

1 Jason M. Ohta (SBN 211107)
2 Heather U. Guarena (SBN 238122)
3 **DUANE MORRIS LLP**
4 750 B Street, Suite 2900
5 San Diego, CA 92101-4681
6 Telephone: 619.744.2200
7 Facsimile: 619.744.2201
8 E-mail: johta@duanemorris.com
9 E-mail: huguarena@duanemorris.com

10 *Attorneys for Plaintiff*
11 *Isolani, LLC*

A6004
93012
DEPT. 49

DEMANDS
HLL

FILED
Superior Court of California
County of Los Angeles

SEP 08 2015

Sherri R. Carter, Executive Officer/Clerk
By Judi Lara, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

BC 5 93 86 1

CASE NO. _____
COMPLAINT IN EQUITY FOR:
(1) WRIT OF ATTACHMENT; AND
(2) INJUNCTIVE RELIEF

ISOLANI, LLC, a Delaware limited liability
company,

Plaintiff,

vs.

RUSSELL REITZ, an adult individual and
resident of the State of California, and R&O
PHARMACY, LLC, a California limited
liability company, and DOES 1 through 20,
inclusive,

Defendants.

Plaintiff ISOLANI, LLC ("Plaintiff" or "Isolani"), by and through its attorneys, Duane
Morris LLP, submits this complaint for (1) writs of attachment and (2) injunctive relief, against
Defendants, RUSSELL REITZ ("Reitz") and R&O PHARMACY, LLC ("R&O"), and DOES 1
through 20, inclusive, collectively referred to as "Defendants," and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Isolani is a limited liability company organized under the laws of
Delaware.
2. Defendant R&O is a limited liability company organized under the laws of
California.

CIT/CASE: 09/08/15
LEA/DEF#: 09/08/15
RECEIPT #: CCH520872004
DATE PAID: 09/08/15 08:32 AM
PAYMENT: \$235.00
RECEIVED: 310
CHECK \$435.00
CASH: \$0.00
CHANGES: \$0.00
CARD: \$0.00

ORIGINAL

09/08/2015

1 3. Defendant Reitz is an adult individual and a resident of the State of California,
2 who is last known to reside at 6966 Quinto Court, Camarillo, California 93012.

3 4. R&O operates a pharmacy located at 651 Via Alondra, Units 708 and 709,
4 Camarillo, CA 93012 (hereafter the "Pharmacy"). Reitz has been at all relevant times appointed
5 as the Pharmacist-in-Charge of the Pharmacy.

6 5. Plaintiff is ignorant of the true names and capacities of those Defendants sued
7 herein as DOES 1 – 20, inclusive, and therefore sues such Defendants by such fictitious names.
8 Plaintiff will amend this Complaint ("Complaint") to allege their true names when the same are
9 ascertained. Plaintiff is informed and believe and based thereon allege that each said fictitiously
10 named Defendants is proximately, jointly, and severally liable to Plaintiff on the conduct,
11 obligations, or liabilities set forth herein.

12 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
13 mentioned herein each of Defendants was the agent, servant, employee, successor, and/or
14 assignee of each of the other Defendants, and in doing the things herein alleged was acting
15 within the scope of his, her, or its authority as such agent, servant, employee, successor, and/or
16 assignee and with the permission and consent of each of the other Defendants. (Reitz, R&O, and
17 Does 1 through 20, inclusive, are collectively referred to as "Defendants".)

18 7. Reitz and R&O entered into a Purchase and Sale Agreement (the "Purchase
19 Agreement") with Isolani whereby Isolani paid Reitz \$350,000 in valuable consideration to
20 acquire full ownership interest in R&O and the Pharmacy. See Purchase Agreement, a true and
21 correct copy of which is attached as Exhibit "1".

22 8. In addition to the Purchase and Sale Agreement, R&O, Reitz, and Isolani entered
23 into a Management Services Agreement (the "MSA") that, *inter alia*, appointed Isolani as
24 manager of the Pharmacy. See MSA, a true and correct copy of which is attached as Exhibit "2".
25
26
27
28

00/08/2015

1 In this action, Isolani is alleging material breaches, both express and implied, of the Management
2 Services Agreement by Reitz, acting individually or by and through R&O,¹ *see infra*.

