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7 BARDAV INC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

10
11 PROPER MEDIA, LLC, a California limited
liability company; CHRISTOPHER RICHMOND,
12 an individual; and DREW SCHOENTRUP, an
individual,

13 Plaintiffs,

14 v.

15 BARDAV INC, a California corporation, and
16 DAVID MIKKELSON, an individual,

17 Defendants,

18
19 BARDAV INC, a California corporation,

20 Cross-Complainant,

21 v.

22 PROPER MEDIA, LLC, a California limited
liability company; DREW SCHOENTRUP, an
23 individual; and ROES 1 through 30, inclusive,

24 Cross-Defendants.
25
26
27
28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/08/2017 at 08:00:00 AM

Clerk of the Superior Court
By Cody Newlan, Deputy Clerk

Case No. 37-2017-00016311-CU-BC-CTL

CROSS-COMPLAINT for:

- (1) BREACH OF CONTRACT;
- (2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (3) ACCOUNTING;
- (4) VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTIONS 17200 *et seq.*; and
- (5) DECLARATORY RELIEF

Dept.: C-68
Judge: Hon. Judith F. Hayes

Complaint Filed: May 4, 2017
Trial Date: Not set

IMAGED FILE

DEMAND FOR JURY TRIAL

1 Defendant/Cross-Complainant BARDAV INC alleges as follows:

2 **SUMMARY OF CROSS-ACTION**

3 1. Bardav Inc ("Bardav" or "Cross-Complainant") owns and operates the popular
4 Snopes.com website, which it uses to support and advance the quality, authenticity, and accuracy
5 of news media. Bardav and Proper Media, LLC ("Proper Media") were parties to a written
6 contract under which Proper Media agreed to provide certain services to Bardav for the
7 Snopes.com website, subject to Bardav's ultimate discretion. Proper Media failed to perform its
8 contractual and legal obligations and Bardav eventually terminated the contract in accordance with
9 its terms. Proper Media is now wrongfully withholding money owed to Bardav and effectively
10 holding the Snopes.com website hostage by preventing Bardav from moving the website,
11 advertising and other back-end functions to another service provider.

12 2. At the same time that Proper Media is inflicting external harm upon Bardav, one of
13 Proper Media's principals, Drew Schoentrup, is trying to paralyze Bardav internally in an apparent
14 effort to force Bardav to continue its business relationship with Proper Media. Among other
15 things, Schoentrup is purporting to hold a director position within Bardav in an effort to give the
16 appearance that Bardav has a deadlocked board. Similarly, Schoentrup is purporting to control (via
17 Proper Media) a 50% ownership stake in Bardav, despite the fact that Schoentrup holds, at most, a
18 20% shareholder interest.

19 **THE PARTIES**

20 3. Defendant/Cross-Complainant Bardav is, and at all times mentioned in this Cross-
21 Complaint was, a corporation duly organized and existing under and by virtue of the laws of the
22 State of California, and doing business within the State of California.

23 4. Cross-Complainant is informed and believes, and on that basis alleges, that
24 Plaintiff/Cross-Defendant Proper Media is, and at all times mentioned in this Cross-Complaint was,
25 a California limited liability company with its principal place of business in San Diego, California.

26 5. Cross-Complainant is informed and believes, and on that basis alleges, that
27 Plaintiff/Cross-Defendant DREW SCHOENTRUP ("Schoentrup") is and individual who presently
28 resides in Puerto Rico.

1 6. The true names and capacities, whether individual, corporate, or otherwise of the
2 cross-defendants named in this Cross-Complaint as Roes 1 through 30, inclusive, are unknown to
3 Cross-Complainant. Cross-Complainant is informed and believes, and on that basis alleges, that
4 each of said fictitiously named cross-defendants is liable to Cross-Complainant on the causes of
5 action herein alleged and/or asserts some interest, legal or equitable, in the subject matter of this
6 action, and therefore Cross-Complainant sues said cross-defendants by said fictitious names.
7 Cross-Complainant will move to amend this Cross-Complaint when the true names and capacities
8 of said fictitiously named cross-defendants have been ascertained.

9 7. Proper Media, , Schoentrup, and Roes 1 through 30 are collectively referred to as
10 the "Cross-Defendants" herein.

11 8. Cross-Complainant is informed and believes, and on that basis alleges, that at all
12 times mentioned in this Cross-Complaint the Cross-Defendants, and each of them, were the agents,
13 servants, employees, and/or alter egos of each of the other co-Cross-Defendants, and in doing the
14 things alleged in this Cross-Complaint were acting within the scope of their authority as such
15 agent, servant, employee, and/or alter ego, and with the permission and consent of their co-Cross-
16 Defendants.

