who is considered an "Affiliate" under the West Plains Franchise Agreement), established a competing real-estate brokerage company while maintaining his forty-nine (49%) interest in the West Plains Franchise and in violation/default of Section 11.2.7 of the West Plains Franchise Agreement. See Exhibit 6.

22. Again and despite written notice of this default (See Exhibit 7), Defendants failed to cure such violation/default on or before the expiration of the thirty (30) day cure period thereby materially breaching Section 11.2.7 of the West Plains Franchise Agreement.

23. Additionally and at some point in 2012, MOP learned that Defendant Johnson



also had established a company called Kingdom Quest Realty, LLC, a competing real estate brokerage company, while maintaining his majority ownership interest in the West Plains Franchise and in violation/default of Section 11.2.7 of the West Plains Franchise Agreement. *See Exhibit 8*. Upon information and belief, Defendant Johnson's intent in establishing and operating Kingdom Quest Realty, LLC was to avoid having to pay royalties to MOP by diverting certain real estate closings from MOP to Kingdom Quest Realty thereby defrauding MOP out of royalties to which MOP would have otherwise been entitled under Section 7 of the West Plains Franchise Agreement.

24. Defendant Johnson's self-acknowledged (*See Exhibit 9*) establishment and operation of Kingdom Quest Realty, LLC in direct competition with MOP and while maintaining his majority ownership interest in the West Plains Franchise constitutes yet another material breach by Defendants of Section 11.2.7 of the West Plains Franchise Agreement.

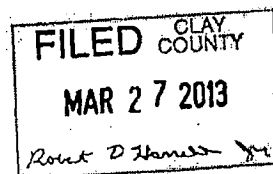
25. Section 11.3.3 of the West Plains Franchise Agreement grants MOP the right to audit the West Plains Franchise and states that the franchisee (Defendants) shall:

"...allow [Mossy Oak Properties] to make inspections of your business and...you will make your books, bank statements, tax returns and records available for audit by [Mossy Oak Properties]..."

See West Plains Franchise Agreement, §11.3.3:

26. Based on the multiple material breaches of the West Plains Franchise Agreement as well as certain representations/admissions made by Defendant Johnson that the Defendants had engaged in stealing and embezzling from MOP (*See Exhibit 10*), MOP requested, on several occasions, that Defendants submit to an audit of the West Plains Franchise. (*See Exhibit 11*).

27. Despite such requests for audit and written notices of default (*See Exhibit 12*),



Defendants failed to produce all documents requested which, prevented MOP from conducting the audit thereby constituting a material breach of Section 11.3.3 of the West Plains Franchise Agreement.

28. Sections 11.3.4 and 11.3.9 of the West Plains Franchise Agreement requires the franchisee (Defendants) to adhere to certain levels of ethical standards and professionalism. Defendant Johnson's representations/admissions that the Defendants have "stolen" and "embezzled" from MOP (*See Exhibit 10*), constitutes a material breach of Sections 11.3.4 and 11.3.9 as well as Section 7 (Franchise Royalty Fees) of the West Plains Franchise Agreement.

29. Additionally, MOP received multiple third party complaints regarding the West Plains Franchise, each of which constitutes a separate breach of Sections 11.3.4 and 11.3.9 of the West Plains Franchise Agreement.

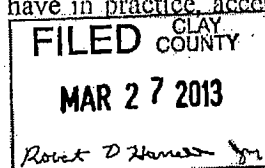
30. Additionally, Defendants have failed to pay minimum royalties and fees for 2012 in the amount of \$6,428.40 as required under Sections 7 and 8 of the West Plains Franchise Agreement constituting yet another breach by Defendants of the West Plains Franchise Agreement. *See Exhibit 13.*

31. Finally, upon information and belief and based on certain representations/admissions made by Defendant Johnson⁶, Defendants have also failed to pay royalties as required under Section 7 of the West Plains Franchise Agreement for the years 2009-2011.

32. As a result of the multiple breaches of the West Plains Franchise Agreement, MOP was forced to terminate the West Plains Franchise Agreement "for cause" effective January 21, 2013. *See Exhibit 14.*

33. Upon information and belief, Defendants have in practice, accepted and ratified

⁶ *See Exhibit 10.*



the termination of the West Plains Franchise Agreement, by abandoning the West Plains Franchise and by no longer using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks" as those terms are defined in the West Plains Franchise Agreement.