3 9. The MSA requires the parties to submit any dispute relating to the MSA to non-
4 binding mediation. If the dispute is not resolved in non-binding mediation within 45 days, the
5 dispute must then be submitted to binding arbitration in accordance with the arbitration rules and
6 procedures set forth by the American Health Lawyers Association. Counsel for the parties have
7 discussed the selection of a potential mediator and commencement of alternative dispute
8 proceedings.²

9 10. Section 1281.8 of the Code of Civil Procedure provides:

10 A party to an arbitration agreement may file in the court in the county in which an
11 arbitration proceeding is pending, or if an arbitration proceeding has not
12 commenced, in any proper court, an application for a provisional remedy in
13 connection with an arbitrable controversy, but only upon the ground that the
14 award to which the applicant may be entitled may be rendered ineffectual without
15 provisional relief.

16 C.C.P. § 1281.8(b). In this action, Isolani seeks only provisional and preliminary relief that is
17 crucial to maintain the *status quo* and prevent the loss of millions of dollars being wrongfully
18 confiscated, hidden, and withheld by Reitz, individually or acting by and through R&O, in
19 breach of the MSA.

20 11. Accordingly, this Court has subject matter jurisdiction over this dispute under
21 California law, including without limitation, the Constitution of the State of California, Article
22 VI, Section 4.

23 12. This Court has jurisdiction over the parties.

24 13. Venue is proper in this Court pursuant to a choice of venue clause contained in
25 the MSA that states “[t]he site of any such arbitration or dispute resolution (including any

26 ¹ Isolani is the contractually appointed manager of R&O and the Pharmacy. To the extent Reitz
27 is purporting to act by or for R&O or the Pharmacy, such acts are unauthorized and Reitz has
28 wrongfully appropriated and used R&O in furtherance of the wrongful conduct alleged herein.

² Nothing in this Complaint should be construed as a waiver of Isolani’s right to proceed with the
dispute in arbitration on its breach of contract and other potential claims, and Isolani
affirmatively reserves its right to proceed with nonbinding mediation and arbitration as
required by the agreements between the parties.

1 arbitration *or litigation*) shall be in Los Angeles County, California.” MSA § 11.G (emphasis
2 added).

3 14. Pursuant to the MSA, the laws of California govern this dispute.

4 **GENERAL ALLEGATIONS**

5 15. R&O was formed as a limited liability company under the laws of the State of
6 California on or around July 16, 2012. On July 11, 2013, the California State Board of
7 Pharmacy issued a retail pharmacy license to R&O.

8 16. Isolani was formed as a limited liability company under the laws of the State of
9 Delaware on October 28, 2014. Isolani is a single-member limited liability company created for
10 the purpose of acquiring ownership of R&O and the Pharmacy from Reitz.

11 17. In November 2014, Reitz, R&O, and Isolani entered into the Purchase Agreement
12 conveying a 10% ownership of R&O to Isolani immediately with the remaining 90% stake to be
13 conveyed upon the completion of certain conditions precedent set forth in Section 4 of the
14 Purchase Agreement, in exchange for \$350,000 in valuable consideration. *See* Exh. “1”.

15 18. Upon finalization and closure of the Purchase Agreement, Isolani will continue to
16 operate R&O as a retail pharmacy.

17 19. In November 2014, Reitz, R&O, and Isolani also entered into the MSA providing
18 that Isolani will have full responsibility for the operation and conduct of the business of the
19 Pharmacy, including acceptance of liability for all claims and expenses of any nature incurred in
20 its operations. *See* MSA at § 2, Exh “2”.

21 20. Specifically, the MSA provides the following material terms:

22 a. Isolani is “to provide all such management and administrative services as
23 are reasonably necessary and related to the day-to-day operations of the
24 Pharmacy.” MSA § 1.

25 b. Isolani “shall have full responsibility for the operation and conduct of the
26 business of the Pharmacy.” MSA § 2.

27 c. “Neither [R&O] nor [Reitz] shall undertake any actions or activities, or
28 fail to undertake any actions or activities such that [Isolani] would be

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

precluded from the due observance or performance of its duties and responsibilities[.]” MSA § 3.

d. “[Reitz] shall remain involved and available to [Isolani] in order to fulfill [R&O’s] obligations” as it relates to “compliance with all regulatory requirements[.]” MSA § 7.

21. The MSA gave Isolani the exclusive authority to manage the business operations of the Pharmacy. This both explicitly and impliedly includes Isolani’s right to control the receipt and payment of corporate funds.