17 **JURISDICTION AND VENUE**

18 9. This Court has jurisdiction over all causes of action asserted in this Cross-Complaint
19 pursuant to California Constitution, Article VI, § 10 and California Code of Civil Procedure section
20 410.10 because the acts and omissions alleged herein were committed in the State of California,
21 because this is a civil action wherein the matter in controversy, exclusive of interest, exceeds
22 \$25,000, and because this case is a cause not given by statute to other trial courts.

23 10. Venue is proper in this Court pursuant to California Code of Civil Procedure section
24 395, because these claims are asserted in a cross-complaint to the above-captioned action filed in
25 this venue, Cross-Defendants reside and/or transact business within the County of San Diego, and
26 the unlawful conduct alleged herein was carried out, and had effects, in the County of San Diego.
27 Venue is proper in this district pursuant to Rule 1.2.2 of the San Diego Superior Court Rules.

1 GENERAL ALLEGATIONS

2 11. This action concerns the operation and control of the Snopes.com website, which is
3 owned by Bardav. Bardav is a California corporation founded in 2003 by then-husband and wife,
4 David and Barbara Mikkelsen. Since its formation, Bardav has been the ownership entity for the
5 Snopes.com website, which Mr. Mikkelsen first began as a personal project in as early as 1994.
6 Mr. and Mrs. Mikkelsen were each directors of Bardav until Mrs. Mikkelsen sold her ownership
7 interest in 2016, after which Mr. Mikkelsen became the sole member on the Bardav board of
8 directors. Today, in addition to his position as director, Mr. Mikkelsen is the President, CEO and
9 50% shareholder of Bardav.

10 12. On information and belief, Proper Media is an "internet media" company founded in
11 2015 by Schoentrup and Richmond. Proper Media advertises itself as owning, operating, and
12 representing web properties, working with website "publishers" and "advertising partners."

13 The General Service Agreement

14 13. On or about August 11, 2015, Bardav and Proper Media entered into a written one-
15 year contract entitled the General Service Agreement ("GSA"). Under the GSA, Proper Media
16 agreed to provide certain services to Bardav for the Snopes.com website during the term of the
17 agreement. A true and correct copy of the GSA is attached as Exhibit "A" hereto and is
18 incorporated by reference herein.

19 14. The GSA was premised on the following recitals:

20 **Publisher:** Bardav, Inc., (Snopes)

21 * * *

22 **Agent:** Proper Media, LLC

23 * * *

24 WHEREAS, The Publisher is the owner and/or operator of
25 Snopes.com (the "Website"); and

26 WHEREAS, the Publisher wishes to retain the Agent to provide
27 content and website development services as well as advertising
28 sales and trafficking, as set forth in this Agreement (the
"Agreement")

(Exhibit A, p. 1.)

1 15. The GSA had an initial term of 1-year commencing on August 11, 2015, and
2 thereafter reverted to renewable monthly terms until such time it is terminated by either party:

3 Effective Date: August 11, 2015

4 "Term" means the period commencing upon the effective date and
5 ending upon the termination of this agreement in accordance with
6 Section 7.

6 (Exhibit A, p. 1.)

7 **7. Term & Renewal**

8 7.1. Term: This Agreement shall remain in effect for a period of one
9 (1) year from the date hereon (the "Initial Term"). Either party may
10 terminate this Agreement by providing the other party with sixty
11 (60) days written notice, with or without cause, prior to the
12 expiration of the Initial Term. Unless previously terminated by
13 notice as provided above, at the end of the Initial Term this
14 Agreement shall renew for additional one (1) month terms (each a
15 "Renewal Term") unless and until either party provides the other
16 party with written notice of termination, with or without cause, at
17 least sixty (60) days prior to renewal.

14 (Exhibit A, § 7.1, p. 4.)

15 16. The GSA also provided for immediate termination for cause upon Proper Media
16 breaching and failing to cure within ten days:

17 7.2. Termination by Publisher: Publisher may terminate this
18 Agreement by written notice to Agent if any of the following events
19 occur:

- 20 (i) Agent fails to pay any amount due to Publisher within ten
21 (10) days after Publisher gives Agent written notice of such
22 nonpayment; or
23 (ii) Agent is in material breach of any term, condition, or
24 provision of this Agreement and such breach is not cured
25 within ten (10) days after Publisher gives Agent notice of
26 such breach.

24 (Exhibit A, § 7.2, p. 4.)

25 17. Under the GSA, Bardav retained ultimate decision making on issues regarding
26 staffing, content, and editorial guidelines. (See Exhibit A, § 1, p. 2.)

27 18. Among other tasks, Proper Media contracted to represent Bardav with respect to
28 advertisement procurement, placement, and management, subject to Bardav's ultimate discretion.

