B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Primcogent Solutions	Erchonia Corporation
ATTORNEYS (Firm Name, Address, and Telephone No.) Andrews Kurth LLP 1717 Main Street, Suite 3700 Dallas, Texas 75201, Attn: Paul N. Silverstein	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) ■ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor □ Other □ Trustee	**PARTY** (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor ■ Other □ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Action for declaratory and injunctive relief brought pursuant to 28 U.S.C. §§ 1334(b) and (e), 28 U.S.C. § 2201, 11 U.S.C. § 105(a) and Rules 7001(7), (9) and 7065 of the Federal Rules of Bankruptcy Procedure, and applicable law of the State of Texas.

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☑ 71-Injunctive relief – imposition of stay
- ☑ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☑ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	□ Check if this is asserted to be a class action under FRCP 23
□ Check if a jury trial is demanded in complaint	Demand $ Unknown

Other Relief Sought

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Primcogent Solutions LLC	BANKRUPTCY CASE NO. 13-42368	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Fort Worth	NAME OF JUDGE D. Michael Lynn
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Paul N. Silverstein		
DATE May 22, 2013	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Paul N. Silverstein	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

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Proposed Counsel to the Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	Chapter 11
	§	
PRIMCOGENT SOLUTIONS LLC,	§	Case No. 13-42368-DML-11
	§	
Debtor.	§	
	§	
PRIMCOGENT SOLUTIONS LLC,	§	Adversary No. 13-_____
	§	
Plaintiff.	§	
	§	
v.	§	
	§	
ERCHONIA CORPORATION,	§	
	§	
Defendant.	§	

VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

Plaintiff, Primcogent Solutions LLC, the above-captioned debtor and debtor in possession (the "Debtor"), for its Verified Complaint for Declaratory and Injunctive Relief against Defendant Erchonia Corporation ("Defendant" or "Erchonia"), alleges as follows:

NATURE OF THE ACTION

1. This action for declaratory and injunctive relief is brought pursuant to 28 U.S.C. §§ 1334(b) and (e), 28 U.S.C. § 2201, 11 U.S.C. § 105(a) and Rules 7001(7), (9) and 7065 of the Federal Rules of Bankruptcy Procedure.

2. The Debtor hereby seeks a judgment from this Court declaring, among other things, that:

a. The Erchonia Agreements governing the relationship between the Debtor and Erchonia (the "Erchonia Agreements") have not been terminated, and are still in full force and effect, including: (i) Erchonia's obligations not to compete with the Debtor's business as the exclusive distributor of certain medical devices manufactured and supplied by Erchonia to the Debtor (collectively, the "Products"); (ii) Erchonia's obligations to support the Products, including servicing customer complaints and providing the required licenses and codes for such Products; and (iii) the Debtor's exclusive license and supply rights with respect to all Products in North America and Western Europe;

b. Erchonia has breached (and continues to be in breach of) the Erchonia Agreements by, among other things: (i) failing to obtain approval by the U.S. Food and Drug Administration (the "FDA") for a medical device titled "Lunula" to which the Debtor has exclusive license and distribution rights under the Erchonia Agreements; (ii) seeking to market, rent and/or sell Products (including a new version of the "Zerona Body Laser") in violation of its non-competition obligations under the Erchonia Agreements; (iii) refusing to fulfill purchase order(s) for the Debtor and/or the Debtor's customers; and (iv) stealing and/or attempting to "steal" or "solicit" the Debtor's customers and/or employees;

c. As a result of the breaches described above (and in detail below), Erchonia must release to the Debtor all "information necessary" for the Debtor to distribute and sell the Products "including but not limited to the software which generates the activation codes and similar codes and documentation and materials related to the manufacture and construction" of the Products; and

d. In the unlikely event that the Erchonia Agreements are deemed to have been terminated by this Court, that the Debtor and Erchonia have certain express post-termination rights and obligations under the terms of the Erchonia Agreements, including that:

i. For six (6) months post-termination, the Debtor has the right to acquire, distribute, market rent and/or sell the Products pursuant to the terms of the Erchonia Agreements as if such Erchonia Agreements were still in effect (i.e., as if the Erchonia Agreements had not been terminated);

ii. The Debtor thereafter has a perpetual right to rent, re-rent, sell, re-sell and support the continued operation of the Products; and

iii. For so long as the Debtor continues to have rights under paragraphs 2(d)(i) and/or (ii) above, all licenses and rights granted to the Debtor under the Erchonia Agreements (including, without limitation, Erchonia's obligations not to compete with the Debtor with respect to the Products by Erchonia and to continue to provide service and support with respect to such Products) continue in full force while the Debtor pays royalties to Erchonia.

3. The Debtor further seeks a Temporary Restraining Order, immediately and thereafter preliminary and permanently restraining and enjoining Erchonia from:

a. Continuing to take actions in breach of the terms of the Erchonia Agreements, whether (i) the Court determines that such Erchonia Agreements have not been terminated and are in full force and effect, or, alternatively, (ii) the Court determines that such Erchonia Agreements have been terminated and the post-termination rights and obligations of the Debtor and Erchonia under such Erchonia Agreements have been "triggered" and are in effect;

b. Tortiously interfering with the Debtor's business and operations, including, but not limited to: (i) refusing to fulfill purchase orders for the Debtor's customers and (ii) contacting the Debtor's customers falsely stating that the Debtor is going out of business and no longer has any rights to sell the Products;

c. Tortiously interfering with the Debtor's prospective business relationships, including potential future customers that may purchase Products from the Debtor;

d. Tortiously interfering with the Debtor's contracts and relationships with its employees, including by soliciting them to leave the Debtor's employ to become employed by Erchonia; and

e. Disparaging the Debtor and the Debtor's business, including, without limitation, by making false and fraudulent statements to the Debtor's present and potential customers and the Debtor's employees that the

Debtor no longer has exclusive distribution rights to the Products and that the Debtor is going out of business.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

5. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This adversary proceeding presents a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This action for declaratory and injunctive relief is brought pursuant to 28 U.S.C. §§ 1334(b) and (e), 28 U.S.C. § 2201, 11 U.S.C. § 105(a) and Rules 7001(7), (9) and 7065 of the Federal Rules of Bankruptcy Procedure, and applicable law of the State of Texas.

PARTIES

6. The Debtor is a limited liability company organized under the laws of Delaware, with its principal place of business in Texas.

7. On information and belief, Defendant, Erchonia Corporation, is a corporation organized under the laws of Texas, with its principal place of business in Texas.

FACTUAL BACKGROUND[1]

A. THE DEBTOR'S BUSINESS

8. The Debtor, which is headquartered in this District and currently has approximately fifteen (15) employees, is a supplier and distributor of medical equipment and services in North America.[2] The Debtor operates as the exclusive North American (and, through its European subsidiaries, Western European) seller or distributor of equipment manufactured by

[1] In connection with filing this Complaint, the Debtor also files the Declaration Of David Boris in Support of Debtor's Verified Complaint for Declaratory, Injunctive and Other Relief ("Declaration"), which is incorporated herein as if set forth in full, including all exhibits attached to the Declaration.

[2] The Debtor also operates in Western Europe through certain wholly-owned, non-Debtor European subsidiaries.

Erchonia Corporation ("Erchonia"), pursuant to license and supply agreements between the Debtor and Erchonia (collectively, the "Erchonia Agreements").[3] The Debtor's business principally is leasing, renting, and/or selling such medical products to doctors and medical and health care institutions in exchange for purchase payments (for sold equipment) or recurring revenue payments (for leased or rented equipment).

