

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV027939-910

RUMPEGARDEN, LLC, a North Carolina
limited liability company,

Plaintiff,

v.

FX AIRGUNS USA, LLC, f/k/a King Arthur
Holdings, LLC, a North Carolina limited
liability company, JONATHAN TUELLER
a/k/a JONATHAN ELVEGAARD-
TUELLER, an individual, EVELYN
ELVEGAARD, an individual, and
EVERGUARD HOLDINGS, LLC, a North
Carolina limited liability company,

Defendants.

COMPLAINT

Plaintiff Rumpegarden, LLC (“Rumpegarden”), complaining of Defendants FX Airguns USA, LLC f/k/a King Arthur Holdings, LLC (“FX USA”), Jonathan Tueller a/k/a Jonathan Elvegaard-Tueller (“Tueller”), Evelyn Elvegaard (“Elvegaard”), and EverGuard Holdings, LLC, a North Carolina limited liability company (“EverGuard”, and with Tueller and Elvegaard, collectively, “Defendants”), states:

NATURE OF THE ACTION

This lawsuit is an action by Rumpegarden, a member of the North Carolina limited liability company FX USA, pleading (1) direct claims against FX USA for inspection of documents, (2) direct claims against FX USA for payment of withheld distributions, and (3) direct claims against a manager of FX USA who owed a fiduciary duty directly to Rumpegarden because (a) he owed an independent special duty to Rumpegarden, (b) Rumpegarden has suffered damages not suffered

by other members of FX USA, and (c) Rumpegarden reposed confidence in the manager and the manager had actual control of FX USA. Instead of honoring his duty and the confidence placed in him, the manager and his wife and business exercised dominance and influence over Rumpegarden by exercising actual formidable managerial control over FX USA to commit gross mismanagement, fraud, fraudulent manipulation of FX USA's records, concealment, and misappropriation of FX USA's assets for their personal use and benefit and for use in their other unrelated businesses.

The independent special duty involved arises because the manager of FX USA being sued simultaneously was a manager of Plaintiff Rumpegarden and therefore owed it a separate fiduciary duty from the duties he owed FX USA. Rumpegarden asserts additional direct claims against the manager for breaches of the fiduciary duty owed directly to Rumpegarden, as well as claims against his wife for aiding and abetting those breaches.

Based on these claims, Plaintiff requests that a general receiver be appointed for FX USA under the North Carolina Commercial Receivership Act, both permanently and on an emergency interim basis, to take control of FX USA. The reasons are numerous.

The Court should appoint a receiver because FX USA is not paying its accounts when due. FX USA has been in default for months on monies owed to the suppliers, including suppliers of guns, arrows, and ammunition. It currently owes and is in default to one supplier creditor for over \$5,500,000 and another for over \$150,000. Many decisions that need to be made for FX USA have reached an impasse. The defendant manager appears to be working on numerous acquisitions without consultation or agreement of Rumpegarden. He has hired a senior employee who appears to be a convicted criminal and military imposter, bringing FX USA into the crosshairs of the Stolen Valor Act. The defendant manager has caused FX USA to fail and refuse to cooperate with

investigations into FX USA's financial condition, making an analysis of FX USA's true financial condition impossible. The manager travels internationally, and FX USA has approximately \$3,000,000 of portable assets and significant accounts receivable that the defendant manager can easily move, divert, secrete, transfer, conceal and waste. Due to gross mismanagement, monetary losses, and fraud, a general receiver is necessary to take possession of the assets of, manage, and control FX USA to protect FX USA's assets and maximize recoveries for FX USA's secured and unsecured creditors. Plaintiff is proposing that the well-regarded firm The Finley Group be appointed to serve as the receiver, as it has in other Business Court cases.

Furthermore, it appears FX USA may be insolvent. As of the close of 2022, it was insolvent according to its own financial statements. But because of the inability of Rumpegarden to determine the true financial condition of FX USA, Plaintiff is not requesting judicial dissolution of FX USA under N.C. Gen. Stat. § 57D-6-05 at this time. Rumpegarden makes these claims without prejudice to its rights or the rights of any other authorized person to seek dissolution at a later date.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Rumpegarden is a North Carolina limited liability company with its official registered office located at 176 Mine Lake Court, Suite 100, Raleigh, North Carolina 27615.

2. Defendant FX USA is a North Carolina limited liability company with its principal place of business located at 3030 Hall Watters Drive, Wilmington, North Carolina 28405. It may be served by serving its registered agent, Evelyn Elvegaard, at that address.

3. Jonathan Tueller is an individual residing in Wilmington, North Carolina who may be served with process by personal service at 3108 Rivendell Place, Wilmington, NC 28411, or 3030 Hall Watters Drive, Wilmington, North Carolina 28405.

4. Evelyn Elvegaard is an individual residing in Wilmington, North Carolina who may be served with process by personal service at 3108 Rivendell Place, Wilmington, NC 28411 or 3030 Hall Watters Drive, Wilmington, North Carolina 28405.

5. EverGuard is a North Carolina limited liability company with its principal place of business located at 3030 Hall Watters Drive, Wilmington, North Carolina 28405. It may be served by serving its registered agent, Evelyn Elvegaard, at that address.

6. This Court has jurisdiction over the parties pursuant to N.C. Gen. Stat. § 1-75.4 and original jurisdiction over this action pursuant to N.C. Gen. Stat. §§ 7A-240 and 7A-243 because Rumpegarden, LLC, FX Airguns USA, LLC and EverGuard Holdings, LLC are all formed under the laws of the State of North Carolina and maintain registered offices and principal places of business in North Carolina.

7. Venue is proper in Wake County pursuant to N.C. Gen. Stat. § 1-79(a)(1) because Rumpegarden maintains its registered office at 176 Mine Lake Court, Suite 100, Raleigh, NC 27615.

8. This action involves the law governing corporations and, in particular the law governing limited liability companies under Chapter 57D of the North Carolina General Statutes. It constitutes a mandatory complex business case under N.C. Gen. Stat. § 7A-45(a)(1), (b)(2) and (b)(4).

FACTS

What is an “Airgun”?

9. This lawsuit arises in the airgun industry and involves the sale of airguns in the United States. In the United States, the word “airgun” might bring to mind a Daisy Red Ryder BB gun or other childhood toy. But this lawsuit concerns high-end precision weapons often costing thousands of dollars that are used in shooting competitions all over the world. In order to distinguish these products from BB guns, the industry also uses the term “pneumatic rifle” in the place of “airgun.” Here is an example of an airgun:



10. Airguns have numerous advantages over conventional firearms.
11. Operationally, they do not contain or use gunpowder or other explosives, they create the option to shoot with less noise, and they do not create large amounts of recoil.

12. Depending on the jurisdiction, other advantages over conventional arms may exist. For example, in many markets, airguns are not regulated as strictly as conventional firearms. In addition, ammunition generally is less expensive.

The Creation of a New FX Airgun Distribution Channel in the US

13. FX Airguns, AB (“Manufacturer”) is a Swedish aktiebolag¹ and is a manufacturer of high-end precision airguns. Manufacturer has been in business for over 24 years and is world renowned for the quality, reliability and accuracy of its products. It is considered in the industry to be one of the world’s premier manufacturers of airguns.

14. Prior to 2017, Manufacturer distributed its products in the United States through a third party named Airguns of Arizona, located in Arizona.

15. During 2016, Defendant Tueller traveled to Sweden to visit Manufacturer’s factory. Tueller came to the factory to discuss distribution of FX airguns in the United States with Fredrik Axelsson, the inventor of FX airguns.

16. Tueller appeared to be a legitimate and knowledgeable businessman to Manufacturer and also appeared to be knowledgeable about the industry.

17. Tueller volunteered to create an entity to facilitate distribution and handle all the paperwork and manage this new distribution channel.

