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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CLERK OF COURT
CUYAHOGA COUNTY

CLEVELAND SYNERGY FOUNDATION)
635 W. Lakeside Avenue, Suite 101)
Cleveland, Ohio 44113)

Plaintiff,)

v.)

THE FEDERATION OF GAY GAMES)
c/o Statutory Agent)
Alan Lessik)
37 Stoneman Street)
San Francisco, California 94110)

and)

CITY OF CLEVELAND, OHIO)
601 Lakeside Avenue)
Cleveland, Ohio 44114)

and)

GREATER CLEVELAND)
SPORTS COMMISSION)
c/o Statutory Agent)
WH Entity Services, Inc.)
1301 E. 9th Street, Suite 1900)
Cleveland, Ohio 44114)

and)

VALARIE McCALL)
c/o City of Cleveland)
601 Lakeside Avenue)
Cleveland, Ohio 44114)

Defendants.)

CASE NO.: 10-07-00000

Judge: MICHAEL J RUSSO

CV 10 735877

COMPLAINT

(Jury Demand Endorsed Hereon)

Now comes Plaintiff, Cleveland Synergy Foundation ("Synergy"), by and through undersigned counsel, and for its Complaint against The Federation of Gay Games ("FGG"), the City of Cleveland, Ohio ("City of Cleveland"), the Greater Cleveland Sports Commission ("GCSC"), and Valerie McCall, states as follows:

THE PARTIES

1. Synergy is an Ohio non-profit corporation. Synergy is organized and operated for the purpose of engaging in charitable activities to enhance the economy, image and quality of life in the greater Cleveland gay, lesbian, bisexual, transgender and straight community by attracting and creating athletic, cultural, and other events and festivals.

2. Defendant FGG is a California non-profit corporation. FGG's purpose is to foster and augment the self-respect of gay men and women throughout the world and to engender respect and understanding from the non-gay world, primarily through an organized, international athletic and cultural event held every four years known as the "Gay Games."

3. Defendant City of Cleveland is a municipal corporation located in Cuyahoga County organized and existing under the laws of the State of Ohio and the Cleveland City Charter.

4. Defendant GCSC is an Ohio non-profit corporation. GCSC is organized and operated for the purpose of engaging in charitable activities to develop and support regional, national, and international amateur sports competitions and programs.

5. Defendant, Valerie McCall, is a resident of Cuyahoga County and an employee of The City of Cleveland. McCall was a member of the Board of Directors of Synergy at all relevant times herein.

THE FACTS

6. The FGG is the governing body and custodian of the Gay Games. The Gay Games are a sports and cultural festival held every four years since the first Gay Games in 1982 in San Francisco, California. Since the first and second Gay Games were held in San Francisco, the Gay Games have been held in various cities around the world including Vancouver, New York, Amsterdam, Sydney, Chicago and most recently during the first week of August 2010, in Cologne, Germany.

7. In 2008, the FGG was in the initial stages of soliciting Letters of Intent to Bid for the 2014 Gay Games IX.

8. During early May 2008, two of the three founders of Synergy, W. Douglas Anderson and Brian Tavolier were approached about trying to bring the 2014 Gay Games IX to Orlando, Florida because of their vast experience in large scale athletic and event planning.

9. Rather than promote the games in Orlando, Florida, they decided that if they were to invest the time and resources to become an official host organization of the 2014 Gay Games IX, they would prefer to have the Games come to their hometowns of Cleveland and Akron, Ohio.

10. Accordingly, Mr. Anderson and Mr. Tavolier combined forces with their long-time friend and business partner Jeff Axberg to form Synergy.

11. From Synergy's inception, its purpose has not been limited to becoming the host organization for the 2014 Gay Games IX. Rather, its purpose has always been to measurably enhance the economy, image and quality of life in the greater Cleveland gay, lesbian, bisexual, transgender and straight community by attracting and creating significant cultural, athletic and benevolent events and festivals.

12. In October 2008, Synergy representatives went to the FGG annual meeting in South Africa to continue their pursuit of the 2014 Gay Games IX.

13. Shortly thereafter, Synergy learned that, of the initial fourteen cities who had been considered for the 2014 Gay Games IX, it had been selected as one of the four finalists to host the event. The other three finalists were host organizations from Washington DC, Miami and Boston.

14. In furtherance of the selection process, FGG published a Request for Proposal for the Gay Games IX, 2014 (hereafter "RFP") [The RFP is not reproduced herein as it is too voluminous to attach to this complaint].

15. The RFP set forth specific "guidelines, requirements and timelines governing the bidding process for the 2014 Gay Games IX. This RFP further incorporated a Code of Ethics for FGG Members and Gay Games Bidding Organizations.

16. To be eligible to bid on the 2014 Gay Games, the bidder must be a "non-profit non-governmental organisation", and "shall have governing bodies and leadership with significant experience in the LGBT Sports Community, including directors and key staff who have participated in at least one Gay Games®."

17. While Synergy met the requirements for an eligible host organization, The City of Cleveland and GCSC did not meet the requirements for an eligible organization.

18. In response to the Request for Proposal, Synergy prepared and submitted a bid package for the 2014 Gay Games IX in excess of 416 pages which detailed, among other items, a financial budget with respect to hosting the 2014 Gay Games IX.

19. As a direct result of the comprehensive bid package prepared and submitted by Synergy, Synergy became one of three finalist host organizations selected by the FGG to be considered to host the 2014 Gay Games IX.

20. The other finalists were host organizations from Washington, D.C. and Boston, Massachusetts.

21. Consistent with the bid process, from July 30, 2009 through August 3, 2009, the FGG Site Selection Committee visited Cleveland and Akron to evaluate Synergy's proposal and capacity to host the 2014 Gay Games IX.

22. As a part of the Site Selection Committee tour, Synergy as a bidding organization was required to have a community meeting, a Board of Directors meeting, and a visit to all of the venues and facilities that were identified in Synergy's bid documents.

23. Synergy's community meeting, entitled Frivolity, was the largest event ever held at the Rock and Roll Hall of Fame & Museum. Over 7,000 people attended the Frivolity event including various political and civic dignitaries. Also as part of the Site Selection Committee tour, the Committee visited the Cleveland Browns Stadium which Synergy had secured as the location for the opening and closing ceremonies and Firestone County Club for the golfing competition as well as a variety of other potential venues including Cleveland State University, Case Western Reserve University, and City of Cleveland owned facilities.

24. At Gordon Park, as the Site Selection Committee entered into the Softball Arena, the North Coast Athletic Association began to chant and sing which moved the Site Selection Committee to tears.

25. At Synergy's Board of Directors meeting nearly 100 people attended to show their support.

26. The entire FGG Site Selection weekend was created, designed, and implemented solely by Synergy.

27. In early July 2009, Founders W. Douglas Anderson, Brian Tavier and Jeff Axberg held a meeting with Kevin Schmotzer, from the Department of Economic Development of the City of Cleveland for the purpose of soliciting the City of Cleveland's support for Synergy's effort to secure the 2014 Gay Games IX.

28. The Founders advised Mr. Schmotzer that the economic benefit to the City of Cleveland was potentially \$85 to 100 million in revenue and that it was imperative that the City of Cleveland demonstrate their support to bring the Gay Games to Cleveland.