9. Among other things, pursuant to the Erchonia Agreements, the Debtor has the exclusive right to sell, rent, lease and market Products[4] utilizing a non-invasive body-contouring laser technology trademarked under the name Zerona®, including the Zerona Body Laser (each, a "Zerona BODY Laser" and, collectively, "Zerona Body Lasers"). This non-invasive, body-contouring laser technology is collectively referred to as "Zerona." The Zerona Body Laser is the first (and so far only) FDA-cleared, non-invasive body contouring procedure that effectively removes excess fat from the abdomen, hip, thigh and arm target areas without the negative side effects associated with surgical methods. The Zerona Body Lasers do so by utilizing "cold laser" technology to emulsify body fat and allow such fat to move to interstitial space. Under the Erchonia Agreements, the Debtor also has the exclusive right to sell, rent, lease and market "Lunula," which is a laser technology used to treat or cure toe fungus. The Debtor also had these exclusive rights with regard to "all current and future … uses" of the Products, "as well as future generations."

10. As discussed below, and in other pleadings filed or to be filed by the Debtor, Erchonia has committed fraud upon the Debtor, breached the Erchonia Agreements, and tortiously interfered with the Debtor's business. Erchonia's fraudulent behavior, breaches and

[3] The Erchonia Agreements include, but are not limited to, the (1) North American License Agreement (as amended, the "License Agreement") and (1) North American Supply Agreement (as amended, the "Supply Agreement").

[4] Capitalized terms not otherwise defined herein have the meaning assigned to them in the Supply and License Agreement.

tortious conduct have resulted in the Debtor's seeking the protective relief of this Court's jurisdiction under Chapter 11 of the Bankruptcy Code. It also appears that ORIX, the Debtor's Secured Lender (as identified further below) is now working "in concert" with Erchonia.

B. THE SBMI ACQUISITION AND ERCHONIA AGREEMENTS

11. The Debtor had no operations prior to November 2011, when it was formed specifically for the purpose of acquiring (the "SBMI Acquisition") the business and assets of Santa Barbara Medical Innovations LLC ("SBMI"). SBMI itself was formed in 2009 by Erchonia and various debt and equity investors, including the original majority owner, Montecito Investment Group ("Montecito"), to serve as the "exclusive" distribution company for Erchonia's Zerona products in North America, for which Erchonia had recently received FDA clearance. From SBMI's inception, Erchonia held a significant ownership stake in SBMI and had significant influence over SBMI's operations. Among other things, in addition to being the exclusive manufacturer and licensor of the Zerona products that were the core of SBMI's business and SBMI's primary assets, Erchonia held twenty-five percent (25%) of SBMI's equity interests and held a seat on SBMI's board of directors. Erchonia also had a "penny" option to purchase the majority equity stake in SBMI from Montecito if Montecito breached certain loan obligations incurred in connection with the formation of SBMI.

12. In 2011, prior to the SBMI Acquisition, upon information and belief as a result of the onerous contract terms imposed on SBMI by Erchonia, Erchonia and SBMI had a contract "dispute" which resulted in SBMI's inability to satisfy its purchase commitments under the then-existing agreements between SBMI and Erchonia. SBMI's inability to satisfy such requirements, and Montecito's corresponding default under its loan obligations, resulted in Erchonia exercising its "penny" option and increasing its ownership in SBMI to approximately eighty-three percent (83%) (and, thereby, controlling SBMI at the time of the SBMI Acquisition). Upon information

and belief, SBMI's inability to satisfy its contractual obligations to Erchonia was in large part due to end-user customers terminating their rental agreements with respect to Zerona and other products and "returning" such products to SBMI, thereby reducing SBMI's ability to pay Erchonia for additional products.

13. During the contract "dispute" identified above, Erchonia and SBMI began to enter into negotiations with various parties about a possible sale of the SBMI assets and business and "resolution" of the dispute between Erchonia and SBMI. In February 2011, representatives of Erchonia and SBMI approached David Boris ("Boris"), Chairman of the Debtor, who was the principal of a predecessor entity to the Debtor, which had purchased the exclusive rights to distribute Zerona in Western Europe. Erchonia and SBMI initiated discussions with Boris about consolidating SBMI's North American Zerona distribution business with the Western European Zerona distribution business. Erchonia and its owners and principals were heavily involved in, and effectively controlled SBMI throughout, the sale process and negotiations, both as super-majority owners of SBMI and as owners of the intellectual property rights relating to SBMI's sole assets (i.e., the Zerona products and exclusive right to distribute them in North America).

14. From the outset of negotiations in February 2011, Erchonia and SBMI management led Boris and the ultimate investors in the Debtor to believe that SBMI's business was extremely valuable, and that SBMI was only in default of its purchase obligations with Erchonia because SBMI's current non-Erchonia owners were unable to maximize the value of SBMI's business (because, among other things, SBMI had not yet adequately implemented a training program to enable its employees to support the Zerona products properly and/or dedicated enough resources to marketing). During the negotiation process, Erchonia and SBMI management provided numerous projections to the Debtor and its investors that, upon

information and belief, intentionally misstated and misrepresented SBMI's financial performance and prospects. Among other things, such financial projections mischaracterized (i) the number of Zerona Body Lasers being rented by customers, (ii) the recurring revenues being generated by such rented Zerona Body Lasers and (iii) the valuation of SBMI resulting from such cash flows.

15. On the basis of such fraudulent discussions and representations, on November 25, 2011, the Debtor entered into a series of contemporaneous transactions whereby it became the exclusive distribute of Erchonia's Products in North America. The Debtor and SBMI entered into an asset purchase agreement (the "APA"). Under the APA, the Debtor acquired all of the operations and assets of SBMI, including SBMI's "hard" assets and its exclusive contractual distribution rights with respect to the Erchonia products (primarily, Zerona). Of the "hard" assets that the Debtor acquired, approximately two hundred (200) Zerona Body Lasers were in SBMI's possession and were as yet unsold or rented and approximately six hundred (600) were represented to the Debtor to be in the possession of paying and revenue-generating customers. In fact, as the Debtor would later discover, approximately two hundred (200) of such Zerona Body Lasers that Erchonia and SBMI represented were being "rented by customers" were not generating any revenue, and many of those units were, in fact, being held on a "trial basis" or "demo'd" by customers. In the SBMI Acquisition, the Debtor also hired substantially all of SBMI's employees, including SBMI's management (that, at such time, was effectively under the control of Erchonia).

16. In the APA, SBMI made various representations about the state of its assets and business, including, among other things that (i) SBMI had had no "adverse change" in its business since December 31, 2010 that would have a material adverse effect on the business being sold to the Debtor, (ii) the assets and inventory purchased by the Debtor were in adequate

operating condition, (iii) SBMI had no obligation to repurchase or replace any product it has sold, leased or licensed other than in the ordinary course of its business and (iv) SBMI's relationships with its customers had been and would continue to be "good" and that none of SBMI's customers had declared an intention to "substantially reduce or terminate its relationship."

17. In total, under the APA, the Debtor purchased all of SBMI's assets and its business as the exclusive licensee and distributor of the products manufactured by Erchonia. As part of the purchase price, the Debtor also incurred a contingent liability in favor of SBMI (and, ultimately, Erchonia, as SBMI's owners) in the amount of $5 million, payable upon the Debtor achieving certain EBITDA targets (which it has not achieved). Further, in connection with the SBMI Acquisition, Erchonia purchased the equity in SBMI held by the remaining non-Erchonia owners and, as a consequence, increased its ownership in SBMI from eighty-three percent (83%) to one hundred percent (100%).

