**UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**BRIAN PAPPAS;**
**CREATIVE LEARNING CORP.;**
**DANIEL O'DONNELL; and**
**MICHELLE COTE**

Defendants.

Civil Action No. 3:17-cv-954-J-32JRK

JURY TRIAL DEMANDED

## COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, the United States Securities and Exchange Commission ("Commission" or "SEC") alleges as follows:

1. This action arises from multiple violations of the federal securities laws by Creative Learning Corporation ("CLCN" or "company") and three of its former officers and directors: Brian Pappas ("Pappas"), who was CLCN's Chief Executive Officer ("CEO") and President, as well as a member of the Board of Directors; Daniel O'Donnell ("O'Donnell"), formerly Chief Operating Officer, Vice President of Operations, and a director; and Michelle Cote ("Cote"), the creator of CLCN's business concept and a director. Beginning in 2011 and continuing into early 2015, Pappas and CLCN (through Pappas's conduct) engaged in a fraudulent scheme to build market confidence in CLCN and its management by making numerous materially false and misleading statements and omissions, including misrepresentations and omissions regarding Pappas's prior business experience, Pappas's

personal financial history, his evaluation of the company's disclosure and financial reporting controls, and CLCN's payments to related persons. As part of that scheme, Pappas proposed and supervised a series of trades designed to manipulate the market for CLCN's shares, increase the share price, and induce others to trade in the company's stock. O'Donnell and Cote participated in the market manipulation, and also joined Pappas in improperly arranging personal loans to company officers. Further, on multiple occasions Pappas improperly disclosed material, non-public information to selected investors without disclosure to other CLCN investors or the public. Pappas also signed false certifications in filings with the SEC, directed that false entries be made in CLCN's books and records, and failed to disclose his beneficial interest in CLCN in SEC filings as required.

2. Pappas demonstrated a sweeping disregard for his responsibilities as the leader of a public company. Pappas was primarily responsible for the fraudulent scheme and acted knowingly or with severe recklessness.

3. O'Donnell and Cote knew or should have known that they were signing false or misleading documents filed with the SEC. Additionally, O'Donnell and Cote knowingly joined in the effort to manipulate the price of CLCN shares, and at least recklessly approved improper loans from the company to Pappas and Cote.

4. Pappas was removed as CEO and President of CLCN in July 2015, but violated the securities laws again in early 2017 when he sought to regain control of the company. While conducting an unsuccessful proxy contest, Pappas failed to file soliciting materials with the SEC as required.

5. The Commission requests that the Court enjoin CLCN, Pappas, O'Donnell, and Cote ("Defendants") from further securities law violations, require that Pappas, O'Donnell, and

Cote (the "Individual Defendants") disgorge their ill-gotten gains and pay civil penalties, and enter officer and director bars and penny stock bars against the Individual Defendants.

## JURISDICTION

6. The Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t and 77v, and Section 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78aa.

7. Venue is proper in this judicial district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the acts and omissions constituting the violations alleged herein occurred in this judicial district and because Defendants are inhabitants of, transact business in, or can be found in this district.

8. Defendants made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business described in this Complaint.

## DEFENDANTS

9. **CLCN** is a Delaware corporation with its principal offices in St. Augustine, Florida. CLCN is a franchisor of children's educational programs. CLCN became a U.S. issuer in July 2010 through a reverse merger with B2 Health, Inc. ("B2 Health"), a Delaware corporation.

10. CLCN's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act, 15 U.S.C. § 78*l*(g), and is traded on the Over-the-Counter Bulletin Board ("OTCBB") under the symbol "CLCN." CLCN's stock price fell from nearly $3.00 per share in April 2014 to $0.18 per share as of mid-July 2017.

11. CLCN offers three educational programs ("Bricks 4 Kidz," "Challenge Island," and "Sew Fun Studios"), each franchised through a separate wholly-owned subsidiary of CLCN.

12. CLCN is subject to the reporting, internal controls, and books and records provisions of Section 13 of the Exchange Act, 15 U.S.C. § 78m, including the requirement that the company file a Form 10-K ("10-K") with the SEC after the close of each fiscal year, file an amended Form 10-K ("10-K/A") as needed, and file a Form 10-Q ("10-Q") after the close of each fiscal quarter. CLCN is a "smaller reporting company" under Rule 12b-2 of the Exchange Act, 17 C.F.R. § 240.12b-2.

13. CLCN's fiscal year runs from October 1 to September 30.

14. The first CLCN filing at issue is CLCN's 10-K for fiscal year 2010, which was filed with the SEC on April 27, 2011.

15. In addition to the on-going trading in CLCN's shares on the OTCBB, CLCN engaged in private offerings. In offering memoranda distributed by CLCN in connection with those private offerings, CLCN directed potential investors to the company's SEC filings as a source of information relevant to their investment decisions. Additionally, in 2014 and 2015, CLCN offered 3 million shares of CLCN stock to a Chinese investor in exchange for the purchase of a master franchise agreement.

16. **Brian Pappas**, age 66, is a U.S. citizen residing in St. Augustine, Florida. He was CLCN's CEO and President from July 2010 until July 2015, and was a member of the Board of Directors from July 2010 until January 2016. Pappas also identified himself as CLCN's Principal Financial Officer and Principal Accounting Officer. Pappas signed and certified all 10-Ks, 10-K/As, and 10-Qs filed by CLCN for fiscal years 2010 through 2014.

17. **Daniel O'Donnell**, age 48, is a U.S. citizen residing in St. Augustine, Florida. He served as CLCN's Vice President of Operations, Chief Operating Officer, and, from 2010 until April 2016, as a director. O'Donnell signed all 10-Ks and 10-K/As filed by CLCN for fiscal years 2011 through 2014.

18. **Michelle Cote**, age 48, is a U.S. citizen residing in St. Augustine, Florida. Cote created the children's educational program Bricks 4 Kidz, which became the core of CLCN's franchise business. She served on the CLCN board from July 2010 until October 2016. Additionally, Cote was President and Secretary of the company from July 2015 until May 2017. She is currently CLCN's Director of Creative Development. Cote signed all 10-Ks and 10-K/As filed by CLCN for fiscal years 2010 through 2014.

## OTHER RELEVANT PERSONS AND ENTITIES

19. **Audioflix, Inc.** ("Audioflix") is a Florida corporation organized in 2012 to provide audio entertainment to subscribers. Pappas is the President and a director of Audioflix, and owns approximately 85% of the Audioflix shares. O'Donnell is a minority shareholder and was a director.