29. The Founders then met with the Director of Economic Development Tracey Nichols and collaborated with Director Nichols in constructing a proposal for an Urban Development Action Grant (UDAG). This grant sought a minimum of \$700,000.00 in grant funding and \$1.3 million in City services to be submitted to the Finance Committee meeting of the Cleveland City Council for consideration.

30. Prior to submission to the finance committee, the Founders met with Council Members Martin Sweeney, Joe Cimperman, and Matt Zone asking for their support. At Councilman Cimperman's suggestion, Synergy requested that Director Nichols amend the UDAG proposal to become an Ordinance rather than a resolution.

31. In September 2009, Mr. Anderson appeared before the Finance Committee. The proposed ordinance was passed by the Finance Committee and presented to City Council for consideration.

32. On September 14, 2009, the Cleveland City Council unanimously passed Ordinance No. 1260-09 which authorized the City's Director of Economic Development to enter

into a grant agreement with the GCSC to finance costs associated with bringing the Gay Games 2014 to Cleveland “and to finance costs incurred by [Synergy] for that purpose.”

33. The Ordinance provided that the City of Cleveland would contribute up to \$700,000.00 in repayment grants funding for that purpose.

34. Likewise, the Founders of Synergy met with Susan Hamo, president of the Akron Convention and Visitors Bureau (CVB) and by unanimous vote of the Board of Directors of the Akron CVB, formally announced to Synergy, during the Site Selection tour in Akron, a future commitment of \$100,000.00 for calendar year 2014 for costs incurred to host the games to demonstrate their support to Synergy to host of the 2014 Gay Games IX.

35. On September 29, 2009, at the FGG’s annual meeting in Cologne, Germany, the FGG selected Synergy as the bidding organization to host the 2014 Gay Games IX. The organization from Washington DC was identified as the runner up.

36. Pursuant to the FGG’s bidding Request for Proposal:

All short-listed Bidding Organizations will submit a signed copy of the GGIX License Agreement and side letter before arriving at the Site Selection meeting in 2009. The side letter will list any aspects of the GGIX License Agreement that require further discussion.

* * *

Any outstanding issues noted in the side letter submitted with the signed License Agreement will be addressed (if not already resolved). Any required license fees will be paid within 90 days of the site selection. In the absence of either of these two elements within the 90-day timeframe, the runner-up will be announced as the host of GGIX.

37. On November 12, 2009, following the selection of Synergy as the host for the 2014 Gay Games IX, the City of Cleveland (as Grantor) and the GCSC (as Grantee) executed Contract No. 69865 (the “UDAG Contract”) which provides in part:

Grantee shall assist/or cause to assist with bringing the Gay Games 2014 to Cleveland, and to finance costs incurred by the Cleveland Synergy Foundation for that purpose. Some of the eligible costs include but are not limited to the following: promotional/marketing materials, administrative expenses, accounting & legal fees, banners & signage, public improvements, equipment, safety, exterior lighting, renovation costs, travel expenses, and other misc. costs associated with bringing the Gay Games 2014 to Cleveland. ("Project").

A copy of the UDAG Contract is attached hereto as Exhibit A.

38. The UDAG grant was designed, in part to provide interim financing of the early stages of the organization of the 2014 Gay Games IX prior to fund-raising activities as well as registration of participants which helps fund the production of the Gay Games.

39. Through the months of November and December 2009, Synergy and the FGG negotiated the terms of their agreement to allow Synergy to host the 2014 Gay Games IX.

40. Synergy was represented during these negotiations by Jon Pinney, an attorney at the law firm of Kohrman, Jackson & Krantz. Mr. Pinney had been referred by Valarie McCall, Mayor Frank Jackson's Chief of Governmental Affairs.

41. The negotiations ultimately led to the execution of a written License Agreement between the FGG as the governing body of the Gay Games and Synergy as the exclusive Host of the 2014 Gay Games IX (the "License Agreement") in late December 2009. A copy of this License Agreement is attached in a sealed envelope as the terms of the agreement are subject to a Confidentiality Provision which prohibits the disclosure of the terms and conditions of the License Agreement and may only be disclosed if legally required to do so by judicial or governmental order. Thus, to preserve the confidentiality of the License Agreement it is filed under seal as Exhibit B.

42. Pursuant to the terms of the License Agreement, Synergy is defined as the "Host" of the 2014 Gay Games IX and FGG granted to Synergy "the exclusive right to host, organize, promote and present the Games."

43. During the first week of February 2010, representatives of the FGG and Synergy met in Cleveland for a brainstorming session regarding planning for the 2014 Gay Games IX.

44. In February 2010, representatives of Synergy traveled to Cologne to meet with representatives of the 2010 Cologne Gay Games' host organization in order to define the Closing Ceremonies Protocol for the passing of the FGG Flag and Torch from the Cologne Gay Games host to Synergy pursuant to the License Agreement and the Red Book which governs the details of the Closing Ceremonies Protocol.

45. Additionally the FGG asked Synergy to negotiate a Mutual Assistance Agreement with the host organization for the 2010 Cologne Gay Games because the FGG had not been successful with Cologne in maintaining a good working relationship and the FGG asserted that Synergy, via the Mutual Assistance Agreement, could be a bridge between all parties, not only for a successful transition from Cologne to Cleveland but to build a better relationship between Cologne and the FGG.

46. Section 4.1 of the License Agreement entitled "Board of Directors and Principal Contact" provides as follows:

FGG Board of Directors will designate in writing one member of FGG's Board of Directors, or such other person as may be designated by FGG's Board of Directors, who will be the designated principal contact between FGG and Host who will communicate directly with an equivalent individual designated in writing by Host's Board of Directors (the "Principal Contact(s)"). The Principal Contacts will oversee the overall management of the communications between the Parties.

47. Synergy designated Doug Anderson as its Principal Contact pursuant to the terms of the License Agreement. However, despite written request by Synergy, the FGG failed to ever designate a Principal Contact on behalf of the FGG.

48. Section 4.3 of the License Agreement entitled "Steering Committee" provides:

The Parties will establish a Steering Committee for the Games (the "Steering Committee") to oversee and review the Parties' compliance with their obligations under this Agreement, including but not limited to each Party's obligations under Section 17, and the achievement of the Milestones set forth in the Performance Plan, to approve changes to the Games Budget, to respond to requests for consents and approvals described in this Agreement, and to resolve disputes. The Steering Committee will consist of up to five (5) persons designated by FGG's Board of Directors and up to five (5) persons designated by Host's Board of Directors. Each Party will ensure that their respective appointees will have the authority to approve various requests (on behalf of such Party) brought before the Steering Committee. The persons appointed to the Steering Committee by each Party shall have, collectively, two (2) votes on each issue before the Steering Committee, which two votes shall be cast in the manner determined by the Party's appointees. Any dispute that cannot be resolved by the Steering Committee will be referred to the respective Boards of Directors of each Party and in the event that the Boards of Directors are unable to resolve the dispute, such dispute shall be submitted to mediation in accordance with the provisions of Section 30 below. Either party may replace its respective Steering Committee members at any time with prior written notice to the other party.