18. The SBMI Acquisition did not occur "in a vacuum." On the same date that the APA was executed, the Debtor and Erchonia entered into the Erchonia Agreements. Under the terms of the Erchonia Agreements, the Debtor acquired the exclusive right and ability to sell, lease and market various products manufactured by Erchonia, including the Zerona Body Lasers and Lunula, in North America (in addition to the exclusive rights to Zerona that the Debtor already held in Western Europe). In addition, under the Erchonia Agreements, the Debtor acquired the exclusive right to sell and lease all new and similar technologies/products produced by Erchonia, including any new versions of Zerona Products.

19. Under the Erchonia Agreements, Erchonia has substantial obligations to the Debtor. These obligations include, but are not limited to (i) manufacturing and supplying the

Products to the Debtor, (ii) supporting the Products, including by providing activation codes, software and other information necessary for the Products to function, (iii) providing warranties, recertifying and refurbishing used devices, and (iv) servicing customer complaints. The Erchonia Agreements also provide that Erchonia cannot compete with the Debtor by selling any products similar to the Products licensed and supplied to the Debtor by Erchonia in North America or Western Europe.

20. In addition to the obligations noted above (and the various representations relating to SBMI's business and its recurring revenue projections), the Debtor entered into the SBMI Acquisition and Erchonia Agreements because it would be able to market, distribute and sell Lunula, and would not be subject to the risks associated with a one-product company. For this reason, the Erchonia Agreements expressly obligated Erchonia to secure FDA clearance for the Lunula product on a timely basis. Knowing this, upon information and belief, during the negotiation and diligence relating to the SBMI Acquisition and Erchonia Agreements, the Debtor was told repeatedly by Erchonia and its management that Lunula would promptly be cleared for use in the United States by the FDA. In connection therewith, the Erchonia Agreements include a covenant by Erchonia to use "best efforts" in "good faith" to secure FDA clearance of the Lunula product. Furthermore, the parties understood and agreed that "time was of the essence" with respect to such clearance. The anticipated revenues to be generated by the Lunula product were a material aspect of the Debtor's agreement to enter into and consummate the SBMI Acquisition.

21. Importantly, the Erchonia Agreements do not only contain obligations "pre-termination." Of significant importance in the Debtor's present chapter 11 case, the Erchonia Agreements contain specific and explicit provisions providing for the Debtor's rights and

Erchonia's obligations in the event that the Erchonia Agreements terminate. Because the Debtor and Erchonia knew that there may be Products that were "in the pipeline" at the time of a termination of the Erchonia Agreements, the Erchonia Agreements contain a "six month tail" following a termination during which the Debtor may continue to purchase, rent and sell Products under the terms of the Erchonia Agreements (as if the Erchonia Agreements had not been terminated).

22. In addition, because a termination of the Erchonia Agreements could hypothetically leave the Debtor with remaining Products which it would not be able to rent and/or sell without the license from Erchonia and Erchonia's continued support of such Products, the Erchonia Agreements specifically provide that, following a valid termination of the Erchonia Agreements, Erchonia has the obligation to honor and continue to provide "all licenses and rights" provided to the Debtor under the Erchonia Agreements, in perpetuity and without qualification, until the Debtor ceases owning, renting, and/or selling all Products in their inventory that are subject to the Erchonia Agreements (provided that the Debtor pays royalties relating to such Products (if and as required by the Erchonia Agreements)).

23. Without the unfettered and exclusive ability to continue to rent and/or sell the Products that the Debtor purchased prior to any termination of the Erchonia Agreements, and Erchonia's continued license, support and non-competition obligations with respect thereof, the Debtor would never have entered into the SBMI Acquisition or the Erchonia Agreements.

C. EVENTS LEADING TO BANKRUPTCY

24. Following the SBMI Acquisition, the Debtor immediately began to infuse money into the Debtor's business in an attempt to expand the business. In particular, the Debtor dedicated significant resources towards sales and marketing with respect to the Zerona Products,

as well as the Lunula toe fungus laser technology that the Debtor had been informed by Erchonia was to be cleared by the FDA shortly.

25. In addition, the Debtor also incurred a significant amount of secured debt, pursuant to a Loan and Security Agreement, dated as of March 29, 2012 (as amended, supplemented or otherwise modified prior to the Petition Date, the "Secured Loan Agreement" and, together with all other agreements and documents delivered pursuant thereto or in connection therewith, the "Secured Loan Documents"), among the Debtor, as borrower, and ORIX Venture Finance LLC (the "Secured Lender"), as secured lender. Under the terms of the Secured Loan Documents, the Debtor incurred secured indebtedness in original aggregate principal amount of $12 million. Pursuant to and to the extent set forth in the Secured Loan Documents, the Debtor granted first priority liens (the "Liens") on, and continuing pledges and security interests in, substantially all of the Debtor's assets to secure the Secured Loan Obligations (all such collateral granted or pledged by the Debtor pursuant to the Secured Loan Documents shall collectively be referred to herein as the "Collateral").[5]

26. On March 29, 2012, the Debtor, the Secured Lender, and Erchonia entered into that certain Consent, Agreement and Subordination (as amended, restated or otherwise modified from time to time prior to the Petition Date, the "Tri-Party Agreement"). The Tri-Party Agreement governs various respective rights, interests, obligations, priority, and positions of the Debtor, the Secured Lender, the Subordinated Noteholders (as defined below) and Erchonia. Pursuant to the Tri-Party Agreement, among other things, a default under the Erchonia Agreements would trigger a "cross-default" under the Secured Loan Documents and all amounts payable under the Subordinated Notes and under the Erchonia Agreements are subject to and

[5] The Secured Loan Obligations are also guaranteed by certain of (2) of the Debtor's non-Debtor subsidiaries.

subordinate in priority to the Liens to the extent set forth in the Tri-Party Agreement. In addition, recognizing that the pre-termination value of the Debtor's enterprise is tied to its exclusive license and supply rights under the Erchonia Agreements, the Secured Lender has the right to cure any defaults under the Erchonia Agreements by the Debtor to ensure that the Erchonia Agreements remain effective and in place.

27. Not long after the SBMI Acquisition and the entry into the Secured Loan Documents, and the Tri-Party Agreement, it became apparent to the Debtor that various representations and statements made by Erchonia (including as controlling owners of SBMI) in connection with the SBMI Acquisition had been false, misleading and/or otherwise materially inaccurate. Among other things, at the time of the SBMI Acquisition, the Debtor was informed that approximately six hundred (600) Zerona Body Lasers were being rented or leased by customers and generating recurring revenue. Such rented or leased Zerona Body Lasers were anticipated to be the source of a significant amount of the estimated future cash flow revenue on which the Debtor based its decision to purchase SBMI.

28. As noted above, however, approximately two hundred (200) of such Zerona Body Lasers that Erchonia and SBMI represented were being "rented by customers" were, in fact, being held on a "trial basis" or "demo'd" by customers and were generating no revenue. Moreover, during early-to-mid 2012, it became clear that Zerona Body Lasers were being returned by customers at a rate significantly greater than represented to by SBMI and Erchonia in the SBMI Acquisition. By June 2012, approximately six (6) months following the SBMI Acquisition, one hundred seventy-nine (179) Zerona Body Lasers had been returned by customers. As of the Petition Date, less than approximately eighteen (18) months following the closing of the SBMI Acquisition, only approximately one hundred fourteen (114) of the

approximately six hundred (600) Zerona Body Lasers that were purportedly generating recurring rental revenues at the time the Debtor purchased SBMI's business are being rented by customers and generating recurring revenues.