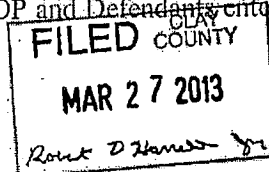
34. MOP has fully performed as required under the West Plains Franchise Agreement and has never committed any material breach or default under the West Plains Franchise Agreement.

35. As a direct, proximate and foreseeable result of Defendants' multiple material breaches of the West Plains Franchise Agreement, MOP has suffered substantial damage as described herein.

36. Due to Defendant's multiple material breaches of the West Plains Franchise Agreement and by virtue of the Personal Guaranty, MOP is entitled to recover from Defendants, jointly and severally, damages related to such breaches including but not limited to: (i) the sum of \$6,428.40 in minimum royalties and fees for 2012 owed by Defendants pursuant to Sections 7 and 8 of the West Plains Franchise Agreement; (ii) any and all royalties due as required under Section 7 of the West Plains Franchise Agreement for the years 2009-2011; (iii) liquidated damages in the amount of \$16,800.00 pursuant to Section 17.1 of the West Plains Franchise Agreement; (iv) additional common law, actual and/or compensatory damages pursuant to Section 17.2 of the West Plains Franchise Agreement in an amount to be determined at trial; (v) reasonable attorney's fees, costs and expenses pursuant to Sections 20.2 and 21.8 of the West Plains Franchise Agreement; and (vi) post-judgment interest at the legal rate from and after the date of entry of judgment.

Defendants' Breaches of the Jackson Franchise Agreement.

37. Effective as of November 1, 2006, MOP and Defendants entered into the Jackson



Franchise Agreement whereby Defendants established a Mossy Oak Properties® franchise in Cape Girardeau County, Missouri. The Jackson Franchise Agreement was for a term of ten (10) years and at all times relevant hereto, the Jackson Franchise Agreement was a valid, enforceable contract between Defendants and MOP. See Exhibit 15.

38. By virtue of the Personal Guaranty executed by Defendant Johnson, Defendant Johnson personally, absolutely and unconditionally guaranteed all obligations whatsoever under the Jackson Franchise Agreement. See Exhibit 2.

39. At all times relevant hereto, Defendant Johnson was the majority owner, sole personal guarantor and the managing broker of the Jackson Franchise.

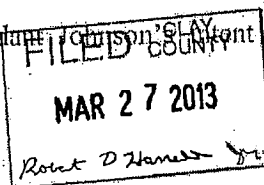
40. Section 11.2.7 of the Jackson Franchise Agreement prohibits any franchisee from engaging in any action that would be considered a "Conflict of Interest" under the Jackson Franchise Agreement. Section 11.2.7 states in pertinent part:

"Without our prior written consent, neither you nor your Affiliates shall, during the term of this Agreement, directly or indirectly (individually, or as an officer, director, shareholder, partner, Responsible Broker or otherwise) operate, manage, own or have an interest in (1) any real estate business other than the business to be operated under this Agreement or under another agreement with us or (2) any other business that may be in competition with us."

See Jackson Franchise Agreement, §11.2.7.

41. At some point in 2012, MOP learned that Defendant Johnson established a company called Kingdom Quest Realty, LLC, a competing real estate brokerage company, while maintaining his majority ownership interest in the Jackson Franchise and in violation/default of Section 11.2.7 of the Jackson Franchise Agreement. See Exhibit 8.

42. Upon information and belief, Defendant Johnson's intent in establishing and



operating Kingdom Quest Realty, LLC was to avoid having to pay royalties to MOP by diverting certain real estate closings from MOP to Kingdom Quest Realty thereby defrauding MOP out of royalties to which MOP would have otherwise been entitled under Section 7 of the Jackson Franchise Agreement.

43. Defendant Johnson's self-acknowledged (See Exhibit 9) establishment and operation of Kingdom Quest Realty, LLC in direct competition with MOP and while maintaining his majority ownership interest in the Jackson Franchise constitutes yet another material breach by Defendants of Section 11.2.7 of the Jackson Franchise Agreement.