20. **FranVentures, LLC** ("FranVentures") is a Florida limited liability company created in 2009. Pappas and his wife are the only members, and Pappas is the Managing Member. FranVentures holds most of the CLCN shares beneficially owned by Pappas and his wife, and it was used to receive commissions and other payments from CLCN to Pappas.

21. **Jeffrey Pappas,** age 64, is Brian Pappas's brother. Jeffrey Pappas, who resides in Las Vegas, Nevada, was a consultant and franchise broker for the CLCN programs Bricks 4 Kidz and Challenge Island.

22. **Jeffrey Ball** ("Ball"), age 30, is Pappas's son-in-law. Ball, who resides in Jacksonville Beach, Florida, was a CLCN franchise broker from 2011 to 2015. In 2013, he also became Director of Franchise Development for CLCN's Bricks 4 Kidz program.

23. **MC Logic, LLC** ("MC Logic") is a Florida limited liability company owned and controlled by Cote. Cote used MC Logic to receive consulting fees and commissions from CLCN in connection with sales of Bricks 4 Kidz franchises.

## FACTUAL ALLEGATIONS

### A. Defendants Made Material Misrepresentations and Omissions in SEC Filings

24. Between April 2011 and March 2015, CLCN, under Pappas's direction, filed ten 10-Ks or 10-K/As containing materially false or misleading statements or omissions, including, at various times, misstatements or omissions regarding (i) related-person transactions, (ii) management's evaluation of disclosure controls and procedures ("disclosure controls"), (iii) management's evaluation of internal controls over financial reporting ("internal controls"), (iv) Pappas's personal bankruptcy, and (v) the bankruptcy of Pappas's former franchising business. Pappas signed all ten of these false or misleading SEC filings, Cote signed nine, and O'Donnell signed eight. Additionally, Pappas made material misrepresentations regarding his evaluation of CLCN's disclosure controls in at least 15 quarterly filings made by CLCN on Form 10-Q. As CEO and President, Pappas exercised ultimate control over the content of all CLCN filings.

#### Undisclosed Related-Person Transactions

25. In 2011, Pappas hired his brother, Jeffrey Pappas, to locate and recruit potential franchisees. Jeffrey Pappas, who was referred to as a "franchise broker," worked as an independent contractor on a commission basis.

26. In 2012, Jeffrey Pappas also began receiving a consulting fee from CLCN for training new franchisees. Jeffrey Pappas's consulting fee was $4,000 per month, in addition to his commissions as a franchise broker.

27. In 2013, Jeffrey Pappas began receiving an additional $2,000 monthly consulting fee in connection with the Challenge Island education program.

28. The commissions and consulting fees CLCN paid to Jeffrey Pappas were directed to Bottom Line Group LLC ("Bottom Line Group"), a Nevada limited liability company Jeffrey Pappas owned and controlled.

29. Jeffrey Ball is Brian Pappas's son-in-law. In 2011, Pappas hired Ball as a franchise broker to be paid on a commission basis.

30. Item 404 of Exchange Act Regulation S-K, 17 C.F.R. § 229.404, requires an issuer to disclose in its 10-K filings "any transaction . . . in which any related person had or will have a direct or indirect material interest." 17 C.F.R. § 229.404(a)(1)-(6). For a company such as CLCN, the disclosure requirement is triggered by any transaction exceeding "the lesser of $120,000 or one percent of the average of the . . . company's total assets at year end for the last two completed fiscal years." 17 C.F.R. § 229.404(d). The relevant related-person reporting thresholds for CLCN were $23,156 at the end of fiscal year 2013 and $36,824 at the end of fiscal year 2014.

31. CLCN paid Jeffrey Pappas consulting fees and commissions totaling $163,034 for fiscal year 2013 and $209,284 for fiscal year 2014. CLCN paid Ball consulting fees and commissions of $98,564 for fiscal year 2013 and $128,393 for fiscal year 2014. These payments to Jeffrey Pappas and Ball constituted reportable transactions under Item 404 of Exchange Act Regulation S-K.

32. CLCN's initial 10-K for fiscal year 2013 and its two 10-K/As for fiscal year 2013 failed to disclose the transactions with Jeffrey Pappas or Ball. Although Pappas, O'Donnell, and Cote were aware of the payments to Jeffrey Pappas and Ball for fiscal year 2013, they signed the 10-K and the two 10-K/As for fiscal year 2013 that did not disclose those related-person transactions, thus rendering the CLCN filings materially misleading.

33. CLCN's 10-K and its first 10-K/A for fiscal year 2014 also failed to disclose the transactions with Jeffrey Pappas or Ball. Although Brian Pappas, O'Donnell, and Cote were aware of the fees and commissions paid to Jeffrey Pappas and Ball for fiscal year 2014, they signed the 10-K and the first 10-K/A for fiscal year 2014 that did not disclose the related-person transactions, thus rendering those CLCN filings materially misleading.

34. Pappas knew that disclosure of related-person transactions was required. In November 2011, CLCN's outside auditor told Pappas that "[i]t is critical that all related-party transactions/activity be reported in the financial statements."

35. Further, in late 2013, CLCN's controller told Pappas that the amounts paid to Jeffrey Pappas in fiscal year 2013 should be included in the company's related-person analysis, and Pappas replied "got it."

36. In late 2014, CLCN's new controller asked Pappas and O'Donnell for "help identifying the 'related parties' with respect to Franchise consulting and commissions." The controller provided a draft of the related-person disclosures (which did not mention the transactions with Jeffrey Pappas or Ball) and asked that Pappas and O'Donnell "let me know if there is anything you think is missing." The new controller was unaware that the payments to Bottom Line Group were actually to Jeffrey Pappas, and likewise did not know that Ball was Brian Pappas's son-in-law. However, neither Pappas nor O'Donnell told CLCN's controller that

the payments to Jeffrey Pappas (through Bottom Line Group) and to Ball were payments to related persons.

37. During a presentation to Pappas, O'Donnell, and Cote in January 2015, the company's independent auditors identified related-party transactions as one of the "most sensitive disclosures affecting the Company's financial statements." Nonetheless, the transactions with Jeffrey Pappas and Ball were omitted from the 10-K filed the next day.

38. CLCN's failure to disclose the related-person transactions with Jeffrey Pappas and Ball was material because a reasonable investor would have considered information regarding those transactions to be important in determining whether to invest or remain invested in CLCN. Consequently, these related-person transactions should have been disclosed pursuant to Item 404 of Exchange Act Regulation S-K, 17 C.F.R. § 229.404, and in order to make the company's related-person disclosures not misleading.