29. In addition to the unanticipated and overwhelming return of Zerona Body Lasers, following the SBMI Acquisition, it became increasingly clear to the Debtor that Erchonia was breaching its obligations under the Erchonia Agreements to take good faith efforts to secure prompt FDA clearance of the Lunula toe fungus technology.

30. Specifically, under Section 5(a) Supply Agreement, Erchonia was "responsible for obtaining, updating and maintaining any FDA Permits."[3] Section 7(a) of the License Agreement expressly stated that:

> Erchonia hereby agrees to provide the Erchonia nail fungus laser [Lunula] for sale and distribution by [the Debtor] ***as soon as possible***, among other things using its ***best efforts*** to obtain any regulatory required approval [including FDA clearance], and Erchonia ***acknowledges and agrees that time is of the essence*** with respect to making the Erchonia nail fungus laser available for sale and distribution by [the Debtor] (emphasis added).

31. The parties agreed that "time was of the essence" with respect to securing FDA clearance because, among other things, the parties understood that it would necessarily require time and money to launch and market Lunula to the public and that a delay in the distribution of Lunula and the resulting revenue would materially harm the Debtor (and launching and marketing Lunula promptly following entry into the Erchonia Agreements was a material aspect of the Debtor entering into the SBMI and Erchonia transactions).

32. In material breach of the Erchonia Agreements, Erchonia failed to use its best efforts to obtain FDA clearance for Lunula. Almost eighteen (18) months have passed since the

[3] Any material breach of the Supply Agreement is also a breach of the License Agreement. *See* Section 7(a) of the License Agreement.

Debtor entered into the SBMI Acquisition and the Erchonia Agreements, nearly twelve months beyond the assumed approval date (of summer 2012) set forth in the Erchonia Agreements. On information and belief, the FDA has not approved Lunula because Erchonia has not used its best efforts to obtain approval, including flawed FDA trials and substandard FDA submissions. As a consequence, during late 2012, representatives of the Debtor informed Erchonia that its efforts to secure FDA clearance of Lunula were causing significant harm to the Debtor's operations. The Debtor also engaged a consultant that had worked as a former attorney at the FDA to review Erchonia' s Lunula FDA application materials and efforts. The consultant that the Debtor engaged informed the Debtor that Erchonia's FDA application efforts were sub-standard and materially deficient.

33. By failing to obtain FDA clearance, Erchonia deprived the Debtor of its contractual right to market and distribute Lunula. Without FDA clearance, Lunula cannot be sold in the United States. Moreover, Lunula's distribution in Europe is impaired because the Debtor's European customers want the assurances of FDA clearance. This in turn directly constrains the Debtor's revenue streams, impairing the Debtor's ability to make royalty payments and meet minimum purchase obligations under the Erchonia Agreements (and meet its other financial obligations).

34. In fall 2012, as a result of the drastically-reduced revenues being generated by the Debtor's business due to the return of Zerona Body Lasers and the failure to secure FDA clearance for Lunula, the Debtor encountered significant cash flow issues and was facing a potential default under its Secured Loan Documents. Moreover, the Debtor found itself unable to meet its purchase requirements to Erchonia. In order to address such issues and appease an increasingly obstinate Erchonia, and without knowledge of the above-described fraudulent

statements and misrepresentations, an existing debt and equity investor in the Debtor "rolled up" its outstanding debt and invested approximately $1.3 million of new financing into the Debtor. The Debtor also negotiated certain reductions to its minimum purchase requirements under the Erchonia Agreements.

35. During the same time that Erchonia was "dragging its feet" with respect to the Lunula application, however, Erchonia pursued and obtained FDA clearance of "Zerona Body Laser 2.0" (the "Zerona Body 2 Laser") without notifying the Debtor, notwithstanding that the Debtor had the exclusive right under the Erchonia Agreements to market, distribute and sell/rent all new Zerona products. On December 20, 2012, Erchonia filed with the FDA a notice of its intent to market the Zerona Body 2 Laser, in blatant contravention of Erchonia's obligations to the Debtor. As stated in such notice of intent, the intended use of the Zerona Body 2 Laser was "as a noninvasive dermatological aesthetic treatment as an adjunct for individuals intending to undergo liposuction procedures for the reduction of circumference of hips, waist, and thighs" (i.e., the same scope and use as the original Zerona Body Laser). The notice of intent failed to mention the Debtor's exclusive rights to the Zerona Body 2 Laser. On January 25, 2013, the FDA sent a letter to Erchonia in response to the notice of intent.[6] To date, Erchonia has never informed the Debtor of the foregoing actions.

36. In early 2013, as a direct result of Erchonia's breaches of its Lunula covenants and the misrepresentations by Erchonia-controlled SBMI in connection with the SBMI Acquisition (in particular, the relationships with customers and the foreseeability of returned Zerona Body Lasers and other Products), and notwithstanding that the Debtor had paid more than $25 million to Erchonia through December 2012, the Debtor was unable to satisfy its

[6] The December 20, 2012, Erchonia filing with the FDA and January 25, 2013 letter from the FDA are collectively referred to as the "FDA Zerona 2 Correspondence."

payment and minimum purchase requirements under the Erchonia Agreements. At another meeting between representatives of the Debtor and Erchonia on February 7, 2013, the Debtor's representatives again informed Erchonia that Erchonia was in breach of the terms of the Erchonia Agreements as a result of Erchonia's bad faith efforts with respect to FDA clearance of Lunula. The Debtor also informed Erchonia that the Debtor believed that Erchonia may have committed fraud and misrepresentations in connection with the SBMI Acquisition. The Debtor, however, also informed Erchonia that the Debtor intended to work in good faith with Erchonia to attempt to "right size" the Debtor's operations, by, among other things, cutting expenses and selling certain of the Products and inventory that the Debtor, at the time, was marketing primarily for rental and leasing customers.

37. Following the February 7 meeting, and ignoring that they were the proximate and actual cause of the Debtor's inability to satisfy payment and minimum purchase obligations under the Erchonia Agreements (and that the Debtor was poised to "work with" Erchonia to reach a consensual resolution relating to Erchonia's breaches and other bad acts), Erchonia sent a letter to the Debtor alleging a payment default under the Erchonia Agreements by the Debtor. Erchonia did not cite a single provision of the Erchonia Agreements that was allegedly breached, or even identify which of the five (5) agreements was allegedly breached. Instead, Erchonia generally proclaimed the Debtor had failed to make payments under the Erchonia Agreements and demanded that the Debtor "cure these defaults in the time provided" or the agreements would be terminated. Shortly thereafter, as a direct result of Erchonia's inaccurate "default" letter, the Debtor's Secured Lender also sent a letter to the Debtor alleging a "cross-default" under the Secured Loan Documents.

38. Promptly following receipt of Erchonia's and the Secured Lender's letters, the Debtor informed Erchonia and the Secured Lender that the Debtor was neither in breach of the Erchonia Agreements nor the Secured Loan Documents because, among other things, Erchonia's breach of such agreements had rendered the Debtor's performance of all of its payment obligations under the Erchonia Agreements impossible. The Debtor, however, once again informed Erchonia and the Secured Lender that it would be willing to discuss possible consensual resolution of the apparent dispute between the parties. During this period, Erchonia declined to enter into any substantive or meaningful discussions with the Debtor despite numerous good faith attempts by the Debtor to institute such discussions. The Secured Lender, however, indicated that it would be willing to engage in discussions with the Debtor. On March 22, 2013, Erchonia sent a letter to the Debtor informing the Debtor that Erchonia believed that the Erchonia Agreements had been terminated as a result of the Debtor's alleged failure to perform thereunder.