44. Section 11.3.3 of the Jackson Franchise Agreement grants MOP the right to audit the Jackson Franchise and states that the franchisee (Defendants) shall:

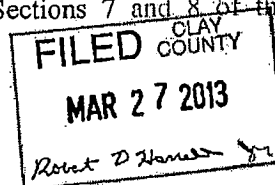
"...allow [Mossy Oak Properties] to make inspections of your business and...you will make your books, bank statements, tax returns and records available for...audit by [Mossy Oak Properties]..."

See Jackson Franchise Agreement, §11.3.3.

45. Based on the multiple material breaches by Defendants of the West Plains Franchise Agreement as well as the Jackson Franchise Agreement, MOP requested, on several occasions, that Defendants submit to an audit of the Jackson Franchise. (See Exhibit 16).

46. Despite such requests for audit and written notices of default (See Exhibit 17), Defendants failed to produce all documents requested which, prevented MOP from conducting the audit thereby constituting a material breach of Section 11.3.3 of the Jackson Franchise Agreement.

47. Additionally, Defendants have failed to pay minimum royalties and fees for 2012 in the amount of \$8,304.60 as required under Sections 7 and 8 of the Jackson Franchise



Agreement constituting yet another material breach by Defendants of the Jackson Franchise Agreement. See Exhibit 18.

48. Finally, upon information and belief and based on certain representations/admissions made by Defendant Johnson⁷, Defendants have also failed to pay royalties as required under Section 7 of the Jackson Franchise Agreement for the years 2006-2011.

49. As a result of the multiple material breaches of the Jackson Franchise Agreement (and pursuant to the "cross-termination" provision in Section 15.2.1 of the Jackson Franchise Agreement allowing termination of the Jackson Franchise Agreement based on the multiple material breaches by Defendant of the West Plains Franchise Agreement), MOP was forced to terminate the Jackson Franchise Agreement "for cause" effective February 25, 2013. See Exhibit 19.

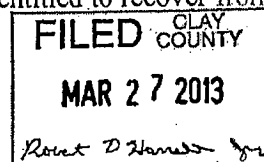
50. Upon information and belief, Defendants have in practice, accepted and ratified the termination of the Jackson Franchise Agreement, by abandoning the Jackson Franchise and by no longer using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks" as those terms are defined in the West Plains Franchise Agreement.

51. MOP has fully performed as required under the Jackson Franchise Agreement and has never committed any material breach or default under the Jackson Franchise Agreement.

52. As a direct, proximate and foreseeable result of Defendants' multiple material breaches of the Jackson Franchise Agreement, MOP has suffered substantial damage as described herein.

53. Due to Defendant's multiple material breaches of the Jackson Franchise Agreement and by virtue of the Personal Guaranty, MOP is entitled to recover from Defendants,

⁷ See Exhibit 10.



jointly and severally, damages related to such breaches including but not limited to: (i) the sum of \$8,304.60 in minimum royalties and fees for 2012 owed by Defendants pursuant to Sections 7 and 8 of the Jackson Franchise Agreement; (ii) any and all royalties due as required under Section 7 of the Jackson Franchise Agreement for the years 2007-2011; (iii) liquidated damages in the amount of \$16,800.00 pursuant to Section 17.1 of the Jackson Franchise Agreement; (iv) additional common law, actual and compensatory damages pursuant to Section 17.2 of the Jackson Franchise Agreement in an amount to be determined at trial; (v) reasonable attorney's fees, costs and expenses pursuant to Sections 20.2 and 21.8 of the Jackson Franchise Agreement; and (vi) post-judgment interest at the legal rate from and after the date of entry of judgment.

Causes of Action

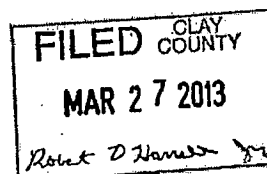
Count I. Declaratory Relief Regarding the West Plains Franchise Agreement.

54. Paragraphs 1 through 53 of this Complaint are incorporated herein by reference and made part hereof.

55. Effective as of March 6, 2009, MOP and Defendants entered into the West Plains Franchise Agreement whereby Defendants established a Mossy Oak Properties® franchise in Howell County, Missouri. The West Plains Franchise Agreement was for a term of ten (10) years and at all times relevant hereto, the West Plains Franchise Agreement was a valid, enforceable contract between Defendants and MOP. See Exhibit 1.