49. Section 5 of the License Agreement entitled "Performance Plan" provides as follows:

5.1 Within one hundred twenty (120) days of the Effective Date, Host will provide to FGG an initial proposed Performance Plan and Games Budget with applicable Milestones, and all other required information, which shall be attached hereto as Appendix P at the time of its delivery. Host shall provide to FGG an updated Performance Plan and Games Budget within thirty (30) calendar days following any material change to the Performance Plan.

5.2 Unless otherwise agreed by the Parties, Host will regularly (at least quarterly if more than 12 months prior to the date of the Opening Ceremony, and at least monthly if within 12 months of the date of the opening Ceremony) provide to FGG an updated Games Budget. Each successive Games Budget will be attached hereto as Appendix M. The initial Games Budget must account for a 10% variation in all category totals. The Games Budget will be re-forecast if the overall budgeted expenses increase or fall more than 10%, or if revenues increase

or fall 10% below the original forecast during any month through January 31, 2013. Thereafter, the Games Budget will be re-forecast if the overall budgeted expenses increase or fall more than 5%, or if revenues increase or fall 5% below the original forecast during any month within 18 months of the date of the opening Ceremony. The Games Budget will be presented with the level of detail reasonably requested by FGG from time to time, including at least "projected" and "Actual to date" columns.

50. With respect to the format for the Performance Plan, Appendix P of the License Agreement provides as follows with regard to the Performance Plan:

The Performance Plan would include all of the deliverables of the Host. These are things like: (a) provide budget by X date, (b) get office space by Y date, (c) send samples of merchandise by Z date, etc. The Performance Plan should list everything the host has to do and everything FGG wants to give to FGG, and the due dates. There might be some cross-reference to the other Appendices.

(The Steering Committee will provide templates and/or guidelines.)

51. FGG's Steering Committee did not provide templates and/or guidelines as required under the License Agreement.

52. Similarly, Appendix M of the License Agreement provides as follows with regard to the Games Budget:

[To be created by the Host and presented along with the Games Performance Plan.]

(The Steering Committee will provide templates and/or guidelines.)

53. Again, FGG's Steering Committee never provided a template and/or guideline for the Games Budget.

54. The initial Performance Plan and Game Budget were to be provided by Synergy within One Hundred and Twenty (120) days of the execution of the agreement.

55. Despite the obligation to appoint a Steering Committee pursuant to paragraph 4.3 of the License Agreement, as well as the obligation for the Steering Committee to provide

templates and/or guidelines for the Performance Plan and Games Budget, FGG had not appointed a Steering Committee as of March 3, 2010, more than sixty (60) days after execution.

56. On March 3, 2010, Synergy sent an email to the individuals whom Synergy reasonably believed would be the FGG Steering Committee stating as follows:

We have not received a template, matrix, chart or spreadsheet for the development of the Performance Plan from the FGG. To that end, we are requesting upon receipt of that template, that is required to be implemented by the FGG per the Licensing Agreement, an extension of 120 days.

57. Five days later, Darl Schaaff, the appointed Chair of the Steering Committee, responded by "strongly recommending" that Synergy complete the Performance Plan on the original schedule (due April 30, 2010), notwithstanding the fact that the FGG had still not provided a template as required by the License Agreement.

58. Mr. Schaaff's response on behalf of FGG's response specifically admitted:

There is no specific matrix of identified questions or parameters that has been developed by the FGG. To assist with the planning we provided a core group of experts to help identify the deadlines and timelines of a successful Gay Games.

Because the host has such freedom to create the plan we are requesting Cleveland Synergy Foundation remain on the intended schedule and present a plan to the FGG by the April 30th deadline. To assist with this the steering committee will travel to Cleveland again on the week of March 30 through April 4 to assist with the composition and creation of the document and budget.

59. On March 13, 2010, Synergy held an open house event at their new offices to welcome the community. Various dignitaries attended the open house event including Mayor Frank Jackson who congratulated Synergy on the execution of the License Agreement and its new offices.

60. Despite previously designating Doug Anderson as the Principal Contact under the terms of the License Agreement, it became apparent that Darl Schaaff was directly

communicating with Valarie McCall of the City of Cleveland with respect to issues pertaining to the License Agreement.

61. While Valarie McCall was an employee of the City of Cleveland, she likewise served at this time on the Board of Directors of Synergy, and had not been designated as a Principal Contact or a member of the Host Steering Committee.

62. Accordingly, on March 25, 2010, Doug Anderson as the Principal Contact on behalf of Synergy sent Darl Schaaff an email asking Mr. Schaaff to confirm whether he was the Principal Contact on behalf of the FGG (as FGG had not designated a Principal Contact pursuant to the License Agreement) and also asking Mr. Schaaff to discontinue communicating directly with Synergy's then-attorney, Jon Pinney, Valarie McCall, or any other City of Cleveland employees pursuant to the terms of the License Agreement.

63. Under the terms of the License Agreement all contacts between the parties were supposed to be between and through the Principal Contacts.

64. Mr. Schaaff did not substantively respond to the March 25, 2010 email and, to date, the FGG has failed to identify its Principal Contact under the License Agreement.

65. Also on March 25, 2010, Doug Anderson sent an email to Valarie McCall advising her that all communication with the FGG should go through the Steering Committee pursuant to the License Agreement and to that end, should be in writing for tracking purposes. Ms. McCall was not a member of the Steering Committee and, therefore, should not have been directly communicating with the representatives of the FGG.

66. During the first week of April 2010, the identified members of Synergy's portion of the Steering Committee met with representatives of the FGG (at this time the FGG had still failed to identify its actual members of the Steering Committee) in Cleveland.

67. At this April meeting, Synergy showed the FGG members a working draft of the Performance Plan and indicated that the Initial Games Budget required under the Licensing Agreement had already been submitted by Synergy in their Bid Package.

68. The FGG representatives acknowledged that the Games Budget submitted with the bid package was acceptable. Indeed, nothing had occurred which would warrant a modification to this initial Game Budget.

69. Likewise, FGG stated the draft of the Performance Plan was acceptable and would merely need completion dates for the various tasks included for years 2010 and 2011.

70. Following the meeting in Cleveland, on April 8, 2010, Robby Davis of the FGG sent an email to certain members of the Steering Committee as well as Valarie McCall which contained a few attachments. One attachment contained a letter dated April 6, 2010 with certain requests as it related to the Performance Plan and Games Budget. However, the letter also stated "we are preparing clarifications to be provided by the first of next week, to assist in the translation of the 'Bid Budget' into a re-forecast yearly budget adjusting for assumptions."

71. Contrary to Mr. Davis' commitments above, the FGG never provided the "clarifications" referenced in the letter which would permit the Bid Budget to be translated into a "re-forecast yearly budget adjusting for assumptions."

72. On April 30, 2010, despite FGG having never provided a template and/or guideline, Synergy produced its Performance Plan for years 2010, 2011, 2012, 2013, and 2014 as defined in the License Agreement with tasks identified, due dates identified, whether the particular task was completed, and the "owner" of the particular task. In addition, space was provided in the Performance Plan to allow for a projected budget, actual cost, and difference for each task to address the Games Budget pursuant to the License Agreement.