39. Upon sending such letter, Erchonia began a "covert" course of interfering with the Debtor's business, including further breaching the Erchonia Agreements, tortiously interfering with the Debtor's existing and potential contracts, and disparaging the Debtor's business. By way of example, Erchonia (i) wrongfully refused to fill outstanding purchase orders for the Debtor's customers, (ii) refused to support the Products, including providing warranties, licenses, the information and software required for the Products to function, and refurbishing used units, (iii) contacting the Debtor's customers falsely stating that the Debtor is going out of business and no longer has any rights to sell the Products, (iv) threatened to sue the Debtor's customers for violations of Erchonia's intellectual property rights if, among other things, the Debtor's customers continue to use the Products, and/or (v) marketed and/or distributed the Products in

competition with Debtor. As a result of such conduct, among other things, customers have ceased making required payments to the Debtor and placing purchase orders.

31. On information and belief, Erchonia also made false statements to the Debtor's employees with, among other things, the intent of stealing the Debtor's employees, including stating that the Debtor no longer has any rights to distribute the Products and is going out of business.

40. While Erchonia was conducting the above-described unlawful activities "behind the scenes," Erchonia was purporting to engage in discussions with the Debtor relating to a consensual resolution of the Debtor's and Erchonia's contractual dispute. In mid-April, however, while Erchonia was still purporting to negotiate with the Debtor, the Debtor became aware of Erchonia's actions in breach of the Erchonia Agreements (through, among other things, Erchonia's marketing of Zerona products through social media and at "trade shows"). On April 15, 2013, the Debtor sent a letter to Erchonia re-stating what it had already told Erchonia numerous times, namely, that the Erchonia Agreements remained in full force and effect and that Erchonia had breached and was continuing to breach its obligations thereunder.

41. On May 15, 2013, as a direct consequence of Erchonia's illegal and improper actions, the Debtor's Secured Lender seized control over the Debtor's cash account and is now attempting to seize control over the Debtor's warehouse inventory, effectively putting a stranglehold on the Debtor's operations. On May 15, 2013, the Secured Lender also sent a letter to the Debtor stating that, if the Debtor did not allow the Secured Lender to "friendly foreclose" on the Collateral because of Erchonia's actions, the Secured Lender would take remedies against the Debtor. On May 17, 2013, the Secured Lender sent a further letter purportedly accelerating and declaring due and payable all amounts under the Secured Loan Documents.

42. On May 20, 2013, the Debtor was made aware by certain of its customers that such customers had received a notice (the "Laser Light Notice") from an entity named "Laser Light, LLC," which claimed that the Debtor had assigned to Laser Light, LLC the Debtor's rights in the accounts receivable owed by such customers and "directed" such customers to pay outstanding amounts to Laser Light, LLC rather than to the Debtor. Later on May 20, 2013, the Debtor became aware that Laser Light, LLC had been formed on May 13, 2013 by Wade Holt, an officer of the Secured Lender, two (2) days prior to the Secured Lender's seizure of the Debtor's cash and warehouse inventory and four (4) days prior to the Secured Lender's "acceleration" letter.

43. On May 20, 2013, as a matter of last resort and as a direct result of the actions of Erchonia and the Secured Lender, the Debtor filed a Chapter 11 petition for reorganization with this Court.

CLAIMS FOR RELIEF

DECLARATORY RELIEF

A. ERCHONIA'S FRAUD IN CONNECTION WITH THE SBMI ACQUISITION AND ERCHONIA AGREEMENTS

44. Erchonia (by itself and through SBMI) made material misrepresentations to the Debtor with knowledge of their falsity and/or reckless disregard as to the truth of the statements relating to SBMI's business operations, including but not limited to, the value of SBMI's business, the quality of SBMI's assets, the nature of SBMI's relationships with its customers, the level of returned products, and forecasted revenues. Erchonia made these misrepresentations with the intent that the Debtor rely on them, and the Debtor did rely on them to its detriment.

45. In the alternative, Erchonia concealed from or failed to disclose material facts to the Debtor relating to SBMI's business operations, including but not limited to, the value of

SBMI's business, the quality of SBMI's assets, the nature of SBMI's relationships with its customers, the level of returned products, and forecasted revenue. This non-disclosure was made by Erchonia with the intention of inducing the Debtor to enter into the SBMI Acquisition and/or the Erchonia Agreements. Erchonia knew that the Debtor was ignorant of the facts and did not have an equal opportunity to discover the facts. Erchonia had a duty to tell disclose these facts to the Debtor. In reliance on Erchonia's non-disclosure, the Debtor entered into the SBMI Acquisition and Erchonia Agreements to its detriment.

B. ERCHONIA BREACHED THE ERCHONIA AGREEMENTS PRIOR TO THE ALLEGED TERMINATION

46. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

47. Erchonia materially breached the Erchonia Agreements prior to the purported "termination" of the Erchonia Agreements by Erchonia in March 2013.

48. Among other things, Erchonia breached its obligations with respect to securing FDA approval of Lunula. Specifically, the Erchonia Agreements required Erchonia to obtain FDA approval of Lunula. *See* Section 5(a) of the Supply Agreements. Additionally, the License Agreements required Erchonia to obtain such approval "***as soon as possible***" and Erchonia expressly "***acknowledge[d] and agree[d] that time is of the essence*** with respect to making the Erchonia nail fungus laser [Lunula] available for sale and distribution by the Debtor." *See* Section 7(a) of the License Agreements (emphasis added). Moreover, Erchonia was required to use "its ***best efforts*** to obtain any regulatory required approval" of Lunula. *Id.* (emphasis added).

49. Erchonia breached the Erchonia Agreements by failing to obtain FDA approval for Lunula, including by failing to obtain approval in a timely manner or by using its "best efforts."

50. In addition, on information and belief, Erchonia breached its obligations to grant the Debtor exclusive rights to market, sell and distribute future generations of the Products and/or Erchonia's obligation not to "promote, offer for sale, sell, or distribute" products which are competitive with the Products. The Erchonia Agreements specifically define Products to "include all current and future developed uses and applications of said products for human body contouring and/or treatment of nail fungus as well as future generations of said products." Hence, the Debtor's exclusive right to sell, market and distribute the Products includes all future developed uses and applications as well as future generations.

51. In breach of the Erchonia Agreements, Erchonia has denied the Debtor's right to be the exclusive distributor of the "Zerona 2.0 Laser," the next-generation to the Zerona BODY Laser.

52. The Debtor fully performed under the Erchonia Agreements, or any such performance was excused.

53. The Debtor was harmed by Erchonia's breach of the Erchonia Agreements.

54. The Debtor is entitled to a declaration that Erchonia breached the Erchonia Agreements by, among other things, failing to use best efforts to secure FDA approval of Lunula in a timely manner as required under the Erchonia Agreements.

C. ERCHONIA'S ALLEGED "TERMINATION" OF THE ERCHONIA AGREEMENTS WAS INVALID

55. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

56. Erchonia's attempted termination of the Erchonia Agreements is invalid because Erchonia: (i) materially breached the Erchonia Agreements (thereby rendering performance by the Debtor impossible under the terms of the Erchonia Agreements); and (ii) prevented and/or materially hindered the Debtor's ability to meet its obligations, including payment, under the Erchonia Agreements.