18. Manufacturer believed the market for airguns in the United States was a good opportunity for growth and decided to pursue the new channel Tueller proposed.

19. As result of these negotiations, Tueller caused numerous corporate documents to be drafted to accomplish the goal of establishing a new distribution channel in the United States.

¹ A type of Swedish corporation.

20. First, Tueller created an entity originally named “King Arthur Holdings, LLC” to be a vehicle for the new distribution channel. With the permission of Manufacturer, Teller later changed the name of this entity to “FX Airguns USA, LLC”. Tueller created this entity as a manager-managed North Carolina limited liability company. A true and correct copy of the Operating Agreement for FX USA created by Tueller is attached hereto and incorporated herein by reference as **Exhibit 1**.

21. Tueller knew that Manufacturer and its employees were located in Sweden and did not have any employees or presence in the United States.

22. Tueller knew that some employees of Manufacturer could converse in English but were not native speakers of English and some did not speak English at all.

23. Tueller knew that Manufacturer and its employees were unfamiliar with the American legal system, legal documents, or limited liability companies.

24. Using this knowledge, Tueller volunteered to take responsibility for the creation of Plaintiff Rumpegarden to be the member of FX USA that would be owned by Manufacturer. In similar fashion to FX USA, Tueller created Rumpegarden to be a manager-managed North Carolina limited liability company. A true and correct copy of the Operating Agreement created by Tueller for Rumpegarden is attached hereto and incorporated herein by reference as **Exhibit 2**.

25. Rumpegarden reposed special confidence in Tueller. The reasons were numerous and reasonable under the circumstances. First was language. Tueller is fluent in English, and it appears his wife is fluent in Swedish, whereas some individuals in Rumpegarden’s management do not speak English. Second, Rumpegarden’s owners had no familiarity with American law, business organizational differences, or the rights and duties of a North Carolina limited liability

company. But Tueller claimed this knowledge and at the time appeared to have it. Third, Tueller lived in the United States whereas Rumpegarden's owners lived over 4000 miles away in Sweden.

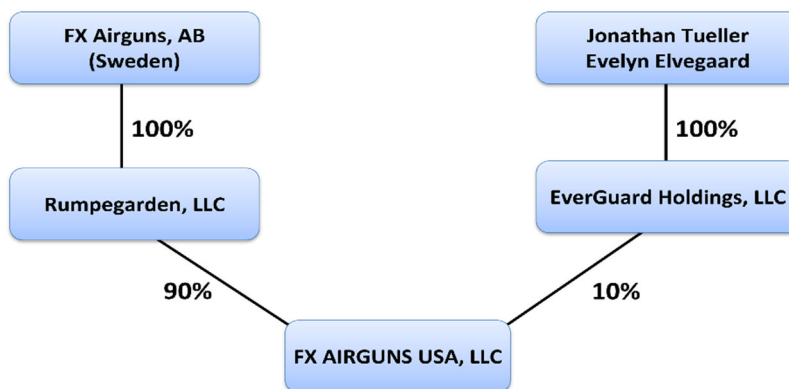
26. Tueller and Elvegaard are husband and wife.

27. Tueller and Elvegaard created and now own, with others perhaps, defendant EverGuard.

28. As reflected in Exhibits 1-2, Tueller structured the business relationship between himself and Manufacturer so that:

- a. Manufacturer owned 100% of Rumpegarden;
- b. Tueller and his wife Elvegaard owned 100% of EverGuard; and
- c. Rumpegarden and EverGuard together owned FX USA (f/k/a King Arthur Holdings).

29. Thus, in 2017, at the beginning of business relationship, the ownership structure of FX USA was as follows:



30. Further as reflected in Exhibits 1-2, and to give Manufacturer reassurance of his good faith, Tueller made the Managers of FX USA himself and Fredrik Axelsson, despite agreement that Tueller would be the “boots on the ground” in the United States.

31. In like fashion, even though Tueller had no ownership interest in Plaintiff Rumpegarden, Tueller made himself and Fredrik Axelsson managers of Rumpegarden.

32. Tueller had the legal documents prepared in the United States and sent to Sweden with instructions for Fredrik Axelsson to sign the papers where indicated.

33. Fredrik Axelsson, on behalf of Manufacturer, complied with Tueller's requests and instructions.

34. As shown by the provisions of Exhibit 1, even though Rumpegarden is the majority owner of FX USA it cannot unilaterally make most decisions pertaining to FX USA because of the way Tueller drafted FX USA's operating agreement.

35. The operating agreement of FX USA, Exhibit 1, requires approval by two-thirds of the members for most actions that the members can take, while the managers have equal authority to manage FX USA.

36. For example, the operating agreement on Page 1 allows for dissolution of FX USA only on a vote of members whose combined capital interest exceeds two-thirds. On Page 2, only members holding a two-thirds interest in the company may elect the managers.

37. Tueller had the FX USA operating agreement drafted such that members cannot manage the company and have no power to bind the company. (*See* Exhibit 1, Page 2). Thus, Rumpegarden has no power to manage FX USA and cannot make decisions to bind it. The FX USA agreement establishes that "managers alone are authorized to make all business, financial, management and other decisions how the company's activities are conducted." (*See* Exhibit 1, Page 3).

38. In part to reassure Rumpegarden and Manufacturer of his good faith, Tueller agreed to use the existing email system of Manufacturer for email communications. That email system uses the domain name and extension of @fxairguns.com.

39. In addition, Tueller agreed that Rumpegarden and Manufacturer would have the ability to remotely monitor the finances of FX USA. This monitoring system from 2017-2021 was Winbas, and from 2022 and 2023 was Monitor (collectively the “Monitor” system). The system permits Manufacturer to view items that FX USA financial personnel input into the accounting and financial records of FX USA.

40. FX USA and Manufacturer never entered into a formal distribution agreement.

41. No written agreement exists between Manufacturer and FX USA over the types of things that typically would be the subject of a distribution agreement, including products to be sold, territory and exclusivity, term and termination, compensation, risk of loss, quality control, pricing or delivery or supply terms, credit terms, or freight and insurance arrangements.²

42. One of the most important provisions of the Exhibit 1 FX USA operating agreement is the limiting of spending by a manager, mandating that “no manager shall have authority to spend or incur liability of more than \$200 for any transaction unless first approved by a majority of membership owners.”

43. Thus, Tueller was not authorized to spend or incur liability of over \$200 on behalf of FX USA without Rumpegarden’s approval.

² In addition to the documents referenced herein, Tueller created a document by which EverGuard agreed to sell certain management services to FX USA. Plaintiff Rumpegarden is not a party or signatory to that document.

44. Another important provision of the Exhibit 1 FX USA operating agreement is the requirement of the manager to supply information or copies of the company's books and records upon a reasonable request by a member.

45. There is no discretion for a manager to provide this information to a member as the Exhibit 1 FX USA operating agreement states that the manager "shall" supply this information to the requesting member.

46. As discussed later, Tueller failed to supply this information to Rumpegarden.

FX USA Starts Strong But Tueller Creates Problems and Those Problems Multiply

47. In 2017, Tueller started operating FX USA in Wilmington, North Carolina.

48. Because Tueller was present physically in the Wilmington office and the owner of Rumpegarden was located far away in Sweden, Tueller exercised actual control over the finances, operations, and almost all other aspects of FX USA.

49. In 2017, Manufacturer began selling products to FX USA.

50. In 2017, FX USA began re-selling products purchased from Manufacturer to dealers in the United States.

51. Tueller created the financial relationships FX USA has with banks, credit card companies, and additional sources of money other than Rumpegarden.

52. In addition, he hired financial employees to operate and control the finances of FX USA.

53. Upon information and belief, Tueller involves his wife Elvegaard in most aspects of the business of FX USA, including the financial decisions of FX USA.