1 (See Exhibit A, § 3, p. 2.) In connection therewith, Proper Media agreed to provide Bardav with
2 advertisement trafficking and reporting. (Exhibit A, § 3.1, p. 2.) Proper Media also agreed to use
3 its best efforts to ensure that the information in its tracking system was accurate. (Exhibit A, § 3.2,
4 p. 2.)

5 19. The GSA further provided that Proper Media would compensate Bardav based on
6 advertising invoicing on a monthly basis:

7 3.5. Agent Commission Rate: The Agent shall pay to Publisher all
8 amounts invoiced or to be invoiced by the Agent to advertisers for
9 advertising placed on the Website up to \$85,000 per month (the
10 "Baseline") and fifty (50) percent of all amounts above the Baseline,
11 calculated on a monthly basis ("Net Revenue").

12 (Exhibit A, § 3.5, p. 3.)

13 20. The remaining advertising revenue constituted the entirety of Proper Media's
14 compensation (exclusive of authorized expense reimbursements) under the GSA: "Other than the
15 commissions in this Section, and the expense reimbursements in Section 5, Agent shall not be
16 entitled to any fixed compensation for its services." (Exhibit A, § 3.7, p. 3.)

17 21. Proper Media was obligated to pay Bardav sums owed under the GSA within forty-
18 five (45) days of the end of each month, regardless of whether Proper Media had received payment
19 from the advertisers:

20 4.3. Payment to Publisher: Regardless of whether the Agent has
21 been paid by all Advertisers, the Agent shall pay Publisher the Net
22 Revenue for each month no later than forty-five (45) days from the
23 end of the month for which advertising was run on the Website
24 provided that that the 45th day falls on a weekday and, if it falls on a
25 weekend, the next business day. Publisher is responsible for all sales
26 taxes, use taxes and any other similar taxes imposed by any federal,
27 state or local governmental entity on the transactions contemplated
28 by this Agreement, excluding taxes based upon Agent's net income.

(Exhibit A, § 4.3, p. 3.)

29 22. Proper Media was contractually obligated to invoice and collect all advertising
30 revenue for the Snopes.com website: "Agent's Obligations: Agent shall invoice and collect all
31 advertising revenue from Advertisers for content sold by Agent for placement on the Website."
32 (Exhibit A, § 4.1, p. 3.)

23. Notably, the GSA did not require or enable Proper Media to host the Snopes.com website or to control its hosting. Rather, the GSA provides that “[Proper Media] shall consolidate [Bardav’s] existing server configuration to use load-balanced Linux servers paired with a MySQL database server and a content delivery network[,]” without granting Proper Media ownership or control over those servers. At all relevant times, the decision of how and where to host the Snopes.com website remained within Bardav’s sole ultimate discretion.

The Stock Purchase Agreement

24. In 2015, David and Barbara Mikkelson divorced, after which each retained an independent fifty percent (50%) ownership interest in Bardav.

25. On or about July 1, 2016, pursuant to a written Stock Purchase Agreement (the “SPA”), Barbara Mikkelson sold her 50% ownership interest in Bardav to Schoentrup, Richmond, and non-parties Tyler Dunn, Vincent Green, and Ryan Miller, in the following percentages:¹

<u>Name</u>	<u>Purchase Percentage</u>	<u>Overall Ownership in Bardav</u>
Drew Schoentrup:	40%	20%
Christopher Richmond:	40%	20%
Tyler Dunn:	6.68%	3.34%
Vincent Green:	6.66%	3.33%
Ryan Miller:	6.66%	3.33%

26. Under the SPA, the shares were sold to, and held by, the above-identified persons in their individual capacity. The SPA makes no mention of any of these parties holding their shares for the “benefit” of Proper Media.

27. Likewise, the SPA does not provide that any of these acquiring individuals, including Schoentrup, would obtain a position on Bardav’s board of directors. The SPA was not accompanied by any corporate resolution appointing Schoentrup or any of the other purchasers to Bardav’s board of directors.

28. Importantly, the SPA contains an express integration provision, confirming that it represents the entirety of the agreement reached with respect to the acquisition and ownership of these shares.

¹ The SPA contains a confidentiality provision and therefore Bardav is not attaching a copy to this public document.

1 29. As a result of Bardav's S-Corp status, its shares cannot be held by companies but
2 must instead be held by individuals. Consistent therewith, the Bardav ownership interest sold by
3 Ms. Mikkelson was purchased by, and continues to be held by, Messrs. Schoentrup, Richmond,
4 Dunn, Green, and Miller in their individual capacity, and not for the benefit of any company, such
5 as Proper Media.