56. During the term of the West Plains Franchise Agreement, the Defendants materially breached Sections 7, 8, 11.3.2, 11.2.7, 11.3.3, 11.3.4 and 11.3.9 of the West Plains Franchise Agreement as follows:

- (i) Failure of Defendants to pay minimum royalties and fees for 2012 in the amount of \$6,428.40 as required under Sections 7 and 8 of the West Plains Franchise Agreement;

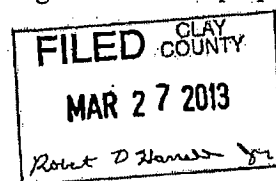


- (ii) Failure to pay royalties as required under Section 7 of the West Plains Franchise Agreement for the years 2009-2011;
- (iii) Defendants' failure to maintain regular business hours in violation of Section 11.3.2 of the West Plains Franchise Agreement;
- (iv) Curt Dobbs' (Dobbs and Associates Real Estate Investments, LLC) conflict of interest in violation of Section 11.2.7 of the West Plains Franchise Agreement;
- (v) Defendant Johnsons' (Kingdom Quest Realty, LLC) conflict of interest in violation of Section 11.2.7 of the West Plains Franchise Agreement;
- (vi) Defendant Johnson's representation/admission that Defendants have stolen and embezzled from MOP in violation of Sections 7, 11.3.4, 11.3.9;
- (vii) Defendants' failure to fully comply with Mossy Oak Properties' request for documents/records pursuant to Section 11.3.3 of the West Plains Franchise Agreement; and
- (viii) The multiple complaints against the West Plains Franchise in violation of Sections 11.3.9 and 11.3.10 of the West Plains Franchise Agreement.

57. As a result of the multiple breaches of the West Plains Franchise Agreement, MOP was forced to terminate the West Plains Franchise Agreement "for cause" effective January 21, 2013. See Exhibit 14.

58. By abandoning the West Plains Franchise and by no longer using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks" as those terms are defined in the West Plains Franchise Agreement, Defendants have in practice, accepted and ratified the termination of the West Plains Franchise Agreement. However, Defendants have not affirmatively confirmed such acceptance/ratification in writing or otherwise responded to MOP's notice of termination nor can MOP independently verify that Defendants have ceased using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks."

59. Accordingly, an actual existing and bona fide controversy exists between MOP and Defendants as to whether or not the West Plains Franchise Agreement was properly



terminated by MOP. Pursuant to Rule 57, Miss. R. Civ. P., MOP seeks a declaration of its rights under the West Plains Franchise Agreement with respect to Defendants. Specifically, MOP seeks a declaration that the West Plains Franchise Agreement was properly terminated effective January 21, 2013.

60. WHEREFORE, PREMISES CONSIDERED, Pursuant to Rule 57, Miss. R. Civ. P., MOP seeks a declaration of its rights under the West Plains Franchise Agreement with respect to Defendants. Specifically, MOP seeks a declaration that the West Plains Franchise Agreement was properly terminated effective January 21, 2013.

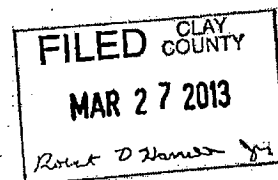
Count II. Breach of the West Plains Franchise Agreement.

61. Paragraphs 1 through 60 of this Complaint are incorporated herein by reference and made part hereof.

62. Effective as of March 6, 2009, MOP and Defendants entered into the West Plains Franchise Agreement whereby Defendants established a Mossy Oak Properties® franchise in Howell County, Missouri. The West Plains Franchise Agreement was for a term of ten (10) years and at all times relevant hereto, the West Plains Franchise Agreement was a valid, enforceable contract between Defendants and MOP. See Exhibit 1.

63. During the term of the West Plains Franchise Agreement, the Defendants materially breached Sections 7, 8, 11.3.2, 11.2.7, 11.3.3, 11.3.4 and 11.3.9 of the West Plains Franchise Agreement as follows:

- (ix) Failure of Defendants to pay minimum royalties and fees for 2012 in the amount of \$6,428.40 as required under Sections 7 and 8 of the West Plains Franchise Agreement;
- (x) Failure to pay royalties as required under Section 7 of the West Plains Franchise Agreement for the years 2009-2011;