22. As compensation for Isolani’s management services, and for Isolani accepting liability for all expenses and claims incurred by R&O and the Pharmacy, the MSA provides that “[Isolani] shall retain, for itself, all profits and losses realized by [R&O] and the Pharmacy during the term of the [MSA].” MSA § 6.

23. The Pharmacy dispenses medications by filling prescription orders submitted by various insured individuals. At periodic intervals, the Pharmacy will submit invoices for the prescriptions filled to various “Payors” (*i.e.*, pharmacy benefit managers, healthcare companies, health insurance provides, etc.). The Payors, in turn, will send reimbursement checks to the Pharmacy as payment for the medications dispensed to their insured members.

24. Reitz has at all relevant times been appointed as the Pharmacist-in-Charge of R&O. As the Pharmacist-in-Charge, Reitz has access to prescription orders, claims, and the reimbursement checks sent by Payors to R&O.

25. Pursuant to the Purchase Agreement, Reitz was required to execute the Seller’s Certification on the Board of Pharmacy Application in order for the application to be submitted to the Board. The Application was required for the Board to approve the transfer of interest to Isolani and the Board’s approval was a condition precedent to Closing. In or around May 2015, legal counsel for Isolani attempted to obtain information from Reitz. Reitz ignored and/or refused to provide the information requested from Isolani’s counsel. As a result of Reitz’s refusal to provide the information, Isolani has been precluded from completing the provisions necessary for it to obtain 100% ownership of R&O.

09/08/2015

1 26. Thereafter, Reitz – as the Pharmacist-in-Charge – locked Isolani out and began
2 confiscating the checks received in the mail by various Payors to R&O and is refusing to disclose
3 the current whereabouts of the checks/funds. In addition, Reitz, acting individually or by and
4 through R&O, failed to undertake the actions and activities necessary to allow Isolani to perform
5 its contractual obligations under the MSA including payment of accounts payable, payroll, etc.

6 27. Recently, Reitz, individually or by and through R&O, has breached his
7 obligations under the MSA by taking actions or failing to take actions that preclude Isolani from
8 performing its duties and responsibilities under the MSA and failing to remain involved and
9 available to Isolani in order to fulfill R&O’s regulatory requirements.

10 28. As of July 30, 2015, there was in excess of \$3,000,000 in reimbursement checks
11 that Reitz hid from Isolani and refused to deposit into R&O’s bank account in accordance with
12 the MSA. Legal counsel for Isolani demanded that these checks be immediately deposited. A
13 true and correct copy is attached as Exhibit “3”. Isolani’s counsel further demanded that:
14 (1) Reitz resign as the Pharmacist-in-Charge (as manager, Isolani had full responsibility for the
15 operation and conduct of the Pharmacy’s business, including, *inter alia*, the authority to hire and
16 terminate employees and appoint a new pharmacist-in-charge); and (2) Reitz state his intention
17 on the finalization and closure of the Purchase Agreement. *Id.* Reitz refused these demands and
18 to honor his obligations under the MSA.

19 29. On August 6 and 12, 2015, Isolani requested that Reitz provide certain financial
20 information regarding R&O’s operations under the MSA. *See* Exhibit “4” attached to the
21 Declaration of Eric Rice. Reitz again refused Isolani’s request.

22 30. Isolani has performed all of its obligations under the terms of the Purchase
23 Agreement and MSA.

24 31. Unlike Isolani, Reitz and R&O have committed, *inter alia*, the following material
25 breaches of the MSA:

- 26 a. hiding, withholding, and refusing to deposit reimbursement checks
27 received from Payors or other payments into company bank accounts;
28 b. refusing to comply with mail and invoice remittance procedures;

09/08/2015

00/08/2015

- 1 c. refusing to send Isolani mail and invoices the Pharmacy has received since
- 2 at least early-July 2015;
- 3 d. refusing to submit customer order invoices to Isolani;
- 4 e. withholding communications concerning the Pharmacy's operations
- 5 (including communications concerning licensing, audits, notices and the
- 6 California State Board of Pharmacy); and
- 7 f. refusing to cooperate with audits required by the Payors as a condition of
- 8 the contracts between R&O and the Payors.