73. On May 4, 2010, Darl Schaaff sent an email to certain members of the FGG and Synergy Steering Committee seeking additional documents as part of the Performance Plan and Games Budget. Mr. Schaaff also inquired as to the status of Synergy's submission of a quarterly financial report.

74. Under the terms of the License Agreement, quarterly financial statements are to be provided within fifteen (15) days of the end of the quarter, in this case April 15, 2010.

75. Synergy's submission of the first quarterly financial report was delayed while they worked with the newly retained outside accounting firm to review and determine the most transparent way to present Synergy's finances.

76. Nevertheless, on May 27, 2010, Synergy provided to the FGG the following documents: (1) Synergy's 1st Quarter financial statement; (2) Synergy's Amended and Restated Articles of Incorporation; (3) Synergy's Amended and Restated Code of Regulations; (4) Synergy's Board of Directors contact information; (5) Synergy's Board of Directors meeting agenda; and (6) Synergy's conflict of interest policy. In the email, Doug Anderson on behalf of Synergy stated:

Darl:

Here is the beginning of our Mutually Beneficial Relationship. Please pass this information on to the members of the FGG Steering Committee. You will also receive in the next several days additional information as it becomes available. This is for one reason only. TRANSPERANCY! We will diligently, through the work of our volunteers, our Attorneys and our CPA's provide FGG with information to establish a standard of operations and protocol. We are not a nebulous, arbitrary or ambivalent organization. Although cliché, what you see is what you get. Best Practices, Sustainability and Capacity Building are tantamount to our potential success. Our investment in this process is guaranteed. At your convenience please notify us that you have received this First email. I will also respond to your most recent email about Cologne shortly, as I am in Portland, Oregon at the NAGVA Championships setting up our booth for the "My Games Rock" 2014 Cleveland + Akron Gay Games. Yes we are out of the gate promoting and marketing the Games.

77. Although there was a minute delay in the submission of the financial reports for the First Quarter 2010, FGG never asserted that the delay constituted a material breach of the License Agreement. As well, the FGG did not provide notice of default pursuant to paragraph 23.3 of the License Agreement and did not provide an opportunity to cure as required by the agreement.

78. Instead, FGG and Synergy continued their relationship pursuant to the License Agreement without interruption, or a claim of breach. In early May 2010, Synergy and FGG had significant discussion regarding the upcoming 2010 Cologne Gay Games and the presence of Synergy representatives in Cologne.

79. Synergy was requested by FGG to attend the Cologne Gay Games for the express purpose of marketing the 2014 Gay Games IX to be held in Cleveland and Akron and hosted by Synergy.

80. In order to attend the Cologne Gay Games, Synergy required approval of, and reimbursement for, expenses associated with the trip and the marketing of the 2014 Gay Games IX.

81. Following the original execution of the UDAG Contract, Synergy submitted its first request for reimbursement under the UDAG Contract in early December 2009. The first request for reimbursement was paid on December 17, 2009 with no issues and no additional documentation required by the City of Cleveland.

82. In early April 2010, Synergy submitted its second request for reimbursement under the UDAG Contract. Kevin Schmotzer, of the City of Cleveland's Department of Economic Development, told Synergy at this time that the request for reimbursement would not be processed unless certain undefined documentation was submitted. Accordingly, Synergy sent

an email to David Gilbert of the GCSC as the Grantee under the UDAG Contract for clarification of the required documentation.

83. Because of these issues regarding the documentation required by the UDAG Contract, Synergy requested Mr. Schmotzer to give Synergy a copy of the UDAG Contract. Mr. Schmotzer refused to provide Synergy a copy of the UDAG Contract and instead responded by telling Synergy to issue a public records request.

84. On April 23, 2010, a meeting was held with members of Synergy, Mr. Schmotzer of the City of Cleveland, David Gilbert of the GCSC, Michael Mendolera, Special Assistant to Mayor Government Affairs, and then-counsel for Synergy, Jon Pinney.

85. As a result of this meeting, Synergy provided the following additional information to the City of Cleveland: upcoming Synergy major expenditures, Synergy pro forma budget, a further description of reimbursements, a progress report, a Synergy calendar of events, and a progress and budgetary report. After providing the additional information on April 27, 2010, Synergy resubmitted the reimbursement request on April 29, 2010. The second reimbursement request was paid on May 19, 2010.

86. On May 7, 2010, Synergy representatives met with Kevin Schmotzer to discuss its third request for reimbursement package under the UDAG Contract. The third request for reimbursement was based upon the anticipated expenditures to travel to, and attend, the 2010 Cologne Games as requested by FGG. At this meeting, Mr. Schmotzer raised concerns about the package including Synergy's level of contribution for travel expenses to Cologne. Mr. Schmotzer stated that the reimbursement grant could not be used to pay for the travel expenses of any City of Cleveland employees.

87. Accordingly, Synergy revised the request for reimbursement and on May 18, 2010, submitted the reimbursement package to David Gilbert who, as the representative of the GCSC, approved the amount of the funds requested. On May 20, 2010, Synergy submitted the third reimbursement request to the City of Cleveland. The City of Cleveland never acted on this reimbursement request.

88. On May 27, 2010, Synergy sent the minutes of their Board of Directors meeting to Darl Schaaff with this note “[our accountants are] working with us regarding a better Pro-Forma Games Budget. That will take more time because we do not have all of the details about Cologne” from the FGG.

89. On the following day, May 28, 2010, Darl Schaaff responded to Doug Anderson’s email stating, in part, as follows:

Doug,

My thanks, I have received all of the documents. My only comment on all of this is that both sides are working hard to achieve what they believe is the “correct” path to the Games in 2014. We simply do not have everybody on the same bus. Some will find the way, some will need to be thrown under the bus, others will discover new ways. . . .

90. On May 30, 2010, Darl Schaaff sent Doug Anderson and certain other members of Synergy an email admitting that he was still trying to get answers to Synergy regarding the outstanding issues pertaining to the Cologne Games. Mr. Schaaff also asked for an “enhanced performance plan and the budget” without further guidance or clarification.

91. Doug Anderson on behalf of Synergy explained to Mr. Schaaff that as the 2014 Gay Games were still over four years away and the Cologne Gay Games had not even begun yet, the 2014 Games Budget had not changed from the original Games Budget submitted with Synergy’s 416-page bid document. Mr. Anderson reminded Mr. Schaaff that not only was the

FGG already in possession of the Games Budget from Synergy's bid document, but that Synergy's entire bid document was, in fact, posted on the FGG's website.

92. Pursuant to the License Agreement, Synergy agreed to use a participant registration system to be designed by the Australian company Sporting Pulse with whom FGG had already contracted, provided that the Sporting Pulse system was operational and met certain criteria by June 1, 2010 and through the term of the License Agreement. If, however, the Sporting Pulse system did not meet the criteria set forth in the License Agreement by June 1, 2010, Synergy was permitted to develop its own registration system.

93. By the end of May 2010, it was apparent that the Sporting Pulse system was not going to meet the criteria set forth in the License Agreement by the June 1 deadline. Not to be deterred, however, representatives of the FGG tried to assure Synergy of the system's capacity and compliance with the criteria set forth in the License Agreement as late as May 30, 2010.