6 **Proper Media Fails to Perform Under the GSA, is Terminated and Then Holds the**
7 **Snopes.com Website and Other Assets Hostage**

8 30. During the one-year term of the GSA, Proper Media repeatedly failed to remit
9 timely payments that were owed to Bardav. Further, over time, Proper Media stopped performing
10 certain functions under the GSA and generally failed to perform at a sufficiently high level.
11 Further, Bardav concluded that it no longer made sense to allow Proper Media to siphon off large
12 sums of advertising revenue from Snopes.com when Proper Media was not providing value
13 commensurate with its compensation, and when Bardav could obtain the services it needed from
14 other vendors at significantly lower cost.

15 31. As noted above, the GSA's express language granted Bardav the right to terminate
16 the GSA at any time, with or without cause, on sixty (60) days' notice. On or about March 9,
17 2017, Bardav gave Proper Media written notification that it was terminating the GSA pursuant to
18 the Term & Renewal Section of the GSA, such that the GSA would terminate in sixty (60) days
19 (i.e., on May 7, 2017), unless otherwise terminated earlier for cause. The notice was sent by
20 Bardav's director and President, Mr. Mikkelson.

21 32. Despite holding no ownership interest in Bardav, Proper Media has recently held
22 itself out as "the beneficial owner of 50% of the shares in Bardav." Presumably based on this false
23 assertion, Proper Media has improperly attempted to exercise rights of a Bardav shareholder,
24 including attempting to call a special meeting, attempting to appoint directors, and attempting to
25 inspect corporate records.

26 33. Despite no corporate resolution appointing him to Bardav's board of directors,
27 Schoentrup has held himself out as a Bardav board member. Presumably based on this false
28 assertion, Schoentrup has improperly attempted to exercise rights of a Bardav director, including

1 attempting to call a special meeting, attempting to appoint directors, attempting to manage business
2 decisions, and attempting to inspect corporate records.

3 34. On or about May 19, 2017, Bardav made a written demand upon Proper Media for
4 certain information and data relating to Bardav and the Snopes.com website, of which Bardav is
5 the legal owner, but is presently in Proper Media's possession, custody, or control. Bardav
6 emphasized the time-sensitive nature of this demand and requested compliance by the close of
7 business on May 22, 2017.

8 35. Cross-Defendants failed and refused to comply with Bardav's written demand, and
9 are instead holding hostage the requested information and data belonging to Bardav.

10 FIRST CAUSE OF ACTION

11 **(Breach of Contract against Proper Media and Roes 1 through 30)**

12 36. Cross-Complainant incorporates by reference each and every allegation contained in
13 each paragraph above and below as though the same were set forth in full herein.

14 37. On or about August 11, 2015, Bardav, Proper Media, and Roes 1 through 30 entered
15 into a written General Service Agreement (the GSA), under which Proper Media and Roes 1
16 through 30 agreed to provide certain content and website development and maintenance services to
17 Bardav for the Snopes.com website, during the term of the agreement. (See Exhibit A.)

18 38. Bardav has fully performed all conditions, covenants, and promises required on its
19 part to be performed in accordance with the GSA, except as prevented and/or excused by Proper
20 Media and/or Roes 1 through 30.

21 39. By entering into the GSA, Proper Media and Roes 1 through 30 expressly agreed to
22 abide by the terms of those agreements with Bardav. Proper Media and Roes 1 through 30 have
23 materially breached the GSA by, among other things:

- 24 a. failing to make payments of revenues owed to Bardav under the GSA;
- 25 b. failing to provide trafficking and reporting to Bardav; and
- 26 c. failing to perform in other ways that may be revealed in the course of
27 discovery.

1 40. As a direct and proximate result of these breaches of the GSA by Proper Media and
2 Roes 1 through 30, Bardav has suffered damage, plus interest thereon, according to proof at trial.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of the Implied Covenant of Good Faith and Fair Dealing**
5 **against Proper Media and Roes 1 through 30)**

6 41. Cross-Complainant incorporates by reference each and every allegation contained in
7 each paragraph above and below as though the same were set forth in full herein.

8 42. On or about August 11, 2015, Bardav, Proper Media, and Roes 1 through 30 entered
9 into a written General Service Agreement (the GSA), under which Proper Media and Roes 1
10 through 30 agreed to provide certain content and website development and maintenance services to
11 Bardav for the Snopes.com website, during the term of the agreement. (See Exhibit A.)

12 43. Bardav has fully performed all conditions, covenants, and promises required on its
13 part to be performed in accordance with the GSA, except as prevented and/or excused by Proper
14 Media and/or Roes 1 through 30.

15 44. During the course of the term of the GSA, Proper Media and Roes 1 through 30
16 unfairly interfered with Bardav's right to receive the benefits of the GSA by, among other things:

17 a. failing and refusing to provide Bardav with information concerning the
18 Snopes.com website and infrastructure, of which Bardav is the legal owner as recognized under the
19 GSA;

20 b. failing and refusing to provide Bardav with a copy of the codebase for the
21 Snopes.com website, of which Bardav is the legal owner as recognized under the GSA;

22 c. failing and refusing to provide Bardav with access to the repositories for the
23 Snopes.com website, of which Bardav is the legal owner as recognized under the GSA;

24 d. failing and refusing to provide Bardav with access to all Bardav's electronic
25 communications as well as data for the Snopes.com website, of which Bardav is the legal owner as
26 recognized under the GSA; and

27 e. failing and refusing to cooperate with the transition of the Snopes.com
28 website and other backend functions to another service provider.