54. Upon information and belief, one of the areas she is involved with is hiring and firing of employees.

55. For example, Tueller and Elvegaard hired a Financial Director for FX USA by the name of Alberto Gomez.

56. Upon information and belief, Gomez is not a CPA and is not a citizen of the United States.

57. Gomez's job was to run the finances of FX USA.

58. Tueller took responsibility for all of FX USA's financial, accounting, and tax reporting activities.

59. In 2017 Manufacturer decided to devote substantial financial, managerial, and operational resources towards this new distribution channel to make it successful.

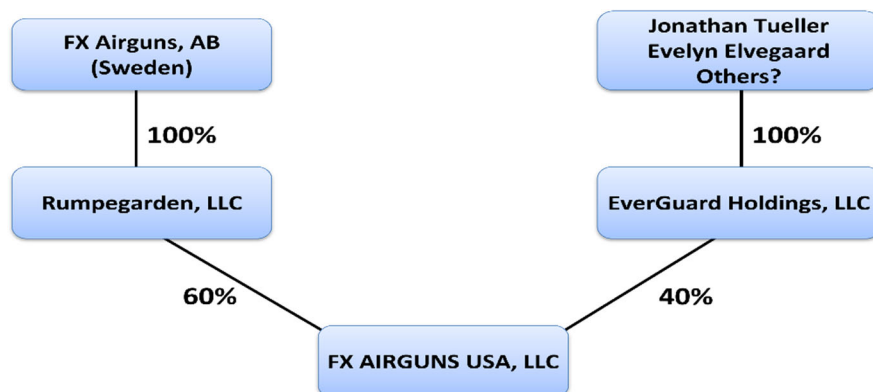
60. As a result of these efforts, as well as the efforts of Tueller in running FX USA, FX USA was successful in creating a new distribution channel for Manufacturer's products in the United States. Sales increased.

61. Manufacturer and EverGuard agreed that EverGuard would be able to earn more equity in FX USA.

62. Initially, EverGuard owned 10% of FX USA and Rumpegarden owned 90%.

63. Between 2017 and 2023, the ownership changed such that today EverGuard owns 40% of FX USA and Rumpegarden owns 60%.

64. Thus, today the current ownership of FX USA is as follows:



65. Because EverGuard owns 40% of FX USA, the provisions that Tueller drafted in the FX USA operating agreement effectively prevent Rumpegarden from removing Tueller as manager or seeking a voluntary dissolution.

66. Despite the changes of equity ownership, Rumpegarden still holds a majority of the membership interest, at 60%.

67. Accordingly, Rumpegarden's consent has always been required for Tueller to spend or incur liability of more than \$200 on behalf of FX USA.

68. Problems arose in part because Tueller took advantage of the fact that Rumpegarden's owners were located far away in Sweden, are not native English speakers, and were unfamiliar with the American legal system or the legalities of conducting business in America.

69. The following paragraphs 73 – 391 detail examples of problems that Rumpegarden knows to exist. Rumpegarden believes many other problems exist but is unable to verify such concerns because of Tueller's control over FX USA and his success at hiding the true financial condition of FX USA.

70. The problems listed below have created conflicts between Rumpegarden and Tueller/EverGuard over FX USA.

71. Many of the problems listed below have created impasses between Rumpegarden and Tueller/EverGuard over the operation of FX USA.

72. As set forth below, Rumpegarden has taken reasonable steps short of filing a lawsuit to try to resolve the following problems. It has discussed and argued about most of these issues with Tueller, sometimes repeatedly. It has protested many of his actions and insisted Tueller act in conformity with the Exhibit 1 Operating Agreement and his fiduciary duty to FX USA and

Rumpegarden. It has complained about lack of transparency and at the same time hired accounting firms and a law firm to audit, demand, gather and inspect corporate records and information of FX USA. All these efforts have failed. Accordingly, Rumpegarden now seeks relief in this Court.

Problem 1 - Tueller buys and overspends on a building

73. FX USA initially rented an industrial warehouse building in Wilmington, North Carolina to use as its office and warehouse.

74. In 2020, Tueller informed Rumpegarden that FX USA needed to buy and upfit its own building.

75. Tueller and Rumpegarden agreed to a budget of \$1.8 Million to buy a building and an additional \$400,000 - \$600,000 to spend on improvements to the building.

76. Tueller caused FX USA to buy an industrial warehouse building adjacent to the industrial warehouse building that FX USA was renting. The new address is 3030 Hall Watters Drive, Wilmington, North Carolina 28405.³

77. Instead of staying within the agreed budget, Tueller grossly exceeded the budget. Tueller created the Taj Mahal of Wilmington industrial warehouse buildings, incorporating very expensive building materials and outfitting such as, by way of example, multiple live edge wood tables and ledges, glass and other specialty wall materials, epoxy sealed flooring, stylized lighting, oversized television monitors throughout the facility, high-end computers with multiple monitors for the majority of employees, and more.

³ Legally, Tueller caused FX USA to acquire the building by creating yet another LLC named Everly Holdings, LLC, which was wholly owned by FX USA. According to the N.C. Secretary of State, Elvegaard is both the registered agent and a manager of Everly Holdings, LLC. See later discussion of Elvegaard.

78. Attached hereto as **Exhibit 3** and incorporated herein by reference is a true and correct copy of accounting calculations from an accountant hired by Rumpegarden that reflect the current accounting status of the FX USA building. Upon information and belief, the financial information going into this entry was prepared by Tueller or his subordinate Gomez. As shown thereon, the building is on the books of FX USA for \$4,802,481.60.

79. Rumpegarden believes the accounting records of FX USA understate the expenditures on the building and that the true number exceeds \$5,000,000.

80. Tueller did not obtain permission from Rumpegarden (the majority of the members of FX USA) to spend \$2.4 Million over the building budget of \$2.4 Million.

81. Tueller attempted to hide the overspending on the building and only admitted the overspending to Rumpegarden after numerous long telephone calls and questioning by Swedish accounting personnel over financial discrepancies on the building.

82. Apparently Tueller also caused FX USA to borrow funds from banks in connection with the building.

83. Rumpegarden and its agents have requested information on these loans, but Tueller and Gomez have failed and refused to provide information on these loans.

84. However, upon information and belief, attached hereto as **Exhibit 4** and incorporated herein by reference is a true and correct copy of internal accounting records from FX USA showing a loan schedule for FX USA.

85. The loan schedule shows borrowings of over \$2,800,000 for the building and its upfitting.

86. The loan amounts exceed \$200 and was unauthorized under the agreed upon budget.

87. Rumpegarden believes that the overspending and spending on other vendors for the building has been used to siphon off money for other businesses that Teller and Elvegaard own.

88. For example, attached hereto as **Exhibit 5** and incorporated herein by reference are true and correct copies of landscaping invoices for the FX USA building.

89. The invoices total \$96,851 for approximately six months' worth of landscaping.

90. Not only are these payments unauthorized, but they are also unreasonable. An industrial warehouse building in an industrial warehouse park in Wilmington, North Carolina should not require almost \$200,000 per year in landscaping expenses.

91. Rumpegarden does not believe the invoices are legitimate, or in the alternative, represent expenditures on such services provided to properties owned Tueller, Elvegaard or one or entities in which they alone hold the ownership interests.

92. This and other overspending on the building is a violation of FX USA's operating agreement.

93. Furthermore, overspending by Tueller caused management conflict within FX USA. Ultimately, Fredrik Axelsson resigned as manager due in large part to Tueller's refusal to comply with the terms of the Operating Agreement and Tueller's refusal to provide correct and complete information about the matters such as the actual spending on the building.

Problem 2 – Impasse over distributions

94. Article II of the Exhibit 1 Operating Agreement for FX USA states that "for financial accounting and tax purposes, the company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's relative capital contribution and interest in the company . . . and the company shall determine and distribute available funds annually or at more frequent intervals at its discretion."