- (xi) Defendants' failure to maintain regular business hours in violation of Section 11.3.2 of the West Plains Franchise Agreement;
- (xii) Curt Dobbs' (Dobbs and Associates Real Estate Investments, LLC) conflict of interest in violation of Section 11.2.7 of the West Plains Franchise Agreement;
- (xiii) Defendant Johnsons' (Kingdom Quest Realty, LLC) conflict of interest in violation of Section 11.2.7 of the West Plains Franchise Agreement;
- (xiv) Defendant Johnson's representation/admission that Defendants have stolen and embezzled from MOP in violation of Sections 7, 11.3.4, 11.3.9;
- (xv) Defendants' failure to fully comply with Mossy Oak Properties' request for documents/records pursuant to Section 11.3.3 of the West Plains Franchise Agreement; and
- (xvi) The multiple complaints against the West Plains Franchise in violation of Sections 11.3.9 and 11.3.10 of the West Plains Franchise Agreement.

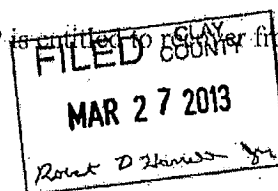
64. As a result of the multiple breaches of the West Plains Franchise Agreement, MOP was forced to terminate the West Plains Franchise Agreement "for cause" effective January 21, 2013. See Exhibit 14.

65. Defendants have, in practice, accepted and ratified the termination of the West Plains Franchise Agreement, by abandoning the West Plains Franchise and by no longer using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks" as those terms are defined in the West Plains Franchise Agreement.

66. As a direct, proximate and foreseeable result of Defendants' multiple material breaches of the West Plains Franchise Agreement, MOP has suffered substantial damage as described herein.

67. MOP has fully performed as required under the West Plains Franchise Agreement and has never committed any material breach or default under the West Plains Franchise Agreement.

68. WHEREFORE, PREMISES CONSIDERED, MOP is entitled to relief from and



demands judgment against Defendant Bioventure Investments, LLC and Defendant Kerry S. Johnson, jointly and severally, for damages related to Defendants' material breaches of the West Plains Franchise Agreement including but not limited to: (i) the sum of \$6,428.40 in minimum royalties and fees for 2012 owed by Defendants pursuant to Sections 7 and 8 of the West Plains Franchise Agreement; (ii) any and all royalties due as required under Section 7 of the West Plains Franchise Agreement for the years 2007-2011; (iii) liquidated damages in the amount of \$16,800.00 pursuant to Section 17.1 of the West Plains Franchise Agreement; (iv) additional common law, actual and/or compensatory damages pursuant to Section 17.2 of the West Plains Franchise Agreement in an amount to be determined at trial; (v) reasonable attorney's fees, costs and expenses pursuant to Sections 20.2 and 21.8 of the West Plains Franchise Agreement; and (vi) post-judgment interest at the legal rate from and after the date of entry of judgment.

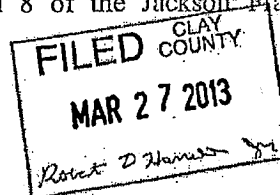
Count III. Declaratory Relief Regarding the Jackson Franchise Agreement.

69. Paragraphs 1 through 68 of this Complaint are incorporated herein by reference and made part hereof.

70. Effective as of November 1, 2006, MOP and Defendants entered into the Jackson Franchise Agreement whereby Defendants established a Mossy Oak Properties® franchise in Cape Girardeau County, Missouri. The Jackson Franchise Agreement was for a term of ten (10) years and at all times relevant hereto, the Jackson Franchise Agreement was a valid, enforceable contract between Defendants and MOP. See Exhibit 15.

71. During the term of the Jackson Franchise Agreement, the Defendants materially breached Sections 7, 8, 11.2.7 and 11.3.3 of the Jackson Franchise Agreement as follows:

- (i) Failure of Defendants to pay minimum royalties and fees for 2012 in the amount of \$8,304.60 as required under Sections 7 and 8 of the Jackson Franchise Agreement;

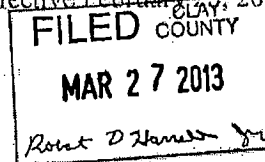


- (ii) Failure to pay royalties as required under Section 7 of the Jackson Franchise Agreement for the years 2007-2011;
- (iii) Defendant Johnsons' (Kingdom Quest Realty, LLC) conflict of interest in violation of Section 11.2.7 of the Jackson Franchise Agreement; and
- (iv) Defendants' failure to fully comply with Mossy Oak Properties' request for documents/records pursuant to Section 11.3.3 of the Jackson Franchise Agreement.