39. The payments to Jeffrey Pappas and Ball were not disclosed until March 19, 2015, when CLCN filed a Form 8-K ("8-K") indicating that previously issued financial statements should not be relied on and disclosing that it "had not properly identified and presented certain related party transactions[.]" Pappas signed that 8-K.

40. In a 10-K/A filed on March 31, 2015, CLCN indicated that it was restating its related-person disclosures for fiscal years 2013 and 2014 because it had failed to properly identify transactions with related persons. CLCN restated its consolidated balance sheets with regard to accounts payable, franchise consulting and commissions, and cash flows in light of the payments to Jeffrey Pappas and Ball. Pappas, O'Donnell, and Cote signed that 10-K/A.

**False Statements Regarding Evaluation of Internal Controls and Disclosure Controls**

41. In each of the ten 10-Ks and 10-K/As filed by CLCN for fiscal years 2010 through 2014, Pappas falsely stated that he had evaluated the effectiveness of the company's internal controls as required and had likewise evaluated CLCN's disclosure controls.

42. In each of those ten 10-Ks and 10-K/As, as well as in the quarterly 10-Qs filed by CLCN during fiscal years 2010 through 2014, Pappas also falsely stated in paragraph 4(c) of certifications submitted pursuant to Section 302 of the Sarbanes-Oxley Act ("SOX") that he had evaluated the effectiveness of CLCN's disclosure controls.

43. In fact, Pappas never evaluated the effectiveness of CLCN's internal controls or CLCN's disclosure controls.

44. In February 2014, the SEC's Division of Corporation Finance asked Pappas to address how he had evaluated CLCN's disclosure controls. That request was repeated in three subsequent letters, dated April 28, June 16, and July 31 of 2014, but Pappas failed to provide the requested information.

45. In June 2014, Pappas was told by CLCN's controller that an "actual" evaluation of the company's internal controls was required. The controller also provided Pappas a SEC pamphlet discussing internal controls and the evaluation of such controls.

46. Even after the SEC inquiries and the warning from CLCN's controller, Pappas did not evaluate CLCN's internal controls or disclosure controls, but continued to falsely assert that he had done so.

47. Pappas's multiple false statements regarding the evaluation of CLCN's internal controls and disclosure controls were material because whether those controls had been

evaluated as required would have been considered important by a reasonable investor in evaluating whether to invest or remain invested in CLCN.

**Failure to Disclose Pappas's Personal Bankruptcy**

48. In October 2003, Pappas filed for personal bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. He was granted a general discharge by the United States Bankruptcy Court for the District of Massachusetts in January 2004.

49. Pursuant to Item 401(f)(1) of Exchange Act Regulation S-K, 17 C.F.R. § 229.401(f)(1), a personal bankruptcy petition filed during the prior ten years by a director or executive officer of a reporting company must be disclosed in the company's 10-K filings if it is material to an evaluation of the director or officer's ability or integrity.

50. Pappas became a director and officer of CLCN on July 7, 2010. Accordingly, CLCN was required to disclose Pappas's bankruptcy in the 10-Ks and amended 10-Ks filed by CLCN for fiscal years 2010 through 2013.

51. Each of CLCN's 10-K and 10-K/A filings from fiscal year 2010 through the first 10-K/A filed for fiscal year 2014 included a glowing account, written originally by Pappas and never changed, of his experience in the franchising business. Those filings failed to disclose that Pappas had previously filed for personal bankruptcy.

52. Because CLCN is an emerging company and Pappas was its CEO, President, and dominant figure, a reasonable investor would have considered information regarding Pappas's earlier bankruptcy to be important in determining whether to invest or remain invested in CLCN. Consequently, Pappas's bankruptcy should have been disclosed as required by Item 401(f)(1) of Regulation S-K and in order to make CLCN's filings not misleading.

53. In its 10-K/A for fiscal year 2014, filed in March 2015, CLCN admitted that it had failed to make the required disclosures regarding Pappas's personal bankruptcy. Pappas, O'Donnell, and Cote signed that filing.

**False Statements Regarding Together Development Corp.**

54. In each of the ten 10-Ks and 10-K/As filed by CLCN for fiscal years 2010 through 2014, CLCN and Pappas falsely stated that Pappas "sold" his prior franchising business, Together Development Corporation ("Mr. Pappas sold Together Development Corporation in 1998").

55. In fact, Together Development Corporation filed for Chapter 11 bankruptcy in November 1997. The Bankruptcy Court subsequently authorized the sale of substantially all the assets of the estate in order to pay creditors.

56. The statement that Pappas "sold" Together Development Corporation was written by Pappas for inclusion in CLCN's 10-K for fiscal year 2010. Pappas subsequently had multiple opportunities to revise that misstatement, but failed to do so. Further, CLCN's investors were not otherwise informed of the Together Development Corporation bankruptcy.

57. Pappas's false assertion that he "sold" Together Development Corporation was material. Because CLCN was an emerging company and Pappas was its CEO, President, and dominant figure, a reasonable investor would have considered information regarding the bankruptcy of Pappas's previous company, which had also been a franchising business, to be important in determining whether to invest or remain invested in CLCN.

**Pappas and CLCN Acted With Scienter in Making Misrepresentations and Omissions in the CLCN Filings**

58. When Pappas signed and certified the ten 10-Ks and amended 10-Ks filed on behalf of CLCN for fiscal years 2010 through 2014, he knew, or was severely reckless in not

knowing, that those SEC filings contained the material misstatements and omissions identified in Paragraphs 24-57 above. Pappas also failed to exercise reasonable care with regard to those statements and omissions, and thus knew or should have known that the filings contained material misstatements and omissions.

59. Because Pappas was the CEO and President of CLCN and exercised ultimate control over the content of all of CLCN's filings with the SEC from July 2010 until July 2015, Pappas's conduct with regard to those filings, as well as Pappas's scienter and failure to exercise reasonable care, are attributable to CLCN.

**Cote and O'Donnell Failed to Exercise**
**Reasonable Care With Regard to the CLCN Filings**

60. In signing nine of CLCN's 10-Ks and 10-K/As for fiscal years 2010 through 2014, Cote failed to exercise reasonable care with regard to whether those filings contained the material misstatements and omissions identified in Paragraphs 24-40 and 48-53 above. Cote knew or should have known that there were material misstatements and omissions in each of those filings.

61. In signing eight of CLCN's 10-Ks and amended 10-Ks for fiscal years 2011 through 2014, O'Donnell failed to exercise reasonable care with regard to whether those filings contained the material misstatements and omissions identified in Paragraphs 24-40 and 48-53 above. O'Donnell knew or should have known that there were material misstatements and omissions in each of those filings.