94. In early June it again became apparent that Robby Davis of the FGG was bypassing the Steering Committee requirements of the License Agreement and was speaking directly with members of Synergy and City of Cleveland officials. Accordingly, Synergy again asked the FGG that it comply with the Principal Contacts requirement of the License Agreement. In response, on June 4, 2010, Darl Schaaff as the Chair of the Steering Committee responded as follows:

I have taken a day to consider your ultimatum. I do not have an easy answer to your request. Just imagine if CSF received a note from me telling them that you were no longer allowed to have any contact with the FGG or Gay Games. It is not an easy situation. We will find an answer by a lot more conversation than e mails with ultimatums and no explanation.

Our schedules make easy communication nearly impossible. But ... We are going to be in a very intimate relationship for 4 years. We really do need to work out the prenup soon. No one wins in a messy divorce.

95. On the same day that Synergy received the above email from Mr. Schaaff, the City of Cleveland responded in writing to Synergy's revised third disbursement request under the UDAG Contract which had been submitted on May 20, 2010. The City of Cleveland demanded certain documentation from Synergy in order to complete the disbursement request: (1) a list of the persons to attend the Cologne Gay Games and their roles and responsibilities; (2) the documented costs of airfare, hotel and other costs; (3) a total budget of costs associated with attending the Cologne Gay Games; (4) a summary of Synergy's fundraising activities and planned activities; and (5) the current membership of Synergy's Board of Directors "as requested by the [FGG]."

96. The UDAG Contract, does not require synergy to provide such documentation in order to receive the funds.

97. Nonetheless, in an attempt to work with the City of Cleveland in good faith, and gain quick access to the funds needed to travel to the Cologne Gay Games, Synergy submitted yet another revised disbursement package on June 8, 2010.

98. On June 15, 2010 the City of Cleveland finally responded to Synergy's revised disbursement package regarding its travel expenses to Cologne.

99. The City of Cleveland recognized that Synergy had provided the requested documents and approved for payment a portion of the funds sought. However, in the June 15, 2010 letter, the City of Cleveland demanded that Synergy now provide additional documentation before it would release any of the funds. Specifically, the City of Cleveland demanded that Synergy provide: (1) a "Project Report" that was due under the UDAG Contract by June 1, 2010; (2) audited financial statements and tax returns for 2008 and 2009; (3) history of required reports, documents, agreements and critical deadlines as required by the [FGG] including copies

of what was submitted; (4) letters of commitment from other funding and sponsorships; and (5) timeline of significant milestones for implementation of the Games, both as required by the FGG and as planned by [Synergy].

100. Synergy was surprised by the tone and substance of the City of Cleveland's June 15, 2010 letter because Synergy had already provided to the City of Cleveland on May 4, 2010 (well in advance of the June 1, 2010 deadline referenced in the City of Cleveland June 15, 2010 letter) a Progress Report discussing the status of Synergy's fundraising activities, search for and locating of office space, retention of certain local business for critical services and a calendar of significant events through the end of 2010. The City of Cleveland had never before requested a "Project Report" and Synergy was unaware of how it differed from the previously produced "Progress Report."

101. Synergy was further surprised by the requests for documents because: (1) the City of Cleveland was already aware of the fact that Synergy was not required by law to file tax returns for 2008 as it had just been incorporated and approved by the Internal Revenue Service as a 501(c)(3) charitable organization and 2009 returns were not yet prepared; and (2) the remaining documents which they sought had never before been requested by the City of Cleveland and appeared to be focused on documents regarding Synergy's relationship with the FGG.

102. Synergy contacted David Gilbert of the GCSC to ask for assistance in determining exactly what the City of Cleveland was demanding, and why Mr. Gilbert was "not available" to meet with Synergy. Instead he eventually referred Synergy to Valarie McCall, Mayor Jackson's Chief of Governmental Affairs.

103. Despite the fact that Valarie McCall was a member of the Synergy Board of Directors, she did not return Synergy's calls or email requests.

104. Valarie McCall's failure to advise Synergy of the details of the requested "Project Report" and failure to even return phone calls on this subject breached a fiduciary duty which she and the City of Cleveland owed to Synergy.

105. Due to the City of Cleveland's unwillingness to disburse the UDAG funds as required, Synergy would not be able to market the 2014 Gay Games as it had hoped in Cologne. Nevertheless, Synergy did still intend on sending representatives to receive the FGG flag at the Cologne Gay Games closing ceremony.

106. Around this time, in a last minute effort to obtain the funds to properly market the 2014 Gay Games IX in Cologne, Synergy along with then-counsel Jon Pinney, from Kohrman Jackson & Krantz, asked for a meeting with Mayor Jackson and/or the Mayor's Chief of Staff Ken Silliman.

107. On June 17, 2010, the Mayor's office sent an email to Synergy recommending that Synergy first contact Valarie McCall to arrange the meeting. At this time, Valarie McCall was still a member of the Synergy Board of Directors. Ms. McCall sent an email stating she was out of the office until the following Monday June 21, 2010, but she would attend to setting up the meeting when she returned to the office.

108. Also on June 17, 2010, Synergy learned that Darl Schaaff and Valarie McCall were in direct email communication with each other regarding the Cologne Gay Games. However, notwithstanding the fact that Ms. McCall was still a Director of Synergy, she failed to advise any of the other Directors of Synergy of her direct communications with members of FGG or the subject matter of those communications.

109. On Monday June 21, 2010, Darl Schaaff sent an email to the Steering Committee, as well as Ms. McCall, about the 2010 Cologne Games. Ms. McCall also asked Synergy on this

day who they intended on bringing with them to the meeting with Ken Silliman to discuss the disbursement requests. Synergy responded with a list of attendees.

110. On June 21, 2010, Synergy's then-attorney, John Pinney, sent a letter to the FGG advising that it had failed to meet the criteria in the License Agreement for the creation and implementation of the Sporting Pulse registration system by June 1, 2010 as required by the License Agreement.

111. On June 24, 2010, Doug Anderson sent an email to the Steering Committee as well as others attaching a letter specifically addressing each of the various issues that had been outstanding between Synergy and the FGG. In the letter, Synergy also disclosed that its sponsorship package was complete and it was scheduled to meet with several large corporate sponsors shortly. Doug Anderson also stated he was removing himself from the Steering Committee to focus his time and attention on development, grant writing, and sustainability.

112. On the following day, June 25, 2010, Darl Schaaff responded to Doug Anderson's June 24, 2010 email and letter stating only as follows:

Dear CSF,

Thank you for your email.

Darl Schaaff
Chair [sic] Steering Committee GGIX

113. On June 29, 2010, Synergy sent another email to Valarie McCall (who was still a member of Synergy's Board of Directors) and identified who from Synergy would be attending the July 6, 2010 meeting with Ken Silliman which had been scheduled by Ms. McCall. In the email, Synergy asked that Ms. McCall identify who would be at the meeting on behalf of the City of Cleveland. Ms. McCall responded by stating "will do" and asked for a suggested list of

topics for the meeting. However, contrary to her “will do” response, Ms. McCall never identified who would be attending the July 6, 2010 meeting at City Hall.