72. As a result of the multiple material breaches of the Jackson Franchise Agreement (and pursuant to the "cross-termination" provision in Section 15.2.1 of the Jackson Franchise Agreement allowing termination of the Jackson Franchise Agreement based on the multiple material breaches by Defendant of the West Plains Franchise Agreement), MOP was forced to terminate the Jackson Franchise Agreement "for cause" effective February 25, 2013. *See Exhibit 19*.

73. By abandoning the Jackson Franchise and by no longer using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks" as those terms are defined in the Jackson Franchise Agreement, Defendants have in practice, accepted and ratified the termination of the Jackson Franchise Agreement. However, Defendants have not affirmatively confirmed such acceptance/ratification in writing or otherwise responded to MOP's notice of termination nor can MOP independently verify that Defendants have ceased using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks."

74. Accordingly, an actual existing and bona fide controversy exists between MOP and Defendants as to whether or not the Jackson Franchise Agreement was properly terminated by MOP. Pursuant to Rule 57, Miss. R. Civ. P., MOP seeks a declaration of its rights under the Jackson Franchise Agreement with respect to Defendants. Specifically, MOP seeks a declaration that the Jackson Franchise Agreement was properly terminated effective February 25, 2013.



75. WHEREFORE, PREMISES CONSIDERED, Pursuant to Rule 57, Miss. R. Civ. P., MOP seeks a declaration of its rights under the Jackson Franchise Agreement with respect to Defendants. Specifically, MOP seeks a declaration that the Jackson Franchise Agreement was properly terminated effective February 25, 2013.

Count IV. Breach of the Jackson Franchise Agreement.

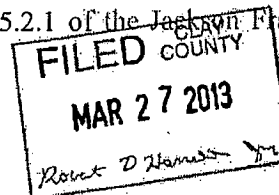
76. Paragraphs 1 through 75 of this Complaint are incorporated herein by reference and made part hereof.

77. Effective as of November 1, 2006, MOP and Defendants entered into the Jackson Franchise Agreement whereby Defendants established a Mossy Oak Properties® franchise in Cape Girardeau County, Missouri. The Jackson Franchise Agreement was for a term of ten (10) years and at all times relevant hereto, the Jackson Franchise Agreement was a valid, enforceable contract between Defendants and MOP. *See Exhibit 15.*

78. During the term of the Jackson Franchise Agreement, the Defendants materially breached Sections 7, 8, 11.2.7 and 11.3.3 of the Jackson Franchise Agreement as follows:

- (v) Failure of Defendants to pay minimum royalties and fees for 2012 in the amount of **\$8,304.60** as required under Sections 7 and 8 of the Jackson Franchise Agreement;
- (vi) Failure to pay royalties as required under Section 7 of the Jackson Franchise Agreement for the years 2007-2011;
- (vii) Defendant Johnsons' (Kingdom Quest Realty, LLC) conflict of interest in violation of Section 11.2.7 of the Jackson Franchise Agreement; and
- (viii) Defendants' failure to fully comply with Mossy Oak Properties' request for documents/records pursuant to Section 11.3.3 of the Jackson Franchise Agreement.

79. As a result of the multiple material breaches of the Jackson Franchise Agreement (and pursuant to the "cross-termination" provision in Section 15.2.1 of the Jackson Franchise



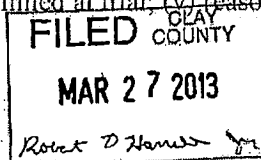
Agreement allowing termination of the Jackson Franchise Agreement based on the multiple material breaches by Defendant of the West Plains Franchise Agreement), MOP was forced to terminate the Jackson Franchise Agreement "for cause" effective February 25, 2013. See Exhibit 19.

80. Defendants have accepted and ratified the termination of the Jackson Franchise Agreement, by abandoning the Jackson Franchise and by no longer using the "Mossy Oak Properties System" and "Mossy Oak Properties Marks" as those terms are defined in the Jackson Franchise Agreement.

81. As a direct, proximate and foreseeable result of Defendants' multiple material breaches of the Jackson Franchise Agreement, MOP has suffered substantial damage as described herein.