1 54. Proper Media and Roes 1 through 30 have failed to tender an appropriate accounting
2 of the aforementioned monies invoiced or to be invoiced, thereby entitling Bardav to equitable
3 relief in the form of an accounting of all amounts owing under the GSA.

4 **FOURTH CAUSE OF ACTION**

5 **(Violation of California Business & Professions Code § 17200 et seq.**
6 **against all Cross-Defendants)**

7 55. Cross-Complainant incorporates by reference each and every allegation contained in
8 each paragraph above and below as though the same were set forth in full herein.

9 56. Cross-Defendants' conduct was and is unlawful, unfair, and fraudulent, constituting
10 unfair competition and unfair business practices under California Business and Professions Code
11 sections 17200 et seq. Cross-Defendants' acts include, without limitation, refusing the remit
12 revenues intended for Bardav in their possession; refusing to use commercially reasonable efforts
13 to obtain payments from advertisers that are owed to Bardav; holding hostage the Snopes.com
14 website, infrastructure information and files for which Bardav is the legal owner; and other acts
15 and omissions as set forth herein. This unlawful, unfair, and fraudulent conduct constitutes unfair
16 competition and unlawful business practices relative to Bardav as well as others in the industry.
17 Among other things, the acts alleged herein have effectively prevented Bardav from doing business
18 with competitors of Proper Media, and the efforts of Mr. Schoentrup to try to paralyze Bardav
19 appear designed to prevent Bardav from doing business with Proper Media's competitors and to
20 discourage those competitors from doing business with Bardav.

21 57. As a result of their conduct, Cross-Defendants have been unjustly enriched in an
22 amount subject to proof at trial, and Bardav is entitled to restitution and disgorgement remedies.

23 58. Bardav is entitled to injunctive relief and other equitable remedies. Bardav has
24 suffered irreparable harm as a result of Cross-Defendants' activities and will continue to suffer
25 irreparable injury that cannot be adequately remedied at law unless and until enjoined and
26 restrained by this Court.

1 **FIFTH CAUSE OF ACTION**

2 **(Declaratory Relief against all Cross-Defendants)**

3 59. Cross-Complainant incorporates by reference each and every allegation contained in
4 each paragraph above and below as though the same were set forth in full herein.

5 60. A dispute has arisen between the parties with respect to Cross-Defendants' alleged
6 ownership interests in Bardav and the Snopes.com website, and rights attendant thereto.

7 61. Bardav desires a judicial determination of the parties' rights and duties concerning
8 Bardav and the Snopes.com website, including a declaration that:

9 a. Proper Media is not entitled to withhold infrastructure information regarding
10 the Snopes.com website from Bardav;

11 b. Proper Media is not entitled to withhold the codebase for the Snopes.com
12 website from Bardav;

13 c. Proper Media is not entitled to withhold access to the Snopes.com website
14 domain and repositories from Bardav;

15 d. Proper Media is not entitled to withhold access to Bardav's email, Slack
16 communications, and Asana project management data messages from Bardav;

17 e. The GSA was terminated effective of May 7, 2017;

18 f. Proper Media does not possess an ownership interest in Bardav;

19 g. Schoentrap owns a twenty percent (20%) interest in Bardav in his individual
20 capacity, and not for the benefit of Proper Media;

21 h. Schoentrap does not hold a position on Bardav's board of directors; and

22 i. The decision of how and where to host the Snopes.com website is within
23 Bardav's sole discretion.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Cross-Complainant prays for judgment as follows:

- 26 1. For actual damages according to proof;
27 2. For special damages according to proof;
28 3. For consequential damages according to proof;

- 1 4. For an accounting to determine, *inter alia*, advertising revenues invoiced or to be
2 invoiced to advertisers during the term of the GSA and revenues owed to Bardav
3 under the GSA;
- 4 5. For restitution and/or disgorgement of ill-gotten gains;
- 5 6. For injunctive relief enjoining Cross-Defendants from engaging in acts of unfair
6 competition and unlawful business practices;
- 7 7. For a judicial declaration that:
- 8 a. Proper Media is not entitled to withhold infrastructure information regarding
9 the Snopes.com website from Bardav;
- 10 b. Proper Media is not entitled to withhold the codebase for the Snopes.com
11 website from Bardav;
- 12 c. Proper Media is not entitled to withhold access to the Snopes.com website
13 domain and repositories from Bardav;
- 14 d. Proper Media is not entitled to withhold access to Bardav's email, Slack
15 communications, and Asana project management data messages from
16 Bardav;
- 17 e. The GSA was terminated effective of May 7, 2017;
- 18 f. Proper Media does not possess an ownership interest in Bardav;
- 19 g. Schoentrup owns a twenty percent (20%) interest in Bardav in his individual
20 capacity, and not for the benefit of Proper Media;
- 21 h. Schoentrup does not hold a position on Bardav's board of directors; and
- 22 i. The decision of how and where to host the Snopes.com website is within
23 Bardav's sole discretion.
- 24 8. For interest at the maximum legally permissible rate from the date of the initial
25 breach(es);