57. Under Texas law and the terms of the Erchonia Agreements, any alleged non-performance by the Debtor was excused, and could not be a valid basis for termination, as a result of Erchonia's breach of the Erchonia Agreements. Erchonia's attempted termination was therefore ineffective, and the Erchonia Agreements remain in effect. In the alternative, Erchonia could not terminate the Erchonia Agreements on the basis of the Debtor's alleged default because Erchonia's own inactions materially hindered or prevented the Debtor's ability to perform.

58. As such, the Debtor's performance was excused as a matter of law, and there could be no default so as to support Erchonia's unilateral attempt to terminate the Erchonia Agreements. As a consequence, the Erchonia Agreements remain in full force and effect, and Erchonia must continue to fulfill its obligations thereunder.

59. The Debtor is entitled to a declaration that the Erchonia Agreements have not been terminated, and are still in full force and effect.

D. THE DEBTOR'S AND ERCHONIA'S POST-TERMINATION RIGHTS AND OBLIGATIONS UNDER THE ERCHONIA AGREEMENTS

60. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

61. In the unlikely event that this Court deems Erchonia's purported termination of the Erchonia Agreements to have been effective, the Debtor is entitled to a declaration of the Debtor's and Erchonia's rights and obligations under the specific language of Section 20(e) of the Supply Agreements and Section 9(f) of the License Agreements (the "Post-Termination Provisions"):

a. For six months after termination, the Debtor has the right to acquire, distribute, rent and/or sell the Products pursuant to the terms of the Erchonia Agreements (the "Six-Month Tail");

b. The Debtor has a perpetual right to rent, re-rent, sell, re-sell and support the continued operation of any Products the Debtor originally acquired and/or rented or sold during the Term of the Erchonia Agreements or the Six-Month Tail;

c. Erchonia cannot take any action or inaction which hinders or interferes with the Debtor's rights, as declared in (a) and (b) above;

d. There is no requirement that the Debtor make any payments, royalties or otherwise, to exercise or maintain the Debtor's rights declared in (a) - (c) above;

e. So long as the Debtor continues to have rights under (a) or (b) above, all licenses and rights granted to the Debtor under the Erchonia Agreements continue in full force and effect during any period of time the Debtor has paid or is paying royalties equal to 25% of Revenues, pursuant to the terms of Section 6(a)(1) of the License Agreements; and

f. The Post-Termination Provisions do not require the Debtor to make any payments that became due or owing during the Term of the Erchonia Agreements.

62. The above declarations are necessary to protect the Debtor's interest in the Products it purchased, including continuing its business operations with regard to those products

and/or selling the Products for value as cutting-edge medical devices. Specifically, under the Post-Termination Provisions, Erchonia is, among other things, (1) required to (a) license the Products, (b) "support" the Products, including honoring warranties and refurbishing devices and (c) provide the Debtor with "all information necessary to effectively exercise its rights" under the Supply Agreements, including, but not limited to, "activation codes and similar codes and information necessary for the continuing functionality of the Products, and (2) prohibited from competing with the Debtor, including soliciting the Debtor's current customers and/or underselling the Debtor. *See, e.g.*, Section 5 of the Supply Agreements.

E. THE ESCROW SHALL BE RELEASED TO THE DEBTOR

63. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

64. Under the express terms of Section 5(i) of the Supply Agreements:

> All information necessary for [the Debtor] to exercise its rights under this Agreement, including, but not limited to, the software which generates the activation codes and similar codes and documentation and materials related to the manufacture and construction of the Products, shall be deposited in escrow …. Any update to said information shall be further deposited in said escrow within 30 days of its creation…. All such information in escrow shall be released to [the Debtor] … upon a material default by Erchonia … in the performance of its obligations under this Agreement.

65. Erchonia is in material breach of the performance of its obligations under the Supply Agreements.

66. The Debtor is entitled to a declaration that it is entitled to release of the escrow.

67. The Debtor is entitled to a declaration that is entitled to all information that was required to be placed in escrow under Section 5(i) of the Supply Agreements regardless of whether it was placed in escrow

INJUNCTIVE RELIEF

68. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

69. The Debtor is entitled to immediate entry of a temporary restraining order, preliminary injunction and a permanent injunction, pursuant to section 105(a) of the Bankruptcy Code and Rule 65 of the Federal Rules of Civil Procedure, restraining and enjoining (1) the termination of the Erchonia Agreements; (2) the termination of the Post-Termination Provisions; (3) the tortious interference with the Debtor's contracts with its customers; (4) the tortious interference with the Debtor's prospective contracts with customers; (5) the tortious interference with the Debtor's employee contracts; and (6) the disparagement of the Debtor's business.

F. THE ERCHONIA AGREEMENTS ARE IN FULL FORCE AND EFFECT

70. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

71. The Debtor is entitled to immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining termination of the Erchonia Agreements.

72. Absent injunctive relief, the Debtor's reorganization efforts will be irreparably harmed and effectively derailed. The Debtor needs the rights and protections of the Erchonia Agreements to protect the value of its assets during reorganization. Without injunctive relief, Erchonia will continue to breach its obligations under the agreements, crippling the Debtor's business and reducing the value of its inventory from tens-of-millions of dollars to mere scrap value to the detriment of all concerned, including creditors, customers, and the public at large. If Erchonia is not enjoined from treating the Erchonia Agreements as terminated, the Debtor will be unable to maximize the value of its estate as is necessary for its reorganization and the benefit of its creditors.

73. Enjoining termination of the Erchonia Agreements on an interim basis maintains the status quo and preserves this Court's exclusive jurisdiction over the Debtor's assets and liabilities and is within the Court's authority to enter any order, process or judgment necessary or appropriate to carry out the provisions of title 11.

74. The Debtor has no adequate remedy at law.

75. Erchonia will not suffer any cognizable harm if the requested relief is granted because Erchonia had no right to terminate the Erchonia Agreements and is legally bound by their terms.

76. Conversely, the Debtor will suffer immeasurable and irreparable harm if the Erchonia Agreements do not remain in full force and effect because it will irreparably harm, derail, and likely destroy the Debtor's reorganization efforts and will very likely make the Debtor's existing inventory obsolete and result in a shutdown of its business.

77. The public interest supports issuance of the requested injunctive relief because, in addition to the above, it will enhance the Debtor's chances of effectively and successfully reorganizing.

78. The Court should therefore issue the requested injunctive relief.

G. IN THE ALTERNATIVE, THE POST-TERMINATION PROVISIONS ARE IN FULL FORCE AND EFFECT

79. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

80. In the alternative to a temporary restraining order, preliminary injunction and permanent injunction restraining and enjoining termination of the Erchonia Agreements, the Debtor is entitled to immediate entry of a temporary restraining order, preliminary injunction and permanent injunction restraining and enjoining termination of and compelling Erchonia to

perform under, the clear and unambiguous Post-Termination Provisions of the Erchonia Agreements.

81. Absent injunctive relief, the Debtor's reorganization efforts will be irreparably harmed and effectively derailed. The Debtor needs the rights and protections of the Post-Termination Provisions to protect the value of its assets during its wind down if the License and Supply Agreement is ultimately determined to have been terminated - - which the Debtor disputes. Without injunctive relief, Erchonia will continue to treat the Post-Termination Provisions as terminated, breach its obligations under those provisions, and effectively force the Debtor out of business, such that the Debtor would be unable to liquidate its assets for anything more than scrap value to the detriment of all concerned, including creditors, customers, and the public at large. If Erchonia is not enjoined from treating the Post-Termination Provisions as terminated and compelled to perform thereunder, the Debtor will be unable to maximize the value of its estate as is necessary for the benefit of all of its creditors.