82. MOP has fully performed as required under the Jackson Franchise Agreement and has never committed any material breach or default under the Jackson Franchise Agreement.

83. WHEREFORE, PREMISES CONSIDERED, MOP is entitled to recover from and demands judgment against Defendant Bioventure Investments, LLC and Defendant Kerry S. Johnson, jointly and severally, for damages related to Defendants' material breaches of the Jackson Franchise Agreement including but not limited to: (i) the sum of \$8,304.60 in minimum royalties and fees for 2012 owed by Defendants pursuant to Sections 7 and 8 of the Jackson Franchise Agreement; (ii) any and all royalties due as required under Section 7 of the Jackson Franchise Agreement for the years 2007-2011; (iii) liquidated damages in the amount of \$16,800.00 pursuant to Section 17.1 of the Jackson Franchise Agreement; (iv) additional common law, actual and/or compensatory damages pursuant to Section 17.2 of the Jackson Franchise Agreement in an amount to be determined at trial; (v) reasonable attorney's fees, costs



and expenses pursuant to Sections 20.2 and 21.8 of the Jackson Franchise Agreement; and (v) post-judgment interest at the legal rate from and after the date of entry of judgment.

Count V. Request for Permanent Injunction Against Defendants.

84. Paragraphs 1 through 83 of this Complaint are incorporated herein by reference and made part hereof.

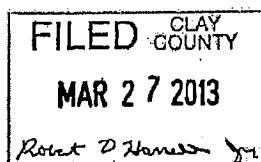
85. To the extent, if any that Defendants continue to utilize, in any manner, the "Mossy Oak Properties System," the "Mossy Oak Properties Marks" or any other trademarks belonging to MOP, such use has caused and will continue to cause irreparable injury to MOP. MOP is likely to succeed on the merits of this civil action, MOP has no adequate remedy at law and the continued harm occasioned by the Defendants' conduct outweighs any harm caused to the Defendants by issuance of injunctive relief. Furthermore, issuance of injunctive relief in this instance will not disserve the public interest.

86. Accordingly, MOP is entitled during the pendency of this civil action and permanently thereafter to injunctive relief permanently prohibiting further use by Defendants of the "Mossy Oak Properties System," the "Mossy Oak Properties Marks" and/or any other trademarks of MOP.

87. WHEREFORE, PREMISES CONSIDERED, MOP seeks and is entitled to a permanent injunction against the Defendants prohibiting further use by Defendants of the "Mossy Oak Properties System," the "Mossy Oak Properties Marks" and/or any other trademarks of MOP.

Count VI. Accounting.

88. Paragraphs 1 through 87 of this Complaint are incorporated herein by reference and made part hereof.



89. Pursuant to Section 11.3.3 of both Franchise Agreements, MOP is entitled to audit the business (books, bank statements, tax returns and records) of both the West Plains Franchise and the Jackson Franchise to ensure compliance with both of the Franchise Agreements.

90. Based on the multiple material breaches of both Franchise Agreement as well as certain representations/admissions made by Defendant Johnson that the West Plains Franchise had engaged in stealing and embezzling from MOP (See Exhibit 10), MOP requested, on several occasions, that Defendants submit to an audit of both the West Plains Franchise and the Jackson Franchise. (See Exhibits 11,16).

91. Despite such requests for audit and written notices of default (See Exhibits 12, 17), Defendants failed or refused to fully comply with such requests and preventing MOP from conducting the audits.

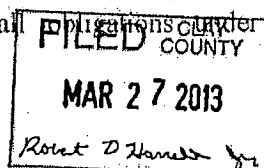
92. Absent a full accounting of both the West Plains Franchise and Jackson Franchise, it is impossible for MOP to completely ascertain its actual damages suffered at the hands of Defendants.

93. WHEREFORE, PREMISES CONSIDERED, MOP is entitled to and requests that this Court demand, order or otherwise compel Defendant Bioventure Investments, LLC and Defendant Kerry S. Johnson to submit to a full and complete accounting of both the West Plains Franchise and the Jackson Franchise.

Count VII. Defendant Johnson's Breach of the Personal Guaranty.

94. Paragraphs 1 through 93 of this Complaint are incorporated herein by reference and made part hereof.

95. Under the terms of the Personal Guaranty, Defendant Johnson personally, absolutely and unconditionally guaranteed all obligations under each of the Franchise



Agreements.