9 32. Reitz's and R&O's material breaches of the MSA have caused Isolani to suffer,
10 *inter alia*, the following significant, immediate, and irreparable harm to Isolani and the Pharmacy
11 (including a diminution and/or loss of the Pharmacy's goodwill, market value, and potentially
12 licensing):

- 13 a. Reitz has confiscated and refused to deposit reimbursement checks and
- 14 other monies into Pharmacy's account, thereby creating an ongoing cash
- 15 flow problem and depleting R&O's bank account. This has caused Isolani
- 16 to be unable to pay outstanding invoices. Additionally, because checks
- 17 have not been deposited, Payors will likely stop payments on, and
- 18 eventually void, the checks as they age;
- 19 b. At least one manufacturer ceased shipping product because bi-weekly
- 20 payments for product have not been made;
- 21 c. The depletion of inventory resulting from Defendants' action subjects the
- 22 Pharmacy to regulatory and Payor risk;
- 23 d. Isolani's ability to perform mandatory accounting of financials, including
- 24 Accounts Receivable balances, Accounts Payable balances and a
- 25 statement of the pharmacy's cash position, has been significantly
- 26 impaired.

27 33. Most significantly, there is a serious risk that the Payors will remove the
28 Pharmacy from Healthcare Benefits Agreements and/or Payor networks because of the

09/08/2015

1 operational problems caused by Reitz's confiscation of the checks.

2 34. As a result of Reitz's and R&O's material breaches of the MSA, Isolani will be
3 forced to shut down operations at the Pharmacy within the next 10 days.

4 35. As of August 31, 2015, the Pharmacy has an outstanding balance due on invoices
5 submitted to Payors in the amount of \$19,319,659.08. Attached as Exhibit "6" to the Declaration
6 of Eric Rice is a voluminous record of prescription orders filled by the Pharmacy and the
7 outstanding accounts receivable related to these orders. Based on historical payment trends, the
8 Pharmacy has certainly received at least \$15,087,304.53 in reimbursement checks for the
9 outstanding accounts receivable – checks that are currently in the possession of Reitz. The
10 precise amount of these checks is not currently ascertainable by Isolani because Reitz refuses to
11 disclose any information about the checks he has confiscated and hidden – other than to state the
12 checks are being held in a "safe place." As part of the relief sought in this action, Isolani seeks a
13 temporary protective order compelling Reitz and R&O to provide an accounting of these funds.
14 Upon the completion of such an accounting, the exact amount being withheld by Reitz will be
15 readily ascertainable and fixed.

16 36. Reitz admits that he is – or at least, was if he has since misused the funds – in
17 possession of the reimbursement checks, but has refused to disclose the location of the checks (or
18 the funds, to the extent deposited into a personal account) or deposit the reimbursement checks
19 into R&O's bank account, stating only that he is keeping them in a "safe place." This is despite
20 the fact that the reimbursement checks are payable to R&O, not Reitz, and that Reitz has no right
21 to the funds payable via those checks.

22 37. Given that at least \$15,087,304.53 is currently in the hands of a private individual
23 – Reitz – who has refused to disclose the whereabouts of these funds – or even communicate
24 directly with Isolani as he is required to do as the appointed Pharmacist-in-Charge – his conduct
25 gives rise to the inference that there is a real danger that the reimbursement checks or monies
26 therefrom will be misused, concealed, substantially diminished in value, or otherwise made
27 unavailable to levy if the matter is delayed until final resolution through arbitration.

28 38. Isolani further believes, and therefore avers, that without a prejudgment writ of

1 attachment and temporary and preliminary injunctive relief, Defendants will not have any assets
2 to pay Plaintiff or even to fund the operations of the Pharmacy, including payment for products
3 ordered and shipped and payroll, after the ultimate resolution of the matter.

4 **FIRST CAUSE OF ACTION**

5 **(Writ of Attachment Against All Defendants)**

6 39. Isolani incorporates by reference the foregoing paragraphs 1 through 38,
7 inclusive, as if fully restated herein.

8 40. California Code of Civil Procedure section 1281.8 permits this court to adjudicate
9 provisional remedies when a matter is subject to arbitration but the arbitration has not yet
10 commenced.

11 41. The claim is a commercial claim for money that is based on an express and/or
12 implied contract.

13 42. The amount of the reimbursement checks at issue is readily ascertainable upon an
14 accounting in an amount totaling at least \$15,087,304.53 as of the date of this filing.