114. When the members of Synergy arrived for the meeting at City Hall the agenda of which they believed to be to address the issue of the reimbursement requests under the UDAG Contract, the Synergy members were confronted by one of the Co-Presidents of the FGG and the FGG’s attorney who handed Synergy a letter purporting to terminate the License Agreement. Notwithstanding Synergy’s request for a list of attendees at the meeting, Ms. McCall as a member of the Board of Directors of Synergy never told Synergy that the FGG Co-President would be attending the meeting and/or delivering the letter purporting to terminate the License Agreement.

115. Later that afternoon, Valarie McCall, apparently recognizing her clear conflict of interest, belatedly tendered her resignation from the Synergy Board of Directors on City of Cleveland letterhead to Synergy’s Treasurer; not the Synergy Board Chair and/or the Synergy President.

116. Two days later on July 8, 2010, the City of Cleveland emailed a letter dated July 7, 2010 to Synergy stating that the City of Cleveland was “suspending any further payments [under the UDAG Contract] to Synergy until the outstanding issues between the FGG and Synergy are resolved and Synergy continues to hold the license for the 2014 Gay Games,” including expenses which they had already approved, but not yet paid.

117. On July 15, 2010, Synergy provided the FGG with its second quarter deliverables including its profit & loss statements, its balance sheets, its statement of cash flow and it provided the FGG an updated performance plan including budgeted and actual cost figures included.

118. On July 29, 2010, the City of Cleveland issued a press release, stating it was sending a delegation of representatives of the City of Cleveland, the GCSC, Positively Cleveland, the Rock and Roll Hall of Fame & Museum, the Akron-Summit Convention and Visitor's Bureau, and Equalsurance to the Cologne Gay Games.

119. Noticeably absent were any members of Synergy, the exclusive Host of the 2014 Gay Games IX. On behalf of the City of Cleveland, Valarie McCall and Kevin Schmotzer were members of the delegation. On behalf of the GCSC David Gilbert and Meredith Scerba were members of the delegation. Synergy's original attorney who drafted the License Agreement on Synergy's behalf and former Synergy Board Member, Jon Pinney, was also part of the delegation on behalf of Positively Cleveland.

120. According to news reports, the travel expenses for Ms. McCall, Mr. Schmotzer, Mr. Gilbert and Ms. Scerba were to be paid from the funds set aside for Synergy under the UDAG Contract despite Mr. Schmotzer's admonition that the UDAG grant could not be used for City of Cleveland employee travel.

121. Notwithstanding the FGG letter purporting to terminate the License Agreement and the City of Cleveland's press release which failed to identify any members of Synergy as part of the official delegation, Synergy sent a delegation of its members to Cologne to receive the FGG flag at the Cologne Closing Ceremonies as required by the License Agreement and the original bidding documents.

122. Synergy sent its own delegation to Cologne based on the representations of the FGG's attorney that if the Synergy Board Chairman went to Cologne to receive the flag, Synergy would be permitted to receive it.

123. Approximately one hour before the Cologne Closing Ceremonies were set to begin on August 7, 2010, Kurt Dahl, one of the Co-Presidents of the FGG, advised Synergy that the FGG would not recognize the validity of the License Agreement and that Synergy would not be permitted to participate in the Cologne Closing Ceremonies and/or receive the flag at the Ceremonies.

124. Instead, the FGG flag was presented to Valarie McCall and the other members of the City of Cleveland delegation identified in the City's July 29 press release.

125. Recent reports state that at the FGG General Assembly's annual meeting on August 8, 2010 the FGG kept open the option of moving the 2014 Gay Games IX to Washington DC as the runner-up in the bidding process "if Cleveland fails to meet a set of conditions by Dec. 15, including the creation of a new gay-run organization to produce the games."

126. However, the License Agreement between the FGG and Synergy specifically prohibits the FGG from entering into any such agreement with another organization to host the 2014 Gay Games IX as the License Agreement specifically grants to Synergy "the exclusive right to host, organize, promote and present the Games."

127. As a result of the improper conduct and collusion between the FGG, various employees of the City of Cleveland, and GCSC, the City of Cleveland is at risk of losing the 2014 Gay Games IX to Washington D.C.

128. If the City of Cleveland loses the 2014 Gay Games to Washington, D.C. it will lose the anticipated economic impact of the games which are projected to be between \$85-100 million as a result of over 12,000 participants and 100,000 families, friends and media members travelling to the City of Cleveland for this 10-day event.

COUNT ONE
(Breach of the License Agreement Against FGG)

129. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

130. Synergy and FGG entered into a written contractual relationship; namely the License Agreement.

131. The License Agreement provides that FGG may terminate the agreement upon a "Material Default".

132. Termination in the event of a material default requires (1) default in the performance of any material term or condition which the breaching party is obligated to perform; (2) written notice of the default transmitted to the defaulting party; and, (3) failure by the breaching party to cure within twenty (20) days of the written notice of default.

133. On July 6, 2010, FGG purported to terminate the License Agreement pursuant to paragraph 23.3 asserting that Synergy had failed to cure material defaults.

134. Within this termination letter, FGG asserted that Synergy had materially defaulted under the agreement by failing to provide the Games Budget, the quarterly financial report, and a minimally acceptable Performance Plan.

135. To the contrary, Synergy had provided the Games Budget, the first quarter financial report and Performance Plan which FGG originally found to be acceptable. The Second quarter financial report was provided on the day that it was due, July 15, 2010 pursuant to the terms of the License Agreement.

136. FGG's conduct/actions constitutes a breach of the License Agreement. As well FGG failed to follow the started dispute resolution obligations set forth in Sections 23.3 and 30.2 of the License Agreement.

137. Rather than comply with the terms of the License Agreement, FGG issued a press release which stated as follows:

The Federation of Gay Games ended its relationship with Cleveland Synergy Foundation (CSF), effective 6 July 2010. The FGG remains committed to the host city of Cleveland, and the State of Ohio to host Gay Games IX in 2014. Cleveland city officials and a delegation of regional organizers and supporters will accept the flag of the Federation of Gay Games in Cologne, Germany on 7 August 2010 at the closing ceremony from the city officials of Cologne, Germany.

138. On August 3, 2010, Synergy placed the FGG on notice pursuant to the terms of the License Agreement that the FGG was in material breach of the License Agreement by its issuance of the July 6, 2010 letter and by the FGG's August 3, 2010 press release.

139. Synergy demanded that the FGG immediately cure its material breach by recognizing the continued enforceability of the License Agreement, including Synergy's exclusive role as the named "Host" of the 2014 Gay Games IX and by allowing representatives of Synergy to receive the flag at the closing ceremonies of the Cologne Gay Games VIII as the exclusive "Host" of the 2014 Gay Games IX.

140. After receiving Synergy's written notice of default pursuant to the terms of the License Agreement, the FGG failed to cure its material breach of the License Agreement.

141. As a direct and proximate result of the FGG's material breach of the License Agreement, Synergy and all third-party beneficiaries of the license agreement have sustained, and will continue to sustain damages and irreparable harm. Specific performance of the License Agreement is required to mitigate these damages.

142. In the alternative, Synergy has suffered damages, and will continue to suffer damages as a result of FGG's breach of the License Agreement in an amount to be determined at trial.

COUNT TWO

(Declaratory Judgment)

143. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

144. The FGG has attempted to terminate the License Agreement without proper notice and/or legal and factual justification. Accordingly, the License Agreement has not been properly terminated and Synergy remains the “Host” of the 2014 Gay Games IX pursuant to the terms of the License Agreement.