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- 9. For costs of suit incurred herein; and
- 10. For such other and further relief as the Court deems just and proper.

DATED: June 7, 2017

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

By: 
Paul A. Pyrell
Ryan C. Caplan
Attorneys for Defendant/Cross-Complainant,
BARDAV INC

EXHIBIT A

GENERAL SERVICES AGREEMENT			
Publisher: Bardov, Inc., (Snopes)		Jurisdiction of Organization:	
URL of Publisher: www.snopes.com			
Address:		City:	State:
Country:	Zip:	Phone:	
Contact Person: David Mikkelsen			
Phone:			
E-mail:			
Agent: Proper Media, LLC		Jurisdiction of Organization: California	
Address: 4155 Mission Blvd.		City: San Diego	State: CA
Country: USA	Zip: 92109	Phone: (509) 995-5654	
Contact Person: Drew Schorndrup			
Phone: (509) 995-5654			
E-mail: drew@proper.io			
<p>WHEREAS, The Publisher is the owner and/or creator of Snopes.com (the "Website"); and</p> <p>WHEREAS, The Publisher wishes to retain the Agent to provide content and website development services as well as advertising sales and trafficking, as set forth in this Agreement (the "Agreement");</p> <p>NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agent and the Publisher (each a "Party" and, collectively, the "Parties"), intending to be legally bound, do hereby agree as follows:</p>			
Effective Date:	"Term" means the period commencing upon the effective date and ending upon the termination of this agreement in accordance with Section 7.		
August 11, 2015			

In consideration of the terms and conditions set forth herein, the Parties hereby agree as follows:

1. Website Content

1.1. Staff: At Publisher's direction, Agent shall recruit, train and manage a staff of writers, researchers, and editors (collectively the "Staff"), all of whom shall be employees or independent contractors of Agent, not of Publisher, for the purpose of generating high quality, relevant articles ("Content") and publishing such Content to the Website. It is anticipated that the Content will include news related to current events as well as research and fact checks related to rumors and myths, both viral and historical.

1.2. Editorial Guidelines: Publisher and Agent shall work together to establish editorial guidelines for the Content. Agent will be responsible to enforce those guidelines through the Content Management System described in Section 2.1 and management of the Staff.

1.3. Disputes: In the event a dispute arises between Publisher and Agent regarding the Staff, Content or Editorial Guidelines, Publisher will retain sole discretion on how to resolve such a dispute.

2. Infrastructure

2.1. Content Management: Agent shall extend Publisher's existing WordPress Content Management System, incorporating plugins and tools as necessary, to support and enhance the Staff's ability to develop and publish Content.

2.2. Design: The Website's current design spans a number of page templates and themes. Agent shall design a mobile-first responsive, unified theme and redevelop the various templates to conform to this theme. Publisher will retain control over the final theme and templates to be used on the live version of the Website.

2.3. Servers: Agent shall consolidate Publisher's existing server configuration to use load-balanced Linux servers paired with a MySQL database server and a content delivery network. It is envisioned that the consolidation will increase the speed, redundancy, and efficiency of the Website, while at the same time lowering the corresponding server-related expenses. Further, Agent shall be responsible to maintain the servers described herein and to make all reasonable efforts to maximize up-time, speed and efficiency for the Website.

2.4. Domains: The Website currently spans multiple domains, including `snopes.com`, `th.snopes.com` and `new.snopes.com`. Utilizing practices that will preserve existing Search Engine Optimization and link structures, Agent shall merge all domains associated with the Website to `snopes.com`. Additionally, Agent shall migrate hard-coded content currently associated with these domains to the Content Management System described in Section 2.1.

3. Advertisements

3.1. Representation: Agent shall represent Publisher with respect to the placement of advertisements on the Publisher's Website, including without limitation, banner and video advertisements, "native" and in-content ads, the solicitation of Website advertising purchases directly from Advertisers (including Exchanges, Agencies, Demand Side Partners, Brands, etc.) for placement on the Website, and the reporting of the results therefrom to Advertisers and the Publisher. In connection with the foregoing, Agent shall provide trafficking and reporting to Publisher.