95. N.C. Gen. Stat. § 57D-1-03(4) defines “capital interest” as the share of an owner’s equity of a LLC. This statute at N.C. Gen. Stat. § 57D-1-03(9) further generally defines “distribution” as a direct or indirect transfer of money or other property for the benefit of an interest owner in respect of that interest owner’s ownership interest.

96. Unless expressly varied in the terms of the LLC’s operating agreement, N.C. Gen. Stat. § 57D-4-03 requires that distributions to members be proportional.

97. The Operating Agreement for FX USA does not vary the statutory requirement that distributions to members be proportional.

98. Tueller, through Gomez, controls the finances of FX USA and its distributions.

99. Tueller, by himself or through Gomez, has caused FX USA to make distributions to EverGuard.

100. For example, attached as **Exhibit 6** and incorporated herein by reference is a true and correct copy of a summary prepared by an accountant hired by Rumpegarden showing various monies that have been disbursed to EverGuard and/or Tueller from 2021 to 2023.

101. Tueller and EverGuard understood and agreed that after August 2019, EverGuard would only be paid distributable profits of FX USA in proportion to EverGuard’s ownership interest in FX USA.

102. Despite this agreement, Tueller/EverGuard have caused FX USA to take profits of FX USA and disburse them to Tueller/EverGuard and to the exclusion of Rumpegarden.

103. According to the Exhibit 1 operating agreement, those disbursements are distributions.

104. If the trends of Exhibit 6 schedule are consistent, between 2019 and 2023 Tueller/EverGuard withdrew over \$1,000,000 in distributions.

105. Rumpegarden has been told by Tueller/Elvegaard that they have caused FX USA to make minimal tax distributions on its behalf.

106. Because of the refusal and failure of Tueller to turn over Rumpegarden records (described in greater detail later), Rumpegarden is unable to determine whether any such tax distributions have been made on its behalf.

107. In any event, Rumpegarden believes that Tueller has failed and refused to cause FX USA to pay Rumpegarden all the distributions that should have been paid in proportion to the distributions paid to EverGuard and/or Tueller.

108. Rumpegarden and Tueller have reached an impasse over the issue of distributions to Rumpegarden. Rumpegarden has repeatedly asked for distributions in proportion to the distributions taken by Tueller/EverGuard. Tueller has refused to allow FX USA to pay them.

Problem 3 – FX USA is not paying its accounts when due

109. Tueller has caused and currently is causing FX USA to fail and refuse to pay its suppliers as those accounts become due, including its primary supplier of guns to whom FX USA is in default for over \$5,500,000.

110. FX USA's suppliers are not limited to the supplier of guns. One of the primary supplies is a supplier of rifle stocks named GRS Rifle Stocks.

111. GRS is located in Norway.

112. The primary contact for GRS is named Oscar Haugen.

113. FX USA is not paying its obligations to GRS as they become due.

114. Attached hereto as **Exhibit 7** and incorporated herein by reference are true and correct copies of invoices and communications from Haugen complaining about FX USA not meeting its payment obligations to GRS when due. The invoices total \$166,005.06.

115. One of the primary suppliers of arrows sold by FX USA is Goldtip/Vista/Bushnell (“Goldtip”).

116. Attached hereto as **Exhibit 8** and incorporated herein by reference are true and correct copies of invoices and communications from Goldtip complaining about FX USA not meeting its payment obligations to Goldtip when due.

117. One of the primary suppliers of ammunition sold by FX USA is JSB Match Diablo a.s. (“JSB”).

118. Attached hereto as **Exhibit 9** and incorporated herein by reference are true and correct copies of communications from JSB complaining about FX USA not meeting its payment obligations to JSB when due.

119. Another one of the primary suppliers of ammunition sold by FX USA is Patriot Outdoors (Pty) Ltd.

120. Attached hereto as **Exhibit 10** and incorporated herein by reference are true and correct copies of invoices and communications from Patriot complaining about FX USA not meeting its payment obligations to Patriot when due.

121. Another supplier for FX USA is a company called Airgun Nation.

122. Attached hereto as **Exhibit 11** and incorporated herein by reference are true and correct copies of invoices and communications from Airgun Nation complaining about FX USA not meeting its payment obligations to Airgun Nation when due.

123. On top of all these suppliers, the largest supplier and creditor not being timely paid is Manufacturer, the supplier that supplies FX USA’s primary product – airguns.

124. FX USA is not timely paying its obligations to Manufacturer and is in default to Manufacturer.

125. The terms of sale from Manufacturer to FX USA are net 60 days, meaning that payment is expected within 60 days of the invoice date.

126. Manufacturer has invoices to FX USA on which payment was due in January of 2023, nine months ago, that are in default and still have not been paid.

127. Attached hereto as **Exhibit 12** and incorporated herein by reference are true and correct copies of Manufacturer's aged receivables report for FX USA. The report is in Swedish Krona and shows receivables of 66,743,301.96 Krona.

128. As of September 2023, one U.S. dollar is worth between ten and eleven Krona.

129. Using a conversion rate of 10.92 Krona to dollars results in a sum of over \$6,000,000.

130. FX USA currently owes Manufacturer over \$6,000,000 for products that have not been paid for by FX USA, of which over \$5,500,000.00 is past due.

Problem 4 – Tueller destroys FX's reputation with the SHOT show

131. The premier shooting industry event in the world is the annual SHOT ("Shooting, Hunting, Outdoor Trade") show. It is the nation's largest professional event for the sport shooting, hunting, and outdoor industry. It occurs every January in Las Vegas, Nevada.

132. Tueller has destroyed FX's reputation with the organizers of the SHOT show.

133. Specifically, in January 2022 Tueller violated the regulations of the show by having FX USA rent a room in a hotel in Las Vegas above the trade show and having customers visit the room to place orders.

134. When the SHOT show discovered Tueller's actions, it banned FX USA from participating in the show.

135. Attached hereto as **Exhibit 13** and incorporated herein by reference is an email dated January 4, 2023 discussing the ban and the scope of what the ban covered. It states “FX will remain banned.”

136. Instead of complying with the show’s ban, in 2023 Tueller registered for the show under another name and attended the show and took videos joking about the ban and disparaging the show.

137. As a result of Tueller’s shenanigans, the SHOT show permanently banned FX USA from ever again participating in the SHOT show.

138. The actions of Tueller were unauthorized and hurt FX USA’s reputation with the SHOT show, in the industry, and with existing and prospective customers.

139. FX USA further lost the ability to attend or participate in the premier shooting event in its industry.

Problem 5 – Tueller uses FX USA as his personal piggy bank

140. During 2022 and 2023, Rumpegarden grew increasingly concerned that Tueller was living an extravagant lifestyle and charging personal expenses to FX USA.

141. Conflict between Rumpegarden and Tueller increased early in 2023 due to Tueller’s actions in connection with the SHOT show and the ban that show implemented, and repeated broken promises from Tueller that Elvegaard would not be involved in the business, described in greater length in later paragraphs.

142. On information and belief, Tueller used FX USA credit and/or debit cards to pay for personal Amazon purchases, First Class personal air travel expenses for him and his wife (including visits to her family in Norway), and a host of other inappropriate personal expenses. None of these expenses were approved by Rumpegarden.

143. Upon information and belief, Tueller diverted money from FX USA to construct an expensive swimming pool at his personal residence in Wilmington, North Carolina. This expense was not authorized by Rumpegarden.

144. Occasionally but infrequently, Rumpegarden has been able to catch Tueller and Gomez in theft of monies from FX USA in real time.

145. For example, in 2023 Rumpegarden or its agents objected to Tueller's personal expenditures that were paid by FX USA. The amount involved was \$14,844.05.

146. Gomez and Tueller responded that this was just a "mistake," and Tueller would pay back the funds.

147. Attached hereto as **Exhibit 14** and incorporated herein by reference is a true and correct of the check by which Tueller caused EverGuard to pay back the funds.