## B. Pappas, O'Donnell, and Cote Engaged in a Scheme to Manipulate the Stock Price

62. Throughout 2014, Pappas was focused on increasing CLCN's stock price so that the company could be listed on the NASDAQ stock exchange. In November 2014, Pappas, O'Donnell, and Cote engaged in a manipulative scheme designed to inflate the price of this

lightly-traded penny stock, build marketplace confidence in the company, and induce others to purchase the stock.

63. On November 5, 2014, Pappas proposed that they "open an account and buy CLCN stock when and if it takes a sizeable dip to prop it up." O'Donnell and Cote agreed.

64. On November 13, 2014, O'Donnell purchased 2,000 CLCN shares on the open market for $1.57 per share.

65. That same day, Pappas purchased 1,000 CLCN shares on the open market for $1.80 per share. In the Form 4 disclosing the purchase, filed by Pappas on November 17, 2014, Pappas listed the price as $1.85 per share, which, if true, would have been above the market price.

66. Cote needed to open a brokerage account to make her purchases and therefore it took her longer to buy shares. In a series of e-mails between November 19 and December 1, 2014, Pappas advised Cote to wait "to buy on the next dip."

67. Pappas disclosed the scheme to one retail investor, writing that "[w]e will be buying more stock on the dips. Dan O'Donnell bought 2k shares . . . and Michelle Cote (our Founder) will be buying some too."

68. In early December 2014, Cote made two purchases for a total of 1,700 CLCN shares.

69. Instead of using their own funds to purchase the stock, Pappas, O'Donnell, and Cote used company funds. Pappas directed CLCN's bookkeeper to write company checks in the amount of $3,000 each to O'Donnell, Cote, and himself (addressed to the legal entities each used to receive funds from CLCN). Pappas kept the difference between the $3,000 that he issued to himself and the approximately $1,800 he spent on purchasing shares.

70. At Pappas's direction, these payments were recorded in CLCN's books and records as "consulting" fees even though no consulting services had been performed. In fact, the $3,000 payments were made to Pappas, O'Donnell, and Cote solely to pay them for their stock purchases as part of the scheme to manipulate the market for CLCN's stock.

## C. Pappas Directed Improper Loans to Himself and Cote

71. Exchange Act Section 13(k), 15 U.S.C. § 78m(k), makes it illegal for an issuer to directly or indirectly extend or maintain credit in the form of a personal loan to a director or executive officer of that issuer, subject to exceptions not applicable here.

### The Audioflix Loan

72. Pappas was the CEO, a director, and the controlling shareholder of Audioflix, an entity he created to provide audio entertainment to monthly subscribers. O'Donnell was a minority shareholder and director. In June 2013, Pappas arranged for CLCN, through its wholly-owned subsidiary BFK Franchise Company LLC ("BFK"), to loan $70,000 to Audioflix. The $70,000 loan was for 24 months and carried simple interest of 6%. Pappas signed the note on behalf of Audioflix and personally guaranteed the loan.

73. On June 13, 2013, Cote and O'Donnell, acting on behalf of CLCN, approved the $70,000 loan to Audioflix. Cote and O'Donnell knew when they approved this loan that Pappas was an officer and controlling shareholder of Audioflix. O'Donnell also knew that he personally held an ownership interest in Audioflix.

74. Neither CLCN nor its subsidiary BFK was in the business of making loans. The loan to Audioflix was made because of Pappas's ownership in and control of Audioflix. Pappas negotiated the terms of the loan on behalf of both BFK and Audioflix.

75. In December 2013, CLCN's independent auditor raised concerns regarding "the SEC's views about loans to officers." Similarly, during a presentation to the CLCN directors in January 2015, other auditors noted that the Audioflix loan "may be a violation of Sarbanes-Oxley Section 402(a) relating to loans to officers." Nevertheless, Pappas, O'Donnell, and Cote took no action in response to these warnings.

76. After the end of the loan term, CLCN demanded repayment. Audioflix repaid the $70,000 loan on August 12, 2015.

**The MC Logic Loan**

77. Cote owns and controls MC Logic, which receives payments from CLCN in connection with the sale of "Bricks 4 Kidz" franchises.

78. In October 2013, Cote asked Pappas and O'Donnell for a $125,000 loan from CLCN to MC Logic so that she could purchase a recreational vehicle. Cote agreed to personally guarantee the loan and to make repayment with funds to be generated from a private sale of her CLCN stock.

79. Cote and O'Donnell signed a resolution on behalf of CLCN approving the loan to MC Logic. Pappas drafted the requisite loan documents.

80. On October 23, 2013, MC Logic and CLCN's subsidiary BFK entered into a promissory note providing for a loan of $125,000 to MC Logic at 2% interest, to be repaid by December 1, 2013.

81. MC Logic repaid the loan on December 30, 2013, without interest.

**D. Pappas Selectively Disclosed Material, Non-Public Information**

82. Regulation FD, 17 C.F.R. § 243.100 et seq, provides that if an issuer discloses material, non-public information regarding the issuer or its securities to, inter alia, a shareholder

under circumstances indicating that it is reasonably foreseeable that the shareholder will trade on the basis of that information, the issuer must also disclose the information to the public.

83. Pappas repeatedly disclosed material, non-public information regarding CLCN's anticipated earnings to a hedge fund manager ("Fund Manager"), whose fund was one of CLCN's largest outside investors. On November 4, 2013, Pappas told the Fund Manager that CLCN expected to announce fiscal year 2013 revenue of $4.8 million, a 41% increase from the prior year. Pappas also revealed to the Fund Manager that CLCN expected to announce $900,000 in net income, an increase of more than 56% from the prior year. The Fund Manager purchased 40,000 shares of CLCN stock for his fund between November 13 and December 31, 2013.

84. On January 3, 2014, Pappas told the Fund Manager that for fiscal year 2013 CLCN would "show a pre-tax profit of around $930k on revenue of $4.8 million." The Fund Manager purchased an additional 28,000 shares of CLCN stock for his fund between January 3 and January 10, 2014.

85. The material, non-public information disclosed to the Fund Manager on November 4, 2013, and January 3, 2014, was not disclosed to CLCN's other investors or to the public until CLCN filed a 10-K on January 14, 2014.