3.2. Online Tracking System: Agent shall maintain an online tracking system, which, among other things, identifies the revenue earned, impressions served, and average CPM on a daily basis. Agent shall use its best efforts to ensure that the information in its online tracking system is accurate.

3.3. License Grant: Publisher hereby grants Agent the primary exclusive right to sell and market all advertisements on the Website during the term of this agreement. Publisher maintains the right to refuse to run any ad type or placement.

3.4. Placement and Management: Agent shall place and manage all advertisements through its ad-server and will be responsible for all aspects of ensuring advertisements are served properly, on time, and appropriately targeted.

3.5. Agent Commission Rate: The Agent shall pay to Publisher all amounts invoiced or to be invoiced by the Agent to advertisers for advertising placed on the Website up to \$85,000 per month (the "Baseline") and fifty (50) percent of all amounts above the Baseline, calculated on a monthly basis ("Net Revenue").

3.6. ComScore Assignment: Publisher shall sign the Traffic Assignment Request for ComScore Inc. Reporting which is attached hereto as Exhibit "A."

3.7. Other than the commissions in this Section, and the expense reimbursements in Section 5, Agent shall not be entitled to any fixed compensation for its services.

4. Billing & Payment

4.1. Agent's Obligations: Agent shall invoice and collect all advertising revenue from Advertisers for content sold by Agent for placement on the Website.

4.2. Collections: Agent will use commercially reasonable efforts to collect any monies owed to Agent by Advertisers.

4.3. Payment to Publisher: Regardless of whether the Agent has been paid by all Advertisers, the Agent shall pay Publisher the Net Revenue for each month no later than forty-five (45) days from the end of the month for which advertising was run on the Website provided that the 45th day falls on a workday and, if it falls on a weekend, the next business day. Publisher is responsible for all sales taxes, use taxes and any other similar taxes imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement, excluding taxes based upon Agent's net income.

4.4. Revenue Devoided by Fraud: Agent shall not be liable for any payment based on (a) any fraudulent impressions generated by any person, bot, automated program or similar device or for fraudulent clicks similarly generated on any ad, as reasonably determined by Agent; (b) ads delivered to end users whose browsers have the ads disabled; (c) or impressions co-mingled with a significant number of fraudulent impressions or fraudulent clicks described in (a) above, or as a result of other breach of this Agreement, by Publisher for any applicable pay period. Agent reserves the right to withhold in the event of any breach of this Agreement.

5. Additional Expenses

Publisher's Expenses:

5.1. Staff: Expenses paid directly to the Staff described in Section 1.1. Agent shall be responsible for making such payments to the Staff and deducting this amount from the Net Revenue.

5.2. Infrastructure: A \$2,500 monthly fee for the Infrastructure described in Section 2.

5.3. Budget: Agent shall provide to Publisher a monthly budget of all expenses for Publisher's prior approval and shall not exceed this budget by more than 10% without express written approval of Publisher.

Agent's Expenses:

5.4 Agent shall be responsible to pay for all expenses incurred from the Infrastructure described in Section 2 in excess of Publisher's fee set forth in Section 5.2, including expenses for Servers and expenses incurred as a result of hiring third-party independent contractors for website related development.

6. Marketing/Public Relations

6.1. Agent may refer to the Publisher and the Website in Agent's corporate web site, press releases and marketing collateral.

7. Term & Renewal

7.1. Term: This Agreement shall remain in effect for a period of one (1) year from the date hereof (the "Initial Term"). Either party may terminate this Agreement by providing the other party with sixty (60) days written notice, with or without cause, prior to the expiration of the Initial Term. Unless previously terminated by notice as provided above, at the end of the Initial Term this Agreement shall renew for additional one (1) month terms (each a "Renewal Term") unless and until either party provides the other party with written notice of termination, with or without cause, at least sixty (60) days prior to renewal.

7.2. Termination by Publisher: Publisher may terminate this Agreement by written notice to Agent if any of the follow events occur:

- (i) Agent fails to pay any amount due to Publisher within ten (10) days after Publisher gives Agent written notice of such nonpayment; or
- (ii) Agent is in material breach of any term, condition, or provision of this Agreement and such breach is not cured within ten (10) days after Publisher gives Agent notice of such breach.

7.3. Termination by Agent: Agent may terminate this Agreement by written notice to Publisher if any of the follow events occur:

- (i) Publisher is in material breach of any term, condition, or provision of this Agreement and such breach is not cured within ten (10) days after Agent gives Publisher notice of such breach.