96. Although MOP has made several demands for payment pursuant to the Personal Guaranty to Defendant Johnson (See Exhibit 20), Defendant Johnson has breached the terms of the Personal Guaranty by failing or refusing to respond to any such demands or to otherwise make any payment to MOP as required under the Personal Guaranty.

97. As a direct, proximate and foreseeable result of Defendant Johnson's breach of the Personal Guaranty, MOP has suffered substantial damage as described herein.

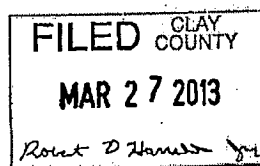
98. MOP has fully performed as required under the Personal Guaranty, has never committed any material breach or default under the Personal Guaranty and all conditions precedent to the institution of this Claim VII have been performed by MOP or waived.

99. Accordingly and pursuant to Defendant Johnson's Personal Guaranty, Defendant Johnson is personally, absolutely and unconditionally liable to MOP for any/all obligations owed to MOP under each of the Franchise Agreements and for any/all damages suffered by MOP as described herein.

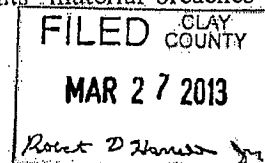
100. WHEREFORE, PREMISES CONSIDERED, MOP is entitled to recover from and demands judgment against Defendant Johnson, personally, absolutely and unconditionally for any/all damages suffered by MOP related to Defendants' material breaches of each of the Franchise Agreements and as further described herein.

RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, Plaintiff Mossy Oak Properties, Inc. respectfully requests that this Honorable Court enter judgment in its favor and against Defendant Bioventure Investments, LLC and Defendant Kerry S. Johnson, jointly and severally, for the following relief:



- (a) A declaration that the West Plains Franchise Agreement was properly terminated effective January 21, 2013; and
- (b) Judgment in the amount of **\$6,428.40** for minimum royalties and fees for 2012 owed by Defendants pursuant to Sections 7 and 8 of the West Plains Franchise Agreement; and
- (c) Judgment for any and all royalties due as required under Section 7 of the West Plains Franchise Agreement for the years 2009-2011; and
- (d) Judgment in the amount of **\$16,800.00** pursuant to Section 17.1 of the West Plains Franchise Agreement; and
- (e) A declaration that the Jackson Franchise Agreement was properly terminated effective February 25, 2013; and
- (f) Judgment in the amount of **\$8,304.60** for minimum royalties and fees for 2012 owed by Defendants pursuant to Sections 7 and 8 of the Jackson Franchise Agreement; and
- (g) Judgment for any and all royalties due as required under Section 7 of the Jackson Franchise Agreement for the years 2007-2011; and
- (h) Judgment in the amount of **\$16,800.00** pursuant to Section 17.1 of the Jackson Franchise Agreement; and
- (i) A permanent injunction against the Defendants prohibiting further use by Defendants of the "Mossy Oak Properties System," the "Mossy Oak Properties Marks" and/or any other trademarks of MOP; and
- (j) An order compelling Defendants to submit to a full and complete accounting as allowed under the Franchise Agreements; and
- (k) Judgment against Defendant Johnson, personally, absolutely and unconditionally for any/all damages suffered by MOP related to Defendants' material breaches of each of the



Franchise Agreements and as further described herein.

(l) Judgment for additional common law, actual and/or compensatory damages pursuant to Section 17.2 of the separate Franchise Agreements in an amount to be determined at trial; and

(m) Judgment for reasonable attorney's fees, costs and expenses incurred by Mossy Oak Properties, Inc. pursuant to Sections 20.2 and 21.8 of the Franchise Agreements; and

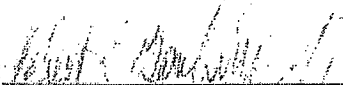
(n) Judgment for post-judgment interest at the legal rate from and after the date of entry of the above judgment(s); and

(o) Such other relief as this Honorable Court deems appropriate.

This the 14 day of March, 2013.

Respectfully Submitted,

MOSSY OAK PROPERTIES, INC.

By: 

Robert J. Barefield, Jr. (MSB # 99522)

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West Point, MS 39773

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Attorney for Plaintiff

Mossy Oak Properties, Inc.