145. Without justification, the FGG has through multiple press releases stated that Synergy is no longer the “Host” of the 2014 Gay Games IX and has failed and refused, despite due demand, to recognize the continued enforceability of the License Agreement, including Synergy’s exclusive role as the named “Host” of the 2014 Gay Games IX.

146. Accordingly, a real and present controversy exists between the parties as to the parties’ respective interest in the License Agreement and Synergy’s continued role as the exclusive “Host” of the 2014 Gay Games IX.

147. Synergy desires that this Court determine the parties’ rights and responsibilities under the terms of the License Agreement and declare that the License Agreement remains in effect and that Synergy remains the exclusive “Host” of the 2014 Gay Games IX.

COUNT THREE
(Breach of Contract Against the City of Cleveland and GCSC)

148. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

149. The City of Cleveland (as Grantor) and the GCSC (as Grantee) entered into the UDAG Contract on or about November 12, 2009.

150. Pursuant to the UDAG Contract, the GCSC was required to “assist and/or cause to assist with bringing the Gay Games 2014 to Cleveland, and to finance costs incurred by The Cleveland Synergy Foundation for the purpose.” The UDAG Contract further provides:

Some of the eligible costs include but are not limited to the following: promotional/marketing materials, administrative expenses, accounting & legal fees, banners & signage, public improvements, equipment, safety, exterior lighting, renovation costs, travel expenses, and other misc. costs associated with bringing the Gay Games 2014 to Cleveland. (“Project”).

151. The City of Cleveland and GCSC, acting individually and/or in concert unilaterally terminated the UDAG contract by failing and refusing to reimburse and/or fund legitimate expenses incurred by Synergy in connection with the promotion of the 2014 Gay Games IX.

152. The City of Cleveland and GCSC, acting individually and/or in concert, materially breached the UDAG contract by refusing to reimburse and/or fund legitimate expenses incurred by Synergy in connection with the promotion of the 2014 Gay Games IX.

153. The City of Cleveland and GCSC had no legal right to unilaterally terminate the UDAG Contract and refuse to reimburse expenses incurred by Synergy, and the unilateral determination to suspend payments to Synergy constitutes a material breach of the UDAG Contract.

154. Synergy, as an intended third-party beneficiary of the UDAG Contract is entitled to assert a claim directly related to the breach of the UDAG Contract.

155. As a direct and proximate result of the breach of the UDAG Contract, Synergy has sustained compensatory damages in an amount to be proven at trial plus interest, fees, and costs and is entitled to the relief specified in its prayer for relief set forth below.

COUNT FOUR
(Tortious Interference with Contractual and Business Relations Against the FGG)

156. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

157. Synergy is an intended third-party beneficiary of the UDAG Contract between the City of Cleveland and the GCSC.

158. FGG was aware of the existence of the UDAG Contract and Synergy's business relationships with the City of Cleveland and the GCSC.

159. Upon information and belief, the FGG communicated with representatives of the City of Cleveland to intentionally procure the breach of the UDAG Contract.

160. The FGG's intentional conduct has caused the City of Cleveland and the GCSC to discontinue its business relationships with Synergy.

161. The FGG's intentional procurement of the City of Cleveland's breach of the UDAG Contract and termination of Synergy's relationships with the City of Cleveland and the GCSC was without privilege or justification and was done with actual malice and bad faith, exhibiting an entire want of care and conscious indifference to the consequences of its tortious conduct thereby authorizing an award of exemplary and punitive damages and an award of attorneys' fees.

162. The above-described conduct of the FGG constitutes tortious interference with contractual and business relations in that the FGG actively, intentionally and maliciously interfered with Synergy's relations with the City of Cleveland and the GCSC.

163. As a direct and proximate result of the FGG's tortious interference with Synergy's contractual and business relations with City of Cleveland and the GCSC, Synergy has sustained and continues to sustain damages in an amount to be proven at trial and is entitled to the relief specified in its prayer for relief set forth below.

COUNT FIVE
(Tortious Interference with Contractual and Business Relations
Against the City of Cleveland and GCSC)

164. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

165. Synergy is a party to the License Agreement with the FGG.

166. The City of Cleveland and GCSC were aware of the existence of the License Agreement and Synergy's business relationships with the FGG.

167. The City of Cleveland and GCSC acted to intentionally procure the FGG's breach of the License Agreement.

168. The City of Cleveland's and GCSC's intentional conduct has caused the FGG to discontinue its business relationships with Synergy.

169. The City of Cleveland's and GCSC's intentional procurement of the FGG's breach of the License Agreement and purported termination of Synergy's relationship with the FGG was without privilege or justification and was done with actual malice and bad faith, exhibiting an entire want of care and conscious indifference to the consequences of its tortious conduct thereby authorizing an award of exemplary and punitive damages and an award of attorneys' fees.

170. The above-described conduct of the City of Cleveland and GCSC constitutes tortious interference with contractual and business relations in that the City of Cleveland and GCSC actively, intentionally and maliciously interfered with Synergy's relations with the FGG.

171. As a direct and proximate result of the City of Cleveland's and GCSC's tortious interference with Synergy's contractual and business relations with the FGG, Synergy has sustained and continues to sustain compensatory damages in an amount to be proven at trial plus

interest, fees, and costs and is entitled to the relief specified in its prayer for relief set forth below.

COUNT SIX
(Civil Conspiracy Against the FGG, the City of Cleveland, and the GCSC)

172. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

173. Synergy had, and continues to have, a property right in the License Agreement and the UDAG Contract.

174. Upon information and belief, the FGG communicated with representatives of the City of Cleveland and GCSC to intentionally procure the City of Cleveland's and the GCSC's breach of the UDAG Contract and the FGG's breach of the License Agreement.

175. The FGG, the City of Cleveland, and the GCSC have maliciously agreed, conspired, and colluded for the purposes of engaging in an unlawful act; *to wit*, the breach of the License Agreement and the UDAG Contract and Defendants' respective tortious interference with said contracts.

176. The FGG had a monetary incentive to engage in the conspiracy in order to avoid the terms and conditions of the License Agreement which capped the amount of money the FGG could receive from the 2014 Gay Games IX for sponsorships and registration fees and put Synergy in control of the revenue from the 2014 Gay Games. The City of Cleveland and GCSC also had a monetary incentive to engage in the conspiracy in order to reap the benefits of the significant financial benefits associated with the 2014 Gay Games.

177. The malicious combination is demonstrated by the improper communications by and between representatives of the FGG, the City of Cleveland and the GCSC for the purpose of inducing the breach of said contracts and the tortious interference with said contracts.

178. As a direct and proximate result of the Defendants' civil conspiracy, Synergy has sustained and will continue to sustain damages in an amount to be proven at trial and is entitled to the relief specified in its prayer for relief set forth below.

COUNT SEVEN
(Breach of Fiduciary Duty – Valarie McCall and The City of Cleveland)

179. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

180. Defendant Valarie McCall is employed by the City of Cleveland as the Chief of Government Affairs. Valerie McCall simultaneously served as a member of the Board of Directors of Synergy.