8. Right of First Refusal

8.1. Agent is hereby granted a right of first refusal to purchase all or a portion of the Website for the same price and on the same terms and conditions as Publisher is prepared to accept from a third party buyer at any time during the during the Initial Term or a Renewal Term of this Agreement. Publisher shall notify Agent of the receipt of an offer to purchase the Website that Publisher is prepared to accept, prior to accepting the same, and Agent shall have thirty (30) days after receipt thereof to notify Publisher that Agent elects to exercise its right of first refusal and purchase the Website on such terms and conditions.

9. Representations, Warranties and Covenants

9.1. The Publisher hereby represents, warrants and covenants that: (i) all of the information provided by Publisher to enter into this Agreement is correct and current; (ii) Publisher is the owner of the Website or legally authorized to act on behalf of the owner of such Website for the purposes of this Agreement; (iii) use of the Website by Agent or any of Agent's Advertisers will not infringe upon any third party intellectual property rights, including, without limitation, United States or foreign trademarks, patents, copyrights, rights of publicity, moral rights, music performance or other music-related rights, or any other third-party right; (iv) the Website does not and will not contain any content which violates any applicable law or regulation, and (v) Publisher has all necessary rights and authority to enter into this Agreement and place advertising, and authorize the placement of advertising on the Website.

10. Indemnification

10.1. Each Party and its successors and assigns shall indemnify, defend, and hold harmless the other Party, its affiliated companies, and their successors and assigns from and against any and all: demands, judgments, losses, costs, expenses (including, but not limited to, the cost of obtaining an opinion of counsel in response to a notice of potential infringement of the rights of any other person or organization), obligations, liabilities, damages, fines, recoveries and deficiencies, including without limitation interest, penalties, reasonable attorneys' fees and costs (collectively, "Losses") in connection with a claim, action, suit or proceeding made, brought or commenced by a third party other than an affiliated company of the indemnified Party (each, a "Claim"), that any such party may incur or suffer, which arise, result from, or relate to the breach by the indemnifying Party of any of its representations, warranties or covenants set forth in this Agreement.

11. Liability

11.1. **No Liability.** AGENT IS NOT AND SHALL NOT BE LIABLE FOR THE CONTENT OF THE ADVERTISING SUPPLIED BY ADVERTISERS. AGENT MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

12. General

12.1. **Waiver:** Failure by either Party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement shall be effective only if in writing and signed by the Parties. Failure by either Party to enforce any provision of this Agreement shall be effective only if in writing and signed by both Parties.

12.2. **Severability:** If any provision of this Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced unless the severance of the unenforceable provision renders the agreement commercially unreasonable for either party.

12.3. **Binding Effect:** This agreement inures to the benefit of and is binding upon the parties, their respective successors in interest and their assigns by way of merger, sale, acquisition, transfer of substantially all of the transferring party's assets, stock or business, including the Website.

12.4. **Choice of Law:** This Agreement is governed by the laws of the State of California.

12.5. **Entire Agreement:** This is the entire agreement of the parties relating to this subject and it supersedes all other commitments, negotiations and understandings.

Bardav, Inc. By: _____	Print Name and Title:	Date:
Proper Media, LLC: By: <i>[Signature]</i>	Print Name and Title: Drew - chairman Member	Date: 8-11 2012

Exhibit A**Traffic Assignment Request for comScore, Inc., Reporting**

I, David Mikkelson, Owner of Bardav, Inc. ("Bardav"), certify that Bardav is the majority owner of www.snopes.com and enjoys a legitimate business relationship with Proper Media, LLC, justifying the aggregation of this traffic, and requests assignment of the traffic to these URLs from Bardav to Proper Media, LLC in the comScore Inc. syndicated audience measurement reports.

In requesting this assignment, I understand that Bardav will not receive credit for traffic to these URLs in the syndicated audience reports for those entities where Proper Media, LLC elects to include these URLs. These URLs may not be assigned to any other company during the term of the Agreement between Bardav and Proper Media, LLC. In the event that comScore Inc. receives multiple requests for assignment of the same URL, comScore Inc. will review and honor the request most recently received.

I understand that this request is subject to review by comScore Inc. to determine that the assignment of traffic is consistent with comScore Inc. reporting rules. comScore Inc. retains the right in its sole discretion to refuse the requested assignment if such assignment would in fact be inconsistent with comScore Inc. reporting rules. If necessary, comScore Inc. may require additional documentation to verify ownership of the URLs before granting this request. For example, if Bardav is not the named registrant of the URLs listed below, Bardav must provide documentation demonstrating that the registrant of those URLs is (1) owned or (2) employed by Bardav.

I understand that acceptance of this letter by comScore Inc. imposes no legal liability whatsoever on comScore Inc. for damages, whether actual, incidental or consequential, relating to the maintenance or reporting of the attached URLs. I understand that Bardav is fully responsible for timely notification to comScore Inc. of any updates to the list below, including, but not limited to, changes in ownership of any of those URLs.

URLs

www.snopes.com

Signature

Name

Title

Company

Date