82. Enjoining termination of the Erchonia Agreements maintains the status quo and preserves this Court's exclusive jurisdiction over the Debtor's assets and liabilities and is within the Court's authority to enter any order, process or judgment necessary or appropriate to carry out the provisions of title 11.

83. The Debtor has no adequate remedy at law.

84. Erchonia will not suffer any cognizable harm if the relief requested is granted because Erchonia is contractually obligated to perform under and had no right to terminate the Post-Termination Provisions, and is legally bound by their terms.

85. Conversely, the Debtor will suffer immeasurable and irreparable harm if Erchonia is not enjoined from treating the Post-Termination Provisions as terminated and not compelled to

honor the provisions thereof, as it will irreparably harm, derail, and likely destroy the Debtor's reorganization efforts.

86. The public interest supports issuance of the requested injunctive relief because, in addition to the above, it will enhance the Debtor's chances of effectively and successfully reorganizing.

87. The Court should therefore issue the requested injunctive relief.

H. ERCHONIA HAS TORTIOUSLY INTERFERED WITH THE DEBTOR'S EXISTING CONTRACTS WITH ITS CUSTOMERS

88. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

89. The Debtor is entitled to immediate entry of a temporary restraining order, a preliminary injunction and permanent injunction restraining and enjoining Erchonia from tortiously interfering with the Debtor's existing contractual relationships with its customers.

90. The Debtor has valid and enforceable contracts with its current customers. Erchonia has willfully and intentionally interfered with these contracts by, including but not limited to, (1) threatening to sue the Debtor's customers if they do not pay Erchonia directly for use of the Products, (2) making false representations to the Debtor's customers that use of the Products without payment to Erchonia would be a violation of Erchonia's intellectual property rights, (3) encouraging the Debtor's customers to do business directly with Erchonia instead of the Debtor, including by making false representations that the Erchonia Agreements have been terminated and the Debtor is going out of business, (4) encouraging the Debtor's customers to do business directly with Erchonia by underselling the Debtor's prices with the intent to steal the Debtor's customers, (5) refusing to fulfill existing purchase orders for the Debtor's customers and/or, (6) soliciting the Debtor's employees for employment with Erchonia under the false

representation that the Erchonia Agreements have been terminated and the Debtor is going out of business. Upon information and belief, current customer(s) of the Debtor have withheld payment in breach of their contracts with the Debtor as a direct result of Erchonia's tortious interference.

91. Absent enjoining Erchonia from contacting the Debtor's customers, the Debtor's reorganization efforts will be effectively derailed, the Debtor could very likely be shut down, and the Debtor will be substantially hindered in its efforts to maximize the value of its estate to the detriment of all concerned, including creditors, current customers and the public at large.

92. Enjoining Erchonia's tortious interference maintains the status quo and preserves this Court's exclusive jurisdiction over the Debtor's assets and liabilities and is within the Court's authority to enter any order, process or judgment necessary or appropriate to carry out the provisions of title 11.

93. The Debtor has no adequate remedy at law.

94. Erchonia will not suffer any cognizable harm by being enjoined from engaging in tortious and unlawful behavior. Moreover, Erchonia's tortious and unlawful behavior is a breach of its contractual obligations to the Debtor.

95. Conversely, the Debtor will suffer immeasurable and irreparable harm if Erchonia is allowed to continue tortiously interfering with its contractual relationships. Future interference will irreparably harm, derail and likely destroy the Debtor's reorganization efforts because any plan for reorganization is necessarily rooted in the confidence that the Debtor will be able to continue as a going concern. The Debtor's inability to fulfill customer orders will not only destroy its goodwill with its current customers, but also deprives the estate of the income stream necessary for purposes of reorganization.

96. The public interest supports issuance of the requested injunctive relief because, in addition to the above, it will enhance the Debtor's chances of effectively and successfully reorganizing.

97. The Court should, therefore, issue the requested injunctive relief.

I. ERCHONIA HAS TORTIOUSLY INTERFERED WITH THE DEBTOR'S PROSPECTIVE CONTRACTUAL RELATIONSHIPS

98. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

99. The Debtor is entitled to immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining Erchonia from tortiously interfering with the Debtor's prospective contractual relationships.

100. Erchonia has intentionally interfered with the Debtor's prospective contractual relationships with third-parties, including future customers. On information and belief, Erchonia has intentionally interfered with these prospective business relationships by, (1) encouraging the Debtor's customers to do any future business directly with Erchonia instead of the Debtor, including by making false representations that the Erchonia Agreements have been terminated and the Debtor is going out of business and/or (2) encouraging the Debtor's future customers to do business with Erchonia and not the Debtor by underselling the Debtor's prices with the intent to steal the Debtor's potential customers.

101. Absent injunctive relief, the Debtor's reorganization efforts will be effectively derailed, the Debtor could very likely be shut down, and the Debtor will be substantially hindered in its efforts to maximize the value of its estate to the detriment of all concerned, including creditors, current customers and the public at large.

102. Enjoining Erchonia's tortious interference maintains the status quo and preserves this Court's exclusive jurisdiction over the Debtor's assets and liabilities and is within the Court's authority to enter any order, process or judgment necessary or appropriate to carry out the provisions of title 11.

103. The Debtor has no adequate remedy at law.

104. Erchonia will not suffer any cognizable harm by being enjoined from engaging in tortious and unlawful behavior. Moreover, Erchonia's tortious and unlawful behavior is also a breach of its contractual obligations to the Debtor.

105. Conversely, the Debtor will suffer immeasurable and irreparable harm if Erchonia is allowed to continue tortiously interfering with its prospective contractual relationships. Future interference will irreparably harm, derail and likely destroy the Debtor's reorganization efforts because any plan for reorganization is necessarily rooted in the confidence that the Debtor will be able to continue as a going concern. Tortious interference with the Debtor's potential customers relationships impedes the Debtor's ability to sell its assets, reorganize and satisfy its creditors. The Debtor's inability to fulfill customer orders will not only destroy its goodwill with its current customers, but also deprives the estate of the income stream necessary for purposes of reorganization.

106. The public interest supports issuance of the requested injunctive relief because, in addition to the above, it will enhance the Debtor's chances of effectively and successfully reorganizing.

107. The Court should, therefore, issue the requested injunctive relief.

J. ERCHONIA HAS TORTIOUSLY INTERFERED WITH THE DEBTOR'S EXISTING CONTRACTS WITH ITS EMPLOYEES

108. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

109. The Debtor is entitled to immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining Erchonia from tortiously interfering with the Debtor's contracts with its employees.

110. The Debtor has valid and enforceable contracts with its current employees, including valid and enforceable non-compete provisions. On information and belief, Erchonia has willfully and intentionally interfered with these contracts by, including but not limited to, soliciting the Debtor's employees for employment with Erchonia under the false representation that the Erchonia Agreements have been terminated and the Debtor is going out of business.

111. Absent injunctive relief, the Debtor's reorganization efforts will be effectively derailed, the Debtor could very likely be shut down, and the Debtor will be substantially hindered in its efforts to maximize the value of its estate to the detriment of all concerned, including creditors, current customers and the public at large.

112. Enjoining Erchonia's tortious interference maintains the status quo and preserves this Court's exclusive jurisdiction over the Debtor's assets and liabilities and is within the Court's authority to enter any order, process or judgment necessary or appropriate to carry out the provisions of title 11.