86. On March 20, 2014, Pappas told the Fund Manager that CLCN's gross revenue for the second quarter of fiscal year 2014 "should come in very close to $2M[,]" which represented an increase of approximately $925,000 (85%) from the previous year's second quarter. The Fund Manager purchased 10,000 shares for his fund on March 20, 2014 and another 3,200 shares on March 21, 2014. The material, non-public information disclosed to the

Fund Manager on March 20, 2014, was not disclosed to CLCN's other investors or to the public until CLCN issued a press release on March 27, 2014.

87. On August 14, 2014, Pappas told the Fund Manager that CLCN anticipated reporting a $1.55 million profit for the first three quarters of fiscal year 2014. This would have been an increase of more than $899,000 (138%) from the previous year's first three quarters. CLCN's actual profit for the first three quarters of fiscal year 2014 was not disclosed to CLCN's other investors or to the public until CLCN filed a 10-Q on August 18, 2014.

88. On December 17, 2014, Pappas told the Fund Manager that CLCN would be initiating a stock buyback "ASAP." On January 20, 2015, Pappas disclosed to the Fund Manager that the Board of Directors had voted to repurchase 100,000 shares of CLCN stock. This material, non-public information regarding the buyback plan was not disclosed to CLCN's other investors or to the public until CLCN filed an 8-K on January 26, 2015.

89. In an e-mail on December 18, 2014, Pappas made the Fund Manager aware of a potential CLCN acquisition referred to as the "China Deal," which involved the sale of a master franchise agreement to a Chinese investor, who would be issued three million shares of CLCN stock and agree to purchase another one million shares on the open market. The issuance of three million shares would have increased CLCN's outstanding shares by more than 25%. On January 2, 2015, Pappas forwarded to the Fund Manager an e-mail indicating that the deal "appears to be still alive" and informed the Fund Manager that the likely price for the three million shares would be $1.50. This material, non-public information regarding the China Deal was not disclosed to CLCN's other investors or to the public.

90. On January 14, 2015, CLCN filed its 10-K for fiscal year 2014. The next day, Pappas revealed to the Fund Manager that CLCN had made that filing without its independent

auditor's permission and was contemplating giving notice that the financial statements in the 10-K could not be relied upon. On January 16, 2015, Pappas told the Fund Manager that the company would file an amended 10-K. The facts that CLCN's 10-K had been filed without the independent auditor's authorization and that the company would file an amended 10-K were not disclosed to CLCN's other investors or to the public until January 21, 2015. An amended 10-K, with revised financial statements, was filed on February 2, 2015.

91. Pappas's disclosures of material, non-public information to the Fund Manager were made under circumstances in which it was reasonably foreseeable that the Fund Manager would trade in CLCN shares on the basis of that information. As noted, on at least three occasions the Fund Manager traded in CLCN shares after Pappas provided him with material, non-public information and prior to public disclosure of that information.

92. In March 2015, Pappas disclosed material, non-public information to two CLCN shareholders ("Shareholder A" and "Shareholder B") by copying them on a confidential internal e-mail about a potential acquisition target. This material, non-public information was not disclosed to CLCN's other shareholders or to the public.

93. On June 3, 2015, Pappas again disclosed material, non-public information to Shareholder A and Shareholder B by copying them on a confidential internal e-mail discussing CLCN's anticipated losses. In that e-mail, Pappas stated that "as of the end of May we're looking at no less than a $60k loss and possibly a much greater loss as of the end of the quarter." The anticipated loss represented a reversal from the previous quarter's profit of $138,239.

94. Pappas's disclosures of material, non-public information to Shareholder A and Shareholder B were made under circumstances making it reasonably foreseeable that they would trade in CLCN shares on the basis of that information. Shareholder A made at least two trades in

CLCN shares between receiving Pappas's e-mail on June 3 and CLCN's disclosure of its actual profit figures for May 2015 and the third quarter of fiscal year 2015 on August 19, 2015.

95. The non-public information that Pappas disclosed to the Fund Manager, Shareholder A, and Shareholder B was material because a reasonable investor would have considered it important in deciding whether to invest or remain invested in CLCN.

96. Pappas knew, or was reckless in not knowing, that the information he provided to the Fund Manager, Shareholder A, and Shareholder B was material and non-public.

97. When Pappas disclosed material, non-public information to the Fund Manager, Shareholder A, and Shareholder B, he was CLCN's CEO and President, as well as a board member, and was acting on CLCN's behalf. Consequently, Pappas's misconduct in making those selective disclosures, while failing to disclose the same information to the public, is attributable to CLCN.

98. By disclosing material, non-public information to the Fund Manager, Shareholder A, and Shareholder B while failing to disclose the same information to the public, Pappas knowingly or recklessly provided substantial assistance in CLCN's violations.

## E. Pappas Failed to Make Timely Disclosure of His Beneficial Ownership of, and His Transactions in, CLCN Shares

### Failure to File a Schedule 13D for Six Years

99. Pursuant to Section 13(d) of the Exchange Act, 15 U.S.C. § 78m(d), and the regulations thereunder, any person who has acquired beneficial ownership of more than 5% of, inter alia, a class of an equity security registered under Section 12 of the Exchange Act, 15 U.S.C. § 78*l*, must within 10 days file a Schedule 13D with the SEC to disclose that beneficial ownership.

100. As of July 7, 2010, Pappas (through FranVentures) had acquired 2,599,000 shares of common stock of B2 Health, which soon changed its name to CLCN. Pappas's beneficial ownership constituted approximately 26.5% of B2 Health's common stock. Pappas failed to file a Schedule 13D following that transaction. In fact, despite beneficially owning more than 5% of the common stock of CLCN at all relevant times since July 2010, Pappas did not file a Schedule 13D until October 27, 2016.

101. A beneficial owner of more than 5% of a class of an equity security registered under Section 12 of the Exchange Act must also file a Schedule 13D to disclose material changes in the beneficial owner's interest. On September 13, 2013, Pappas disposed of 150,000 shares of CLCN common stock, which was approximately 6.3% of the shares Pappas owned, and his sale of those shares constituted a material change. Nevertheless, Pappas did not file a Schedule 13D in connection with that transaction.

102. For more than six years, from July 2010 until October 2016, Pappas was in continuous violation of Section 13(d) and the regulations thereunder. Pappas first filed a Schedule 13D on October 27, 2016.

**Failure to File Forms 4 and 5 to Report Transactions**

103. As an officer, director, and beneficial owner of more than 10% of CLCN's outstanding shares, Pappas was required by Section 16(a) of the Exchange Act and the rules thereunder to file a Form 4 with the SEC by the end of the second business day after any change in his beneficial ownership.