181. As a member of the Board of Directors, McCall owed a fiduciary duty to Synergy.

182. Acting under the cloak of her authority as an employee of the City of Cleveland, and as a Board Member of Synergy, McCall breached her fiduciary duty to Synergy.

183. For example, McCall worked directly with representatives of FGG to (1) facilitate the termination of the License Agreement; (2) to reject reimbursement requests submitted under the terms of the UDAG contract; (3) to prevent Synergy representatives from travelling to Cologne, Germany for the 2010 Gay Games; (4) to transition responsibility for hosting the 2014 Gay Games to the City of Cleveland, GCSC and a yet to be formed non-profit corporation organized for the purpose of superseding Synergy as the host of the 2014 Gay Games.

184. McCall negotiated her own attendance at the Cologne Games, to be reimbursed through the UDAG grant, despite the admonition that the funds could not be used for City of Cleveland Employees so that she could control the transition of the Games to the City of Cleveland. The discussions regarding her attendance at the Cologne Games along with other

representatives of the City of Cleveland, GCSC and even Positively Cleveland occurred while she was still a sitting member of the Board of Directors.

185. Ms. McCall was aware of FGG's intent to terminate the License Agreement prior to the July 6, 2010 meeting at City Hall and failed to disclose the intent of FGG to Synergy.

186. Upon information and belief, McCall and other representatives of the City of Cleveland met with members of the LGBT community prior to July 6, 2010 to gauge their interest in forming an organization to supplant Synergy as the host of the 2014 Gay Games.

187. McCall, acting in her official capacity as an employee of the City of Cleveland and as a member of the Board, clandestinely negotiated with FGG to breach the License Agreement, and further conspired to replace Synergy with another, yet to be created organization, to replace Synergy as the host organization despite the fact that this organization is not a bidding organization under the RFP.

188. As a direct and proximate result of the breach of fiduciary duty of McCall, Synergy has suffered and will continue to suffer significant harm including but not limited to economic damages in an amount which will be proven at trial. Much of the damage sustained as a result of McCall's breach of her fiduciary duty is irreparable.

COUNT EIGHT
(Invasion of Privacy/False Light)

189. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

190. FGG, through its actions, conduct and public statements, gave publicity to the issue of Synergy's purported non-compliance with the terms of the License Agreement, material

defaults and purported financial impropriety which directly impacts the reputation of Synergy within the LGBT community and the City of Cleveland.

191. The actions of FFG placed Synergy in a false light and constituted an invasion of Synergy's right to privacy.

192. The false light in which Synergy was placed by FGG would be highly offensive to a reasonable person.

193. The statements and omissions of FGG were made with knowledge of falsity and/or reckless disregard as to the falsity of the publicized matter and the false light in which it placed Synergy. The statements and omissions were made with actual malice.

194. FGG is liable to Synergy for damages arising out of the invasion of its privacy and the false light in which they have been portrayed by FGG, including but not limited to compensation for the damage to their personal and professional reputation, and the economic damages they have sustained from the resulting publicity.

**COUNT NINE
(Defamation)**

195. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

196. FGG made certain public statements which pertained directly to Synergy and their purported non-compliance with the terms of the License Agreement, material defaults and purported financial impropriety. These statements related directly to Synergy's character, reputation and professional integrity.

197. The statements were materially false and/or misleading.

198. The statements were made with knowledge and/or reckless disregard of their falsity.

199. The statements were made with actual malice.

200. Defendant FGG is liable to Synergy for compensatory and punitive damages in amount to be determined at trial.

**COUNT TEN
(PERMANENT INJUNCTION)**

201. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if fully rewritten herein.

202. Synergy has expended significant time, energy and resources securing the City of Cleveland and Akron as the location for the 2014 Gay Games IX.

203. Synergy was selected as the exclusive host of the 2014 Gay Games IX as a result of their bid package and expertise in promoting this type of event.

204. Synergy was the only bidding organization pursuing the 2014 Gay Games IX in the City of Cleveland and Akron.

205. The RFP issued by FGG expressly states that a bidding organization must be a non-governmental entity. Thus, under the terms of the Request for Proposal, the City of Cleveland and/or GCSC are not eligible to be a host organization for the 2014 Gay Games IX.

206. Likewise, the bidding organizations must have governing bodies and leadership with "significant experience in the LGBT sports community, including directors and key staff who have participated in at least one Gay Games®." Thus, both The City of Cleveland and GCSC are ineligible to serve as host organizations.

207. Numerous reports have indicated that the City of Cleveland, GCSC, Positively Cleveland and even the Akron/Summit Convention and Visitors Bureau will host the 2014 Gay Games IX despite the fact that none of the aforementioned organizations are eligible to do so.

208. Defendants herein are intent on creating an LGBT organization to supplant Synergy as the host and therefore facilitate the breach of the License Agreement.

209. The yet to be formed LGBT organization is not a bidding organization and is therefore not legally entitled to step into the shoes of Synergy under the terms of the RFP and the License Agreement.

210. Upon information and belief, FGG has already made inquiry whether the unsuccessful bid organizations from Washington, D.C. and Boston would accept the 2014 Gay Games and host these games in their City.

211. The License Agreement with Synergy, and the enforcement thereof, is critical to the retention of the 2014 Gay Games in the Cities of Cleveland and Akron, as failure to honor the License Agreement requires the award of the 2014 Gay Games to either the second place bidder. If the second place bid organization declines to run the 2014 Gay Games, the Request for Proposal would require the Games be awarded to the third place bidder.

212. Irreparable harm would result if the Defendants were not enjoined from (1) creating an alternative LGBT organization for the purpose of hosting the 2014 Gay Games IX; and, (2) permitting FGG to terminate the License Agreement and move the 2014 Gay Games IX to another City.

213. The economic impact to Northeast Ohio has been estimated by David Gilbert of GCSC as \$60 Million to \$80 Million dollars to the City of Cleveland in recent reports. The City of Cleveland estimated the economic impact to be \$85 Million to \$100 Million in the UDAG grant.

214. There are no adequate remedies at law for the damages that will flow from the collective actions of Defendants.

215. The harm which will result to Synergy as well as the City of Cleveland and City of Akron outweighs any harm which would be imposed by enforcement of the License Agreement and retention of the 2014 Gay Games IX in Cleveland and Akron.

216. The interest of the public are best served by the issuance of an injunction to prevent the organization of a competing LGBT host and/or the loss of the 2014 Gay Games IX to another City.

WHEREFORE, Synergy prays for judgment in its favor and against each of the Defendants as follows:

- (1) The Court declare that the License Agreement remains in effect and that Synergy retains its role under the License Agreement as the exclusive "Host" of the 2014 Gay Games IX;
- (2) The Court order specific performance under the terms of the License Agreement;
and
- (3) The Court enter judgment in favor of Synergy on each claim for relief and award Synergy compensatory damages in an amount to be proven at trial but at least in the amount in excess of \$25,000.00, plus interest, fees, punitive damages as applicable, attorneys' fees and costs and such other relief as the Court deems equitable.

Respectfully submitted,



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JURY DEMAND

A jury trial is demanded on all triable issues.

A handwritten signature in black ink, appearing to read "Richard C. Haber", is written over a horizontal line.

Richard C. Haber (0046788)

Andrew A. Kabat (0063720)