148. The check line reads "mischarged tix."

149. Approximately 2-3 weeks later, Gomez turned around and caused FX USA to pay an entity named "Professional Airgun Federation" \$15,000, approximately the same amount of money. Attached hereto as **Exhibit 15** and incorporated herein by reference is a true and correct copy of the check showing that Gomez and Tueller paid \$15,000 to Professional Airgun Federation.

150. "Professional Airgun Federation" is an entity created and controlled by Tueller (see discussion of other entities at paragraphs 159-176 below).

151. Rumpegarden avers on information and belief that this circuitry of payments was just one big circle of embezzlement.

**Problem 6 – Tueller causes FX USA to
make an unauthorized loan to his company**

152. Tueller has caused FX USA to make unauthorized loans to EverGuard for the benefit of himself and his wife.

153. Attached hereto as **Exhibit 16** and incorporated herein by reference is a true and correct copy of a Promissory Note dated January 18, 2022 for \$150,000 from EverGuard Holdings, LLC payable to FX USA.

154. By its terms, the note was due in full by September 30, 2022, with a 3% annual interest rate. Thus, the loan has been in default for almost a year.

155. FX USA's books currently show this note has an outstanding balance of \$312,279.

156. The promissory note was not authorized by Rumpegarden.

157. The promissory note has not been repaid to FX USA.

158. The loan Tueller caused FX USA to make to himself and his wife through their company exceeded the \$200 limit set out the FX USA operating agreement.

**Problem 7 - Tueller and his wife create unknown entities
that are reflected in the financial records of FX USA**

159. Rumpegarden believes that Tueller and Elvegaard have diverted FX USA monies to Elvegaard to fund their many other businesses.

160. Set forth below is a list of some entities that appear in the financial records of FX USA:

- a. EG Holdings
- b. EverGuard Holdings, LLC
- c. Everton Holdings, LLC
- d. EverGuard Wellness, LLC
- e. Everly Holdings, LLC
- f. Sunny Day Food Group, LLC
- g. Brex Dining, LLC
- h. Brexette Dining, LLC

161. EverGuard Wellness, LLC, listed above, is an entity associated with Elvegaard (see later discussion of Elvegaard). Attached hereto as **Exhibit 17** and incorporated herein by reference are true and correct copies of an invoice from a law firm in Arizona showing that FX USA was charged by the law firm for legal work performed for EverGuard Wellness, LLC and that FX USA paid this invoice on behalf of EverGuard Wellness, LLC.

162. Due to obstruction and concealment by Tueller, at this time Rumpegarden cannot tell the number or amounts of unauthorized transfers to the entities listed above.

163. Rumpegarden's agent has made demand on Tueller for information on transfers of FX USA monies to these entities, but Tueller has failed and refused to answer those inquiries.

164. Tueller established the entity Professional Airgun Federation.

165. According to Tueller, this entity is "the governing board and legislator group for airgun competitions worldwide."

166. Rumpegarden believes this statement is false because it is familiar with many airgun competitions and does not believe the Professional Airgun Federation is involved in those competitions.

167. On information and belief, Tueller has caused substantial funds of FX USA to be diverted to Professional Airgun Federation, even though FX USA has no ownership interest in or other relationship with the entity.

168. For example, attached hereto as **Exhibit 18** and incorporated herein by reference is an invoice from a full-service digital marketing & development agency by the name of Firetoss.

169. The invoice is for \$6,210.00 for Web related services for "ProAir Federation."

170. The expense has been booked as an expense of FX USA even though, upon information and belief, Firetoss is not a supplier of FX USA.

171. Another example attached hereto as **Exhibit 19** and incorporated herein by reference is an invoice from another law firm to FX USA for legal services, in part, provided to Professional Airgun Federation.

172. On information and belief, Tueller is using Professional Airgun Federation to siphon off funds from FX USA or paying FX USA funds to his entities improperly.

173. In addition to paying vendors of Professional Airgun Federation, on information and belief FX USA is currently paying the salary of an employee named Serena Juchnowski at Professional Airgun Federation even though, upon information and belief, she is not an employee of FX USA.

174. Attached hereto as **Exhibit 20** and incorporated herein by reference are true and correct copies of bank records showing recurring ACH payments to Juchnowski of \$1,543.55.

175. Rumpegarden has made demand for an explanation as to why FX USA is paying the compensation of Ms. Juchnowski when she is not an employee.

176. Tueller and Gomez have refused to explain these payments.

Problem 8 - Tueller creates a new email system to evade detection by “Sweden”

177. Despite Rumpegarden’s expectation that that all employees of FX USA would use the @fxairguns.com email domain, Tueller has set up a separate electronic mail system so that Tueller and his confederates can communicate in a manner so as to hide their emails from users in Sweden.

178. On information and belief, the separate electronic mail system used by Tueller, which cannot be accessed by Rumpegarden, has the domain name “@FXoutdoors.com.”

179. Attached hereto as **Exhibit 21** and incorporated by reference as if copied verbatim is a true and correct copy of the official domain registration record from the Internet Corporation for Assigned Names and Numbers showing that “@fxoutdoors.com” is registered to Manufacturer.

180. Manufacturer never applied for or agreed to an email system using @fxoutdoors.com.

181. Manufacturer does not have access to the @fxoutdoors.com domain name.

182. Rumpegarden believes and alleges on information and belief that Tueller created the separate email system to hide wrongdoing from Rumpegarden.

183. Attached hereto as **Exhibit 22** and incorporated herein by reference is an encrypted communication showing Greg Myers using his email address of greg@fx-outdoors.com to communicate with First National Bank of Wilmington.

184. This email indicates that Tueller set up a separate email system and is having his confederates use that system for financial matters so that “Sweden” will not find out.

185. If the Court appoints a receiver, Rumpegarden prays that the receiver be empowered to take custody and control of the server hosting the “@FXoutdoors.com” domain and conduct a forensic examination of that server.

Problem 9 - Tueller encumbers FX USA with unauthorized liabilities and imminently plans to increase such liabilities

186. Tueller caused FX USA to incur millions of dollars of unauthorized bank debt.

187. The bank borrowings by FX USA were not discussed with or authorized by Rumpegarden.

188. Specifically, Tueller caused FX USA to take out a line of credit facility with PNC Bank up to \$2,000,000.

189. Upon information and belief, Tueller caused FX USA to pledge all of its assets to PNC Bank as security for the repayment of this loan, without notice to or approval of Rumpegarden. Attached as **Exhibit 23** is a copy of a Uniform Commercial Code financing statement evidencing the lien of PNC Bank granted in connection with the making of this loan.

190. The current borrowings on that facility matured on July 31, 2023 and the balance due is approximately \$1,300,000.

191. Attached hereto as **Exhibit 24** and incorporated herein by reference are materials from PNC dated August 2023, as well as an email from PNC to Tueller stating that PNC wishes to exit the relationship with FX USA and have the line of credit paid off by October 31, 2023.

192. Exhibit 24 reflects that Tueller caused FX USA to borrow funds from PNC in 2020, the loans were amended and restated in 2021, and they were amended and restated again in 2022.

193. Exhibit 24 further shows Elvegaard and EverGuard are guarantors. The Exhibit also shows that Tueller improperly indicated that Rumpegarden is a guarantor of the loan.

194. The Exhibit reflects that the parties were proposing to reduce the credit line from \$2,000,000 to \$1,000,000.

195. This unsigned exhibit is dated August 8, 2023 but backdated to be effective as of July 31, 2023, which was the maturity date.

196. On July 31, 2023, Tueller's counsel was notified that Tueller had been removed as a manager of Rumpegarden and had no authority to take any action on its behalf.

197. Rumpegarden believes and alleges upon information and belief and Tueller/Elvegaard renewed the PNC loan in August of 2023 at a time that Tueller had no authority to take any action on behalf of Rumpegarden.

198. As set forth in the building section (see paragraphs 73-93 above), Tueller has exceeded the budget for the FX USA building by \$2.4 Million.

199. Perhaps because of this overspending, Tueller also has caused FX USA to borrow money from South State Bank for the building.

200. The bank borrowings by FX USA from South State Bank were not discussed with or authorized by Rumpegarden.

201. Specifically, Tueller has caused FX USA to borrow approximately \$2,900,000 from South State Bank.

202. In addition to millions of dollars of existing bank debt, on information and belief Tueller appears to be planning to embark on an unauthorized spending spree over the next 12 months.

203. Attached hereto as **Exhibit 25** and incorporated herein by reference is a true and correct copy of a document entitled “Business Outline for the next 12 Months for Strategic Purchases.”

204. Upon information and belief, Tueller intends to spend over \$4,000,000 of FX USA’s money on acquisitions over the next 12 months.

205. Tueller has not notified or consulted with Rumpegarden regarding this proposed strategic expansion, nor has Rumpegarden approved the same.

206. Rumpegarden disagrees with the proposed acquisitions and the proposed expenditures of FX USA funds for that purpose.

207. If consulted, Rumpegarden would not approve these purchases or plans.

208. Attached hereto as **Exhibit 26** and incorporated herein by reference is a true and correct copy of a document called a “Pitch Deck” dated September 2023.

209. The September 2023 Pitch Deck further confirms that Tueller is planning unauthorized acquisitions and expenditures.

210. Rumpegarden disagrees with many of the statements in the Pitch Deck and believes it contains falsehoods.

211. The Pitch Deck states that “FX Airguns USA, LLC/FX Outdoors Group FX USA is the exclusive seller of FX Airguns in the Americas.”

212. The assertion by Tueller in Exhibit 26 that “FX Airguns USA, LLC/FX Outdoors Group FX USA is the exclusive seller of FX Airguns in the Americas” is false.

213. Attached as **Exhibit 27** and incorporated herein by reference is a true and correct copy of an email dated Saturday, May 20, 2023 from Tueller to the celebrity chef Guy Fieri.

214. The Exhibit 27 email contains numerous false statements.

215. Rumpegarden alleges on information and belief that an earlier version of the Pitch Deck, as well as false valuations of FX USA, were used by Tueller to try to obtain money from Guy Fieri to buy out Rumpegarden.

216. Rumpegarden is requesting a receiver in this action in part because of concern that Tueller has misled third parties like Guy Fieri, is preparing to defraud others, and will commit fraud in the future on others the same way he committed fraud on Rumpegarden.

Problem 10 – Elvegaard and Tueller divert FX USA funds to Puerto Rico

217. Upon information and belief, Tueller and Elvegaard created Akupara Adventures (“AA”) located on the island of Puerto Rico.

218. Rumpegarden avers on information and belief that AA is merely another part of the fraudulent schemes of Elvegaard and Tueller.

219. In this instance, it appears to Rumpegarden that the goal is to bilk new investors out of \$75,000,000.

220. AA advertises itself as a 260-acre eco-park and resort.

221. Attached hereto as **Exhibit 28** and incorporated herein by reference the same as if copied verbatim is a true and correct copy of an advertising brochure for AA.

222. Upon information and belief, Elvegaard and Tueller created Exhibit 28.

223. In Exhibit 28, Tueller and Elvegaard characterize themselves as “industry titans.”

224. Elvegaard and Tueller also claim to have started FX USA, co-founded numerous successful corporations earning over \$100 Million a year, own four thriving restaurants, and hold a real estate portfolio of \$9MM.

225. Upon information and belief, Tueller and Elvegaard wired at least \$80,000 of FX USA monies to Puerto Rico for AA, without authorization.

226. Upon information and belief, they involved Gomez in their AA scheme.

227. Attached as **Exhibit 29** and incorporated herein by reference are true and correct copies of wire transfers totaling \$80,000 made from FX USA to Puerto Rico company named Success Adventure Enterprise, LLC (“SAE”).

228. Upon information and belief, attached as **Exhibit 30** and incorporated herein by reference is a true and correct copy of a report on corporations in Puerto Rico regarding SAE.

229. Exhibit 30 reflects that Alberto Gomez, the CFO of FX USA, is the corporate secretary of SAE.

230. Exhibit 30 reflects that Elvegaard is an agent of SAE.

231. Transferring \$80,000 to Puerto Rico has nothing to do with the business of FX USA and exceeds the \$200 spending limitation set out the operating agreement.

232. Upon information and belief, Tueller and Elvegaard may have transferred additional monies to Puerto Rico.

233. Upon information and belief, attached hereto as **Exhibit 31** and incorporated herein by reference is true and correct copy of another corporate record for a Puerto Rico company named EverGuard Wellness, LLC.

234. Upon information and belief, Elvegaard is an agent for EverGuard Wellness, LLC.

235. EverGuard Wellness, LLC is one of the entities whose name is in the financial records of FX USA, outlined above.

236. Tueller and Elvegaard have used FX USA funds to pay for expenses of EverGuard Wellness, LLC, as outlined above.

237. Due to Tueller's refusal to provide complete books and records, Rumpegarden has to date been unable to determine whether funds have been transferred from FX USA to EverGuard Wellness, LLC.

238. The parties have come to an impasse on the issue of Puerto Rico. Counsel for Rumpegarden sent a letter dated August 15, 2023 to Tueller and Gomez demanding an explanation for the \$80,000 in wire transfers to Puerto Rico. Tueller and Gomez have failed and refused to provide an explanation.⁴

Problem 11 – Tueller hides his frauds from PWC

239. As a result of discovering the unauthorized spending on the building and the unauthorized personal spending by Tueller, conflicts have arisen between Tueller, on the one hand, and Rumpegarden, on the other.

⁴ In response to Rumpegarden's inquiry, Rumpegarden acknowledges that Tueller's counsel has said he could explain these transfers but wanted first to find out how they were discovered.

240. Rumpegarden believes that Tueller has lied about the finances of FX USA and continues to lie to Rumpegarden and Rumpegarden's owners about the financial condition of FX USA.

241. As a result of the forgoing and in an attempt to determine the true financial condition and activity of FX USA, Rumpegarden's owners hired an independent accounting firm of Price Waterhouse Coopers ("PWC") to audit the book and records of FX USA.

242. In April 2023 PWC sent an audit team to Wilmington, North Carolina to conduct an audit of FX USA finances at the direction of Rumpegarden's manager.

243. PWC did substantial work at FX USA and interviewed Gomez in its efforts to conduct an audit.

244. PWC was unable to fully audit FX USA due to incomplete and potentially fraudulent financial records of FX USA.

245. PWC has reported to Rumpegarden and its owners that the financial records of FX USA were a "nightmare" and that PWC was not getting the information and records it needed from Gomez.

Problem 12 – Tueller obstructs inspection demand

246. Rumpegarden's owners subsequently hired the law firm of Womble Bond Dickinson (US), LLP to make demand for an inspection of the books and records of FX USA.

247. Attached hereto as **Exhibit 32** and incorporated herein by reference as if copied verbatim is a true and correct copy of an inspection demand letter to Tueller dated July 26, 2023.

248. As a manager of FX USA and agent of Rumpegarden, Fredrik Axelsson had the right to have produced and to review any document he chose of FX USA.

249. The list of documents to be produced is set out in the letter, and the date for production was set for eight days later, on August 3, 2023.

250. In addition to hiring counsel, the owners of Rumpegarden hired an accountant named David Hoffman of the forensic accounting firm Acuitas, Inc. to accompany counsel and review documents at the document inspection scheduled for August 3, 2023.

251. Rumpegarden's lawyers consulted with Tueller's counsel, and all counsel agreed Tueller's counsel should attend the inspection.

252. Tueller is represented by the Michael Best law firm.⁵ That firm has acknowledged the validity of the inspection demand and properly encouraged Tueller and Gomez to fully comply with the inspection.

253. On August 3, 2023, Plaintiff's counsel, Mr. Hoffman, and Tueller's counsel appeared at FX USA offices to inspect records.

254. Tueller did not appear at the inspection.

255. Gomez appeared as the financial record keeper for FX USA.

256. Despite having eight days' notice, and despite the involvement of Tueller's counsel, Gomez did not produce any documents responsive to the inspection demand on August 3, 2023.

257. Gomez claimed he did not produce any financial records for FX USA to inspect because, despite receiving a copy of the inspection demand letter, he did not realize he had to produce documents and the records were voluminous.

⁵ Michael Best has been clear that it represents Tueller and Elvegaard but does not represent FX USA.

258. Based on Gomez's claim that he did not understand he was required to produce documents and the records were voluminous, Hoffman reorganized the requested documents in order of priority.

259. Attached as **Exhibit 33** and incorporated herein by reference is a true and correct copy of the revision sent to Gomez on or about August 3, 2023.

260. Gomez has largely failed and refused to produce the requested FX USA records. For example, FX USA has not produced its General Ledger, the highest priority item on the revised list. At this point Rumpegarten estimates Gomez has produced only about 10% of the requested FX USA documents.

261. Even though he is an employee of FX USA, Gomez is fully under the control and supervision of Tueller.

262. Rumpegarten believes and alleges on information and belief that Gomez's failure to produce the records of FX USA is not the result of any legitimate reason but rather is being orchestrated by Tueller to delay or prevent any examination of the actual financial conditions and operations of FX USA.

263. As a result of the failure to produce documents, counsel sent a second letter, dated August 15, 2023, to Tueller's counsel re-iterating to Tueller and Gomez their obligations to comply with the production.

264. Attached hereto as **Exhibit 34** and incorporated herein by reference is a true and correct copy of the letter dated August 15, 2023 reminding Tueller and Gomez of the obligation to produce documents and also asking certain specific questions of Tueller and Gomez.

265. The production of what is estimated to be 10% of the requested documents were not produced until after the August 15, 2023 letter.

266. Rumpegarden now turns to the Court for an order compelling FX USA to produce all of the requested documents.

Problem 13 – Gomez “Cooks the Books”

267. Rumpegarden believes and avers upon information and belief that Tueller has caused Gomez to make fraudulent entries in the financial records of FX USA in order to hide Tueller’s wrongdoing.

268. At the inspection, Gomez stated FX USA had no credit cards and three debit cards.

269. Rumpegarden subsequently has been informed that FX USA has three credit cards.

270. The August 15, 2023 letter demanded an explanation for the discrepancy of Gomez stating there were no credit cards but three credit cards actually existing.

271. Tueller and Gomez have refused to answer this inquiry.

272. As a result, Rumpegarden is unable to review and reconcile credit card statements to determine if the spending on those cards was for proper FX USA expenses.

273. The parties have come to an impasse on this issue. Rumpegarden is demanding an explanation and copies of statements for the cards. Tueller is refusing. Gomez has the records but is refusing to produce them.

274. In addition, Rumpegarden believes and avers upon information and belief that Gomez has issued checks in non-repeating odd number amounts instead of regularly recurring payments to evade detection by Rumpegarden in the Monitor accounting system.

275. Rumpegarden alleges upon information and belief that Gomez issues checks to employees in irregular amounts to accomplish this fraud.

276. For example, attached hereto as **Exhibit 35** and incorporated herein by reference is a true and correct copy of check #1504 dated September 4, 2023 in the amount of \$893.00.

277. The check is made payable to an employee of FX USA named Kevin Skinner.

278. Upon information and belief, Mr. Skinner's compensation is recorded on the books of FX USA at \$80,000 per year.

279. Upon information and belief, Tueller and Elvegaard purported to increase Skinner's compensation to \$200,000 per year without consulting Rumpegarden.

280. Upon further information and belief, Tueller and/or Elvegaard are attempting to hide Skinner's increased compensation from "Sweden."

281. Upon information and belief Tueller and/or Elvegaard set into motion a scheme to repeatedly pay Skinner by checks in non-repeating odd-number amounts and deliver those checks to Skinner in order for "Sweden" not to know that Skinner's compensation had been increased without authorization.

282. Upon information and belief, Gomez did in fact issue checks in non-repeating odd-number amounts and delivered them to Mr. Skinner.

283. Large amounts of money transfers by Gomez remain unexplained.

284. In addition to covering up FX USA's finances by the check scheme, FX USA received a payment of \$428,007.71 from a law firm in Fayetteville, North Carolina, named "Hutchens Law Firm."

285. Attached hereto as **Exhibit 36** and incorporated herein by reference is a true and correct copy of this check from the Hutchens Law Firm.

286. Attached hereto as **Exhibit 37** and incorporated herein by reference is a true and correct copy of a printout of the website for the Hutchens Law Firm.

287. As shown in Exhibit 37, the Hutchens Law Firm is not a dealer of airguns.

288. The August 15, 2023 letter demanded an explanation for the Hutchens payment. Tueller has failed and refused to answer this inquiry.

289. Rumpegarden has asked for information from Tueller and Gomez about the banking relationships of FX USA (and of Rumpegarden).

290. Tueller and Gomez, despite providing a few bank statements, have largely refused to provide the nature and degree of those banking relationships or the financial conditions, borrowings, liens, lines of credit, remaining statements, balances, or other aspects of the same.

291. Despite Tueller's actions, Rumpegarden has been able to determine that FX USA has had or is trying to have relationships with a multitude of banks, including Truist, PNC, South State Bank, UCB and First National Bank of Wilmington.

292. Attached hereto as **Exhibit 38** and incorporated herein by reference are copies of papers of FX USA related to prospective banking relationships with United Community Bank of Wilmington and First National Bank of Wilmington.

293. One of the emails in Exhibit 38 is from Rick Hunt at United Community Bank of Wilmington and reads "Need the operating agreement between Rumpegarden and EverGuard Holdings, LLC – bank will require all owners of a borrower with 20% or more sign as guarantor – so with that said we need to be able to show that EverGuard Holdings has the authorization to operate the company as it sees fit including borrowing money."

294. As reflected in this exhibit, Tueller as of August 18, 2023 was trying to start a new banking relationship with First National Bank of Wilmington.

295. Also as reflected in this Exhibit, Tueller was attempting to establish a relationship with United Community Bank of Wilmington.

296. Rumpegarden and Tueller are at an impasse over allowing Rumpegarden to inspect and know the historic banking relationships and banking activity and records of FX USA and participate in the banking decisions of FX USA.

297. Rumpegarden is requesting a receiver for FX USA, in part, to sort through these banking activities and determine what is legitimate and what is fraudulent.

Problem 14 – Rumpegarden and Tueller are at an impasse over Elvegaard

298. Rumpegarden and EverGuard are at an impasse over the involvement of Elvegaard in the business of FX USA. Tueller and Rumpegarden have agreed she will have nothing to do with FX USA. But she continues to be involved with FX USA.

299. Elvegaard has no formal position with Rumpegarden. She is neither a member, manager, nor employee.

300. Elvegaard has no formal position with FX USA.⁶ She is not a member, manager, or employee.

301. The members of Rumpegarden have never approved or authorized Elvegaard to take any action on behalf of Rumpegarden.

302. The members of FX USA have not approved or authorized Elvegaard to take actions on behalf of FX USA.

303. Nevertheless, upon information and belief, Elvegaard has inserted herself into the management of FX USA and purported to make decisions for FX USA.

304. Upon information and belief, Elvegaard is a individual who influences and controls her husband Tueller's decisions in connection with FX USA.

⁶ Elvegaard is merely a partial owner of one member of FX USA.

305. Upon information and belief, Tueller has stated that he cannot make a FX USA decision without Elvegaard's involvement.

306. Upon information and belief, Elvegaard is a native of the country of Norway.

307. Upon information and belief, Elvegaard has stated that when she flies she is afraid the plane will crash.

308. Upon information and belief, her stated solution for her fear of flying is to fly First Class.

309. Upon information and belief, Tueller has spent, without authorization, tens of thousands of dollars of FX USA's funds on First Class travel, expensive hotels, and expensive car rentals for Elvegaard, including but not limited to renting Rolls Royce or Bentley automobiles.

310. Elvegaard owns or controls other businesses.

311. One business she engages in is located in Wilmington and involves the purchase, renovation and re-sale of residential homes in and around Wilmington, North Carolina.

312. Upon information and belief, Elvegaard has, without authorization, diverted substantial sums of money from the business of FX USA to Elvegaard's house-flipping businesses.

313. Elvegaard has, without authorization, managed, asserted control and taken action on behalf of both Rumpegarden and FX USA that were unauthorized.

314. For example, as shown in the banking documents attached to this complaint, Elvegaard has guaranteed the unauthorized \$2,000,000 line of credit to FX USA from PNC Bank and signed PNC loan documents.

315. Upon information and belief, Tueller not only permitted these actions but has relied on Elvegaard to assist him in his wrongdoing.

316. Rumpegarden and Tueller have disagreed over Elvegaard's involvement with FX USA.

317. Tueller represented and promised to Rumpegarden that she would not be involved with FX USA.

318. Tueller repeated this promise to Rumpegarden each time "Sweden" objected to her participation in the business.

319. Despite this agreement, Elvegaard continues to take action and be involved in the management of FX USA, without authorization.

320. Specifically, Elvegaard exercises unauthorized control over the legal affairs of FX USA.

321. Attached as **Exhibit 39** and incorporated herein by reference are true and correct copies of records from the North Carolina Secretary of State's website. Elvegaard is listed as the official registered agent for FX USA. She also is listed as a manager of FX USA. She is neither.

322. The attached exhibits further include an annual report filed for FX USA for 2022. As shown therein, Elvegaard claims that she is a manager of FX USA. She is not.

323. The parties are at an impasse over the issue of Elvegaard's involvement with FX USA.

Problem 15 – Military imposter Myers and Stolen Valor

324. Tueller and Elvegaard hired as a senior operations employee of FX USA an individual named Greg T. Myers.

325. Mr. Myers has numerous problems.

326. First, upon information and belief, it appears he is a convicted criminal. Attached as **Exhibit 40** and incorporated herein by reference are true and correct copies of criminal records for Greg T. Myers. Upon information and belief, this is the same Greg T. Myers.

327. Second, upon information and belief Myers claims to be a former Special Operations (Green Beret) Lieutenant Colonel, a military doctor, a recipient of a Purple Heart, and a recipient of the Army's third-highest military decoration for valor in combat.

328. Upon information and belief, Myers proudly displayed Silver Star certificates on the wall of his office at FX USA offices.

329. Upon information and belief, Myers is a military imposter and some or all of his alleged military resume and awards are fake.

330. Attached collectively hereto as **Exhibit 41** are copies of Myers's alleged Purple Heart, Silver Star, a photo of him wearing military medals, a notice from Stolen Valor received in Sweden concerning Myers's false awards.

331. According to the email, one of the awards Myers is wearing is from World War II.

332. Upon information and belief, the Purple Heart certificate is fake because it recites that Myers was wounded in 2006 in Operation Desert Storm and Operation Desert Storm occurred 1990-1991.

333. Upon information and belief, Tueller and Elvegaard have been notified that Myers is a military imposter.

334. After the military imposter allegations came to light, upon information and belief, Tueller and Elvegaard refused to fire Myers from FX USA.

335. Rumpegarden believes Myers should be fired because he is bringing FX USA into disrepute and hurting the brand and the company.

336. Upon information and belief, Myers remains employed at FX USA.

337. As might be expected, Tueller and Elvegaard's insistence that Myers be retained in the face of his criminal background and apparently false military records hurts FX USA's industry reputation and reputation with many shooters who are legitimate former military personnel.

**TUELLER ALSO BREACHES HIS FIDUCIARY
DUTIES TO RUMPEGARDEN**

**Breach 1 – While he was a manager of Rumpegarden, Tueller
tried to extort a release and non-disparagement agreement**

338. As set forth above, Tueller served as a manager of Rumpegarden from its formation until he was removed by Rumpegarden in July of 2023.

339. As a manager of Rumpegarden, pursuant to N.C. Gen. Stat. § 57D-3-21, Tueller owed Rumpegarden fiduciary duties.

340. Specifically, Tueller was required to discharge his duties to Rumpegarden (i) in good faith (ii) with the care of an ordinary prudent person in a like position would exercise under similar circumstances and (iii) subject to the operating agreement, in a manner that he believed to be in the best interest of the LLC.

341. Rumpegarden pursues its claims against Tueller as its manager because a claim by a limited liability company against its manager is a direct claim.

342. The problems regarding FX USA set forth above continued to increase in intensity and number throughout 2023.

343. As a potential solution, during 2023 Tueller came up with the idea of buying 40% of the 60% of FX USA owned by Rumpegarden. In other words, after such proposed transaction, EverGuard would own 80% of FX USA and Rumpegarden would own 20%. Tueller proposed to pay Rumpegarden over \$8 Million, for a variety of reasons.

344. The parties devoted substantial efforts and resources during the summer of 2023 towards negotiating such a transaction.

345. From the perspective of Rumpegarden and its owners, the benefits of such a transaction would be payment of the distributions set forth above that had not been paid, a partial buyout of Rumpegarden's equity in FX USA, and payment of millions of dollars FX USA owes Manufacturer that currently is in default.

346. Each summer one of the premier events of the airgun industry occurs in Utah. The name of the event is the Rocky Mountain Airgun Challenge ("RMAC").

347. FX Airguns is the primary sponsor of RMAC.

348. Due to the importance of the RMAC in the industry and because it was a primary sponsor, FX USA prepared and sent a team of personnel to Utah for the event.

349. In 2023 the RMAC occurred during the middle of June.

350. At this time, Tueller was negotiating with Rumpegarden on a possible buyout.

351. As part of the negotiations, Tueller demanded that Rumpegarden and its owners provide a blanket release and non-disparagement agreement before he would enter into negotiations over a potential letter of intent to buy equity from Rumpegarden.

352. Rumpegarden and its owners refused to release Tueller in advance because they were aware of some of the wrongdoing set forth above and believed additional wrongdoing may lie undiscovered.

353. When Rumpegarden refused to issue a blanket release to Tueller in advance and agree to a non-disparagement clause, Tueller threatened Rumpegarden with pulling the entire team of FX USA out of RMAC and flying them home.

354. Rumpegarden refused Tueller's demanded conditions.

355. To try to extort a release, Tueller threatened to, and then did, pack up the FX USA team and flew them home.

356. Upon information and belief, Tueller's actions were an effort to prevent FX USA personnel from connecting to Rumpegarden and its affiliates who would be attending the show and such employees disclosing to "Sweden" the corrupt activities of Tueller.

357. Tueller further threatened employees if he found out they had been communicating with Rumpegarden or its owners in Sweden.

358. The absence of FX USA from the 2023 RMAC show hurt FX USA's reputation in the industry, with the sponsors of RMAC, and with existing and prospective customers.

**Breach 2 – Tueller pledges Rumpegarden assets
and imperils Rumpegarden's right to distributions**

359. As noted in the Exhibit 2 Rumpegarden Operating Agreement, Tueller made himself a manager of Rumpegarden. He was a manager until July 27, 2023.

360. While he was a manager of Rumpegarden, Tueller, in part by utilizing Gomez, caused money to flow in and out of Rumpegarden without any explanation. For example, a \$212,705 deposit into Rumpegarden was explained as another "mistake" and promptly withdrawn.

361. Attached hereto as **Exhibit 