104. Beginning in 2012 and continuing through most of 2014, Pappas solicited investments in Audioflix by offering investors one of his CLCN shares for every three shares of

Audioflix purchased by an investor. Through FranVentures, Pappas disposed of 363,333 CLCN shares in eight such transactions from August 2012 to September 2014:

| Date | Number of Shares |
|---|---|
| 08/13/2012 | 50,000 |
| 07/23/2013 | 10,000 |
| 10/18/2013 | 33,333 |
| 11/03/2013 | 105,000 |
| 12/06/2013 | 15,000 |
| 03/18/2014 | 50,000 |
| 08/13/2014 | 50,000 |
| 09/16/2014 | 50,000 |

Each of these transactions changed Pappas's beneficial ownership of CLCN. Nevertheless, Pappas failed to file a timely Form 4 in connection with any of these transactions.

105. Pursuant to Exchange Act Section 16(a), 15 U.S.C. § 78p(a), and the rules thereunder, Pappas was required to file a Form 5 by the end of any CLCN fiscal year in which his beneficial ownership in CLCN changed, but the transactions resulting in that change had not previously been reported. Pappas failed to file a Form 5 as required after the close of CLCN's fiscal years 2012 and 2013.

106. The eight transactions identified in Paragraph 104, and the corresponding changes in Pappas's beneficial ownership of CLCN, were not disclosed until Pappas filed a Form 4 on November 17, 2014.

**F. Compensation and Fiscal Year 2014 Bonuses**

107. Although at its peak CLCN had only $4.4 million in assets, CLCN paid Pappas approximately $1.52 million between 2010 and 2015, including salary, a bonus of $35,000 in 2014, commissions, and consulting fees.

108. O'Donnell received a salary, consulting fees, bonuses (totaling $85,000), and stock options for his work as an officer and director of CLCN from 2010 through 2015.

109. Cote received commissions and consulting fees for her work as an officer and director of CLCN from 2010 through 2015. She also received a $35,000 bonus for fiscal 2014 and was paid a salary in fiscal years 2014 through 2016.

**G. Pappas Failed to File Proxy Solicitation Materials as Required**

110. In December 2016, Pappas initiated a proxy contest in which he sought to remove certain members of CLCN's Board of Directors and replace them with his own nominees. On December 9, 2016, Pappas and his wife, through FranVentures and along with the individuals being nominated to the Board of Directors, filed a Preliminary Consent Statement on Schedule 14A announcing the effort to replace certain members of the board. The proxy statement became a Definitive Consent Statement on December 22, 2016.

111. Pursuant to Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and rules thereunder, soliciting materials provided to shareholders as part of a proxy contest must be filed with the SEC.

112. Between December 27, 2016, and January 28, 2017, Pappas sent at least thirteen e-mails regarding the proxy contest to two CLCN shareholders. Many of these e-mails commented on the existing CLCN management and board, predicted that the company would soon be bankrupt if the board was not replaced, and urged the two CLCN shareholders to support the effort to replace the existing board. None of these e-mails were filed with the SEC.

113. On January 11, 2017, Pappas sent a memo to Shareholder A, along with the CLCN Definitive Consent Statement and Consent Card, urging Shareholder A to support the effort to replace members of CLCN's Board of Directors. In that memo, Pappas made representations regarding a proposed business plan, claimed that CLCN would be worthless if

the proxy contest was unsuccessful, and urged Shareholder A to support the effort to replace the board. Pappas never filed that memo with the SEC.

## FIRST CLAIM FOR RELIEF

### Pappas and CLCN Made Material Misstatements and Omissions and Engaged in a Fraudulent Scheme in Violation of Section 10(b) and Rule 10b-5 of the Exchange Act

114. Through the conduct described in Paragraphs 24-59 and 62-70 above, in connection with the purchase or sale of securities and by the use of instrumentalities of interstate commerce or the mails, CLCN and Pappas (a) employed devices, schemes, and artifices to defraud, (b) made untrue statements of material facts or omitted material facts necessary to make the statements made not misleading, and (c) engaged in acts, practices, and courses of business which operated or would operate as a fraud or deceit.

115. Pappas and CLCN engaged in this conduct with the intent to deceive, manipulate or defraud, or with severe recklessness.

116. By reason of this conduct, Pappas and CLCN violated, and, unless enjoined, are likely to continue to violate, Exchange Act Section 10(b), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

## SECOND CLAIM FOR RELIEF

### Pappas and CLCN Made Material Misstatements and Omissions and Engaged in a Fraudulent Scheme in Violation of Section 17(a) of the Securities Act

117. Through the conduct described in Paragraphs 9-15, 24-59, 62-70, and 107 above, in the offer or sale of securities and using instruments of interstate commerce or the mails, CLCN and Pappas (a) employed a device, scheme, or artifice to defraud, (b) obtained money or property by means of untrue statements of material fact or the omission of material facts

necessary to make the statements made not misleading, and (c) engaged in transactions, practices, and courses of business which operated or would operate as a fraud or deceit upon the purchasers of CLCN shares.

118. CLCN and Pappas engaged in this conduct with the intent to deceive, manipulate or defraud, or with severe recklessness. CLCN and Pappas also failed to exercise reasonable care with regard to their conduct and consequently were negligent.

119. By reason of the foregoing, Pappas and CLCN violated, and, unless enjoined, are likely to continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. §§ 77q(a).

## THIRD CLAIM FOR RELIEF

### O'Donnell, and Cote Violated Sections 17(a)(2) and 17(a)(3) of the Securities Act

120. Through the conduct described in Paragraphs 9-15, 24-40, 48-53, 60-70, and 108-109 above, in the offer or sale of securities and using instruments of interstate commerce or the mails, O'Donnell and Cote (a) obtained money or property by means of untrue statements of material fact or the omission of material facts necessary to make the statements made not misleading and (b) engaged in transactions, practices and courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities.

121. O'Donnell and Cote failed to exercise reasonable care with regard to this conduct and consequently were negligent.

122. By reason of the foregoing, O'Donnell and Cote violated, and, unless enjoined, are likely to continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2), (3).

## FOURTH CLAIM FOR RELIEF

### Pappas, O'Donnell, and Cote Engaged in Market Manipulation in Violation of Section 9(a) of the Exchange Act

123. Through the conduct described in Paragraphs 62-70 above and by the use of instrumentalities of interstate commerce or the mails, Pappas, O'Donnell, and Cote effected a series of transactions in CLCN shares creating actual or apparent trading in those securities, or raising or depressing the price of those securities, for the purpose of inducing the purchase or sale of those securities by others.

124. By virtue of the foregoing, Pappas, O'Donnell, and Cote violated, and, unless enjoined, are likely to continue to violate, Section 9(a)(2) of the Exchange Act, 15 U.S.C. § 78i(a)(2).

## FIFTH CLAIM FOR RELIEF

### CLCN, Aided and Abetted by Pappas, O'Donnell, and Cote, Made Loans to Pappas and Cote in Violation of Section 13(k) of the Exchange Act

125. Through the conduct described in Paragraphs 71-81 above, CLCN violated Section 13(k) of the Exchange Act, 15 U.S.C. § 78m(k), by making personal loans to Pappas and Cote, both of whom were executive officers of CLCN and members of CLCN's Board of Directors.

126. By reason of the foregoing, CLCN violated, and, unless enjoined, is likely to continue to violate, Exchange Act Section 13(k).

127. Through the conduct described in Paragraphs 71-81 above, Pappas, O'Donnell, and Cote at least recklessly provided substantial assistance to CLCN in connection with CLCN's loans to Pappas and Cote.

128. By reason of the foregoing, Pappas, Cote, and O'Donnell aided and abetted, and, unless enjoined, are likely to continue to aid and abet, CLCN's violations of Section 13(k) of the Exchange Act.

## SIXTH CLAIM FOR RELIEF

### CLCN, Aided and Abetted by Pappas, Violated Regulation FD and Section 13(a) of the Exchange Act

129. Through the conduct described in Paragraphs 82-98 above, CLCN, acting through Pappas, intentionally disclosed material, non-public information regarding CLCN to certain CLCN shareholders without simultaneously disclosing that information to other investors or the public.

130. If an issuer violates Regulation FD, 17 C.F.R. § 243.100 et seq, by making selective disclosure of material, non-public information regarding the issuer without making a simultaneous public disclosure of that information, the issuer also violates Section 13(a), 15 U.S.C. § 78m(a).

131. By reason of the foregoing, CLCN violated, and, unless enjoined, is likely to continue to violate, Regulation FD and Exchange Act Section 13(a).

132. Through the conduct described in Paragraphs 82-98 above, Pappas knowingly or recklessly provided substantial assistance in CLCN's violations of Regulation FD and Section 13(a).

133. By reason of the foregoing, Pappas aided and abetted, and, unless enjoined, is likely to continue to aid and abet, violations of Regulation FD and Section 13(a).

## SEVENTH CLAIM FOR RELIEF

### CLCN and Pappas Failed to Evaluate CLCN's Internal Controls and Disclosure Controls in Violation of Exchange Act Rules 13a-15(b) and (c)

134. As described in Paragraphs 41- 47 above, during fiscal years 2010 through 2014, CLCN and Pappas failed at the end of each fiscal quarter to evaluate CLCN's disclosure controls and failed at the end of each fiscal year to evaluate CLCN's internal controls over financial reporting, thereby repeatedly violating Exchange Act Rules 13a-15(b) and 13a-15(c), 17 C.F.R. §§ 240.13a-15(b), (c).

135. By reason of the foregoing, CLCN and Pappas violated, and, unless enjoined, are likely to continue to violate, Exchange Act Rules 13a-15(b) and 13a-15(c).

## EIGHTH CLAIM FOR RELIEF

### Pappas Signed False Certifications in Violation of Exchange Act Rule 13a-14

136. As described in Paragraphs 41-47 above, Pappas falsely stated in the certifications submitted with the ten 10-Ks and 10-K/As filed by CLCN for fiscal years 2010 through 2014, as well as in the certifications submitted with the 10-Qs submitted by CLCN during those fiscal years, that he had evaluated CLCN's disclosure controls.

137. By reason of those false certifications, Pappas repeatedly violated, and, unless enjoined, is likely to continue to violate, Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14.

## NINTH CLAIM FOR RELIEF

### Pappas Failed to Report His Beneficial Ownership on Schedule 13D in Violation of Exchange Act § 13(d) and Rule 13d-1

138. As the beneficial owner of more than 5% of CLCN's common stock at all relevant times after July 2010, Pappas was required by Section 13(d) of the Exchange Act, 15 U.S.C. §

78m(d), and Rule 13d-1 thereunder, 17 C.F.R. § 240.13d–1, to file a Schedule 13D in July 2010 and again whenever there was a material change to his beneficial ownership.

139. As described in Paragraphs 99-102 above, Pappas failed throughout the period from July 2010 until October 2016 to disclose his beneficial ownership, or the changes thereto, by filing a Schedule 13D. Pappas thereby violated, and, unless enjoined, is likely to continue to violate, Section 13(d) of the Exchange Act and Rule 13d-l.

## TENTH CLAIM FOR RELIEF

### Pappas Failed to File Form 4s and 5s in Violation of Exchange Act § 16(a), and Rules 16a-2 and 16a-3

140. As an officer, director, and beneficial owner of more than 10% of CLCN's outstanding shares, Pappas was required to file a Form 4 within two business days after any change in his beneficial ownership. He was also required to file a Form 5 by the end of any CLCN fiscal year in which his beneficial ownership changed but that change had not previously been reported.

141. As described in Paragraphs 103-106 above, beginning in August 2012 and continuing into September 2014, Pappas on eight occasions disposed of CLCN shares, thereby changing his beneficial ownership of CLCN. However, he failed to report any of those transactions contemporaneously on Form 4. He also failed to report any of the transactions in fiscal years 2012 and 2013 on Form 5 after the close of those fiscal years.

142. By reason of the foregoing, Pappas violated, and, unless enjoined, is likely to continue to violate, Exchange Act Section 16(a), 15 U.S.C. § 78p(a), and Rules 16a-2 and 16a-3, 17 C.F.R. §§ 240.16a-2, 240.16a-3.

## ELEVENTH CLAIM FOR RELIEF

### CLCN, Aided and Abetted by Pappas, Violated Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-13 by Filing Incomplete and Inaccurate 10-Qs, 10-Ks, and 10-K/As

143. Pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13, thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13, CLCN was required to file complete and accurate annual reports on Form 10-K, to submit complete and accurate amendments on Form 10-K/A when circumstances required, and to file complete and accurate quarterly reports on Form 10-Q. CLCN was obligated to include in these filings any material information needed to make the required statements not misleading.

144. As described in Paragraphs 24-40 above, CLCN failed to make required related-person disclosures in its 10-Ks and 10-K/As for fiscal year 2013 and in its 10-K and first 10-K/A for fiscal year 2014, making those filings incomplete and inaccurate in violation of Exchange Act Section 13(a) and Exchange Act Rules 12b-20 and 13a-1.

145. As described in Paragraphs 41-47 above, the 10-Ks and 10-K/As filed by CLCN for fiscal years 2010 through 2014, as well as the 10-Qs filed by CLCN during those fiscal years, contained false or misleading statements regarding Pappas's evaluation of CLCN's internal controls and disclosure controls, making those filings incomplete and inaccurate in violation of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13.

146. As described in Paragraphs 48-53 above, CLCN failed to disclose in its 10-Ks and 10-K/As for fiscal years 2010 through 2013 and in its 10-K and first 10-K/A for fiscal year 2014 that Pappas had filed for bankruptcy in October 2003, making those filings incomplete and inaccurate in violation of Exchange Act Section 13(a) and Exchange Act Rules 12b-20 and 13a-1.

147. As described in Paragraphs 54-57 above, CLCN's 10-Ks and 10-K/As for fiscal years 2010 through 2014 contained false or misleading statements regarding the "sale" of Together Development Corporation, making those filings incomplete and inaccurate in violation of Exchange Act Section 13(a) and Exchange Act Rules 12b-20 and 13a-1.

148. By reason of the foregoing, CLCN violated, and, unless enjoined, is likely to continue to violate, Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13.

149. As described in Paragraphs 24-59 above, Pappas aided and abetted CLCN's violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-13 by knowingly or recklessly providing substantial assistance in those violations, and, unless enjoined, is likely to continue to aid and abet such violations.

## TWELFTH CLAIM FOR RELIEF

### Pappas Violated Exchange Rule 13b2-1

150. Exchange Act Rule 13b2-1, 17 C.F.R. § 240.13b2-1, provides that no person shall directly or indirectly falsify or cause to be falsified, any book, record, or account that is subject to Exchange Act Section 13(b)(2)(A), 15 U.S.C. § 78m(b)(2)(A).

151. As described in Paragraphs 62-70 above, in November 2014, Pappas directed CLCN's bookkeeper to enter materially false information in CLCN's books and records. Pappas thereby violated, and, unless enjoined, is likely to continue to violate, Exchange Act Rule 13b2-1.

## THIRTEENTH CLAIM FOR RELIEF

### CLCN, Aided and Abetted by Pappas, Violated of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act

152. Pursuant to Exchange Act Sections 13(b)(2)(A) and (B), 15 U.S.C. §§ 78m(b)(2)(A) and (B), every issuer having a class of securities registered pursuant to Section 12 of the Exchange Act must (a) make and keep books and records which accurately and fairly

reflect its transactions and the dispositions of its assets, and (b) maintain a system of internal accounting controls sufficient to provide reasonable assurance that, inter alia, transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

153. As described in Paragraphs 62-70 above, in November 2014 CLCN failed to accurately record the payments CLCN made to Pappas, O'Donnell, and Cote in connection the manipulation of the market for CLCN's shares, thereby failing to make and keep accurate books and records and to maintain an adequate system of internal accounting controls. CLCN thus violated, and, unless enjoined, is likely to continue to violate, Exchange Act Sections 13(b)(2)(A) and (B).

154. As described in Paragraphs 62-70 above, Pappas knowingly or recklessly provided substantial assistance to CLCN in CLCN's violations of Exchange Act Sections 13(b)(2)(A) and (B) and, unless enjoined, is likely to continue to aid and abet violations of those provisions.

## FOURTEENTH CLAIM FOR RELIEF

### Pappas's Failure to File Solicitation Materials Violated Section 14(a) and Rule 14a-6(b), Thereunder

155. Pursuant to Section 14(a) of the Exchange Act, 15 U.S.C. §78n(a), and Rule 14a-6(b), 17 C.F.R. §§ 240.14a–6(b), soliciting materials as defined in Rule 14a-1(*l*), 17 C.F.R. § 240.14a–1(*l*), that are provided to shareholders as part of a proxy contest must be filed with the SEC.

156. As described in Paragraphs 110-113 above, in December 2016 and January 2017, Pappas sent CLCN shareholders soliciting materials that were never filed with the SEC. Pappas

thereby violated, and, unless enjoined, is likely to continue to violate, Section 14(a) of the Exchange Act and Rules 14a-6(b) thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court enter the following relief:

A. Injunctive Relief

Permanently enjoin CLCN from (i) violating Exchange Act Section 10(b), Exchange Act Rule 10b-5, or Securities Act Section 17(a) by, directly or indirectly, making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company or by engaging in a scheme to defraud involving the entry of false or misleading information in CLCN's books and records; or (ii) violating any other statutory provision or regulation CLCN is found to have violated;

Permanently enjoin Pappas from (i) violating Exchange Act Section 10(b), Exchange Act Rule 10b-5, or Securities Act Section 17(a) by, directly or indirectly, making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company or by engaging in a scheme to defraud involving the entry of false or misleading information in CLCN's books and records or the manipulation of the market for any security; (ii) violating any other statutory provision or regulation CLCN is found to have violated; or (iii) aiding and abetting the violation of any statutory provision or regulation the violation of which Pappas is found to have aided and abetted; and

Permanently enjoin O'Donnell and Cote from: (i) violating Securities Act Sections 17(a)(2) and (a)(3) by, directly or indirectly, making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company; (ii) violating Section 9(a)(2) of the Exchange Act, 15 U.S.C. § 78i(a)(2), by engaging in market manipulation through the purchase or sale of a security for the purpose of inducing the purchase or sale of such security by others; or (iii) aiding and abetting an issuer's violation of Section 13(k) of the Exchange Act, 15 U.S.C. § 78m(k), by providing substantial assistance in making personal loans to an officer or director of that issuer.

B. Disgorgement

Order Pappas, O'Donnell, and Cote to disgorge the ill-gotten gains obtained as a result of their violations, with prejudgment interest, pursuant to Section 21(d)(5) of the Exchange Act, 15 U.S.C. § 78u(d)(5);

C. Civil Penalties

Order Pappas, O'Donnell, and Cote to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3);

D. Officer and Director Bars

Bar Pappas pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78*l*, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d);

Bar O'Donnell and Cote pursuant to Section 21(d)(5) of the Exchange Act, 15 U.S.C. § 78u(d)(5), from serving as officers or directors of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act;

E. Penny Stock Bars

Bar Pappas, O'Donnell, and Cote pursuant to Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6), and Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), from participating in any offering of any penny stock; and

F. Grant such further relief as the Court may deem just and appropriate.

Date: August 18, 2017

Respectfully submitted,

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