15 43. The claim is not secured by real property.

16 44. There is a probable validity of success on the merits of the breach of contract
17 claim upon which the attachment is based.

18 45. The attachment is sought for the sole purpose of securing recovery on the claim.

19 46. Reitz has no lawful purpose or legal justification to withhold the funds at issue.

20 47. Reitz can establish no right to possess the funds at issue.

21 48. Isolani will suffer great and irreparable injury by the inability to recover these
22 significant business funds if the reimbursement checks and/or monies derived therefrom are not
23 attached pending final resolution of this matter in arbitration.

24 WHEREFORE, Isolani respectfully requests that the Court issue of a Right to Attach
25 Order and Order for Issuance of Writ of Attachment against Reitz and R&O to preserve at least
26 \$15,087,304.53 in reimbursement checks and/or the monies deposited therefrom that rightfully
27 belong to Isolani and the Pharmacy pending final resolution in arbitration.
28

09/08/2015

1 SECOND CAUSE OF ACTION

2 (Injunctive Relief Against All Defendants)

3 49. Isolani incorporates by reference the foregoing paragraphs 1 through 48,
4 inclusive, as if fully restated herein.

5 50. Isolani is entitled to an injunction against Reitz and R&O, barring them from
6 transferring, encumbering, secreting, hiding, or otherwise affecting or disposing of the
7 reimbursement checks and/or monies deposited from them.

8 51. Isolani has a protectable right to the monies from the reimbursement checks
9 pursuant to the Purchase Agreement and MSA.

10 52. Isolani has a likelihood of success on the merits of its breach of contract claim
11 because it has fully performed its contractual obligations under the MSA and Reitz and R&O
12 have breached their obligations and acted in bad faith.

13 53. Isolani believes that Reitz, acting individually or by and through R&O, may
14 attempt to convert, misuse, or otherwise interfere with Isolani's right to access and use these
15 funds in the management of the Pharmacy's business.

16 54. Isolani is further being denied its management fee under the MSA – which is the
17 right to receive all profits resulting from the Pharmacy's operations.

18 55. Isolani will suffer irreparable harm if the requested injunction is not granted
19 because the reimbursement checks and any monies deposited are crucial to maintain the ongoing
20 operations of the Pharmacy.

21 56. There is no adequate remedy at law in the event the reimbursement checks and/or
22 monies are deposited into Reitz's personal bank accounts or otherwise transferred or hidden by
23 Reitz.

24 WHEREFORE, Isolani, in the alternative, requests a temporary protective order barring
25 Reitz from transferring, encumbering, secreting, hiding, or otherwise affecting or disposing of
26 the reimbursement checks and/or monies deposited from pending final resolution of the
27 arbitration proceedings.
28

09/08/2015

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Isolani respectfully requests judgment against Defendants as follows:

3 1. The Court issue of a Right to Attach Order and Order for Issuance of Writ of
4 Attachment against Defendants to preserve at least \$15 million, in reimbursement checks or the
5 monies deposited therefrom that rightfully belong to Isolani and the Pharmacy pending final
6 resolution in arbitration.

7 2. The Court order Reitz and R&O to provide an accounting of all reimbursement
8 checks received and, to the extent those checks have been deposited, cashed, or otherwise
9 transferred, the location of those funds, including information about the bank accounts where
10 such monies is located.

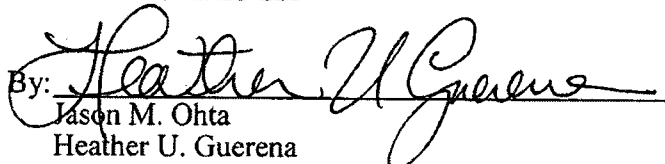
11 3. In the alternative, a temporary protective order barring Reitz from transferring,
12 encumbering, secreting, hiding, or otherwise affecting or disposing of the reimbursement checks
13 and/or monies deposited from pending final resolution of the arbitration proceedings.

14 4. The Court award Isolani its reasonable attorneys' fees and costs.

15 5. Such other relief as the court deems just and proper.

16
17
18 Dated: September 7, 2015

DUANE MORRIS LLP

19
20 By: 
21 Jason M. Ohta
22 Heather U. Guerena
23 Attorneys for Plaintiff
24 Isolani, LLC
25
26
27
28

09 / 08 / 2015