113. The Debtor has no adequate remedy at law.

114. Erchonia will not suffer any cognizable harm by being enjoined from engaging in tortious and unlawful behavior. Moreover, Erchonia's tortious and unlawful behavior is also a breach of its contractual obligations to the Debtor.

115. Conversely, the Debtor will suffer immeasurable and irreparable harm if Erchonia is allowed to continue tortiously interfering with its contractual relationships. Future interference will irreparably harm, derail and likely destroy the Debtor's reorganization efforts because any plan for reorganization is necessarily rooted in the confidence that the Debtor will be able to continue as a going concern, including having employees.

116. The public interest supports issuance of the requested injunctive relief because, in addition to the above, it will enhance the Debtor's chances of effectively and successfully reorganizing.

117. The Court should, therefore, issue the requested injunctive relief.

K. ERCHONIA HAS DISPARAGED THE DEBTOR'S BUSINESS

118. The Debtor realleges and incorporates by reference as though fully set forth herein the allegations contained in each of the preceding paragraphs.

119. The Debtor is entitled to immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining Erchonia from disparaging the Debtor's business.

120. On information and belief, Erchonia has maliciously published false, disparaging words about the Debtor's business by, including, but not limited to, (1) contacting the Debtor's existing and potential customers and falsely representing that the Erchonia Agreements have been terminated and/or that the Debtor no longer has an agreement with Erchonia, its sole supplier, or rights to the Products; (2) contacting the Debtor's existing and potential customers and falsely representing that the Debtor will be going out of business soon; and/or (3) making false representations to the Debtor's customers that use of the Products without making direct payments to Erchonia would be a violation of Erchonia's intellectual property rights. These false statements cast doubt on the existence of the Debtor's license and distribution rights for the

Products, including the Zerona and Lunula devices. Moreover, these defamatory remarks cast a negative impression on the overall stability of the Debtor's business. On information and belief, Erchonia made these statements with knowledge of their falsity and an intent that these statements would harm the Debtor's economic interests as part of Erchonia's attempt to drive the Debtor out of business. Upon information and belief, current customer(s) of the Debtor have not made payments due and owing to the Debtor as a direct result of Erchonia's efforts to disparage the Debtor.

121. Absent injunctive relief, the Debtor's reorganization efforts will be irreparably harmed and effectively derailed. Ongoing business disparagement will effectively derail the Debtor's reorganization efforts and could very likely result in a shutdown of the Debtor's business to the detriment of all concerned, including creditors, current customers and the public at large. If Erchonia is not enjoined from disparaging the Debtor's business, the Debtor will be substantially hindered in its efforts to maximize the value of its estate for the benefit of its creditors.

122. Enjoining Erchonia's business disparagement against the Debtor maintains the status quo and preserves this Court's exclusive jurisdiction over the Debtor's assets and liabilities and is within the Court's authority to enter any order, process or judgment necessary or appropriate to carry out the provisions of title 11.

123. The Debtor has no adequate remedy at law.

124. Erchonia will not suffer any cognizable harm by being enjoined from engaging in tortious and unlawful behavior. Moreover, Erchonia is contractually bound to grant the Debtor the right of exclusive distribution of the Products and not to compete with the Debtor's business

operations. By disparaging the Debtor's business, Erchonia is in breach of its contractual obligations to the Debtor.

125. Conversely, the Debtor will suffer immeasurable and irreparable harm if Erchonia is allowed to continue to disparage the Debtor's business. Future business disparagement will irreparably harm, derail and likely destroy the Debtor's reorganization efforts because any plan for reorganization is necessarily rooted in the confidence that the Debtor will be able to continue as a going concern. Absent goodwill, any confidence in the Debtor's ability to sell its assets, reorganize and satisfy creditors is substantially diminished.

126. The public interest supports issuance of the requested injunctive relief because, in addition to the above, it will enhance the Debtor's chances of effectively and successfully reorganizing.

127. The Court should, therefore, issue the requested injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Debtor demands judgment against Defendant as follows:

(a) Judgment declaring that Erchonia committed fraud in connection with the SBMI Acquisition and Erchonia Agreements;

(b) Judgment declaring that Erchonia is in breach of the Erchonia Agreements;

(c) Judgment declaring that the Erchonia Agreements have not been terminated, and are still in full force and effect;

(d) Judgment declaring the Debtor's and Erchonia's rights and obligations under the Post-Termination Provisions are in full force and effect, including that:

(i) For six months after termination, the Debtor has the right to acquire, distribute, rent and/or sell the Products pursuant to the terms of the Erchonia Agreements (the "Six-Month Tail");

(ii) The Debtor has a perpetual right to rent, re-rent, sell, re-sell and support the continued operation of any Products the Debtor

originally acquired and/or rented or sold during the Term of the Erchonia Agreements or the Six-Month Tail;

(iii) Erchonia cannot take any action or inaction which hinders or interferes with the Debtor's rights, as declared in (ii) and (ii) above;

(iv) There is no requirement that the Debtor make any payments, royalties or otherwise, to exercise or maintain the Debtor's rights declared in (i) - (iii) above;

(v) So long as the Debtor continues to have rights under (i) or (ii) above, all licenses and rights granted to the Debtor under the Erchonia Agreements continue in full force and effect during any period of time the Debtor has paid or is paying royalties equal to 25% of Revenues, pursuant to the terms of Section 6(a)(1) of the License Agreements; and

(vi) The Post-Termination Provisions do not require the Debtor to make any payments that came due or owing during the Term of the Erchonia Agreements.

(e) Judgment declaring that the Debtor is entitled to the release of all information placed in escrow, or that should have been placed in escrow, under Section 5(i) of the Supply Agreements;

(f) Immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining termination of the Erchonia Agreements;

(g) In the alternative to a temporary restraining order and preliminary injunction restraining and enjoining termination of the Erchonia Agreements, the immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining termination of the Post-Termination Provisions of the Erchonia Agreements;

(h) Immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining Erchonia's wrongful contact and communications with the Debtor's customers;

(i) Immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining Erchonia's tortious interference with the Debtor's prospective contracts and business;

(j) Immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining Erchonia's tortious interference with the Debtor's contracts with its employees;

(k) Immediate entry of a temporary restraining order and preliminary injunction restraining and enjoining Erchonia from disparaging the Debtor's business;

(l) Immediate entry of an order directing Erchonia to comply with the obligations set forth in the Erchonia Agreements;

(m) Alternatively, damages, including punitive damages;

(n) Permanent injunctive relief as to each of the foregoing;

(o) An award to Debtor of the costs and disbursements of this action, including reasonable attorneys' fees;

(p) An award of prejudgment and post judgment interest; and

(q) Such other and further relief as this Court may deem just and proper.

Respectfully submitted this 22nd day of May, 2013.

ANDREWS KURTH LLP

By:/s/ Paul N. Silverstein

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Proposed Counsel to the Debtor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of May, 2013, he caused a true and correct copy of the foregoing document to be hand delivered to the Office of the United States Trustee, Room 9C60, 1100 Commerce Street, Dallas, Texas 75242, and caused the same to be served on the counsel to the Secured Lender and the holders of the thirty (30) largest unsecured claims against the Debtor via first class United States mail, postage prepaid and, where possible, via electronic mail and/or overnight mail.

/s/ Jason N. Thelen
Jason N. Thelen

VERIFICATION

I, David Boris, Chairman of the Board of Managers of the Debtor, plaintiff herein. I have read the foregoing Verified Complaint and declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations set forth therein are true and correct to the best of my knowledge, information and belief.

Executed this 22nd day of May, 2013.

/s/ David Boris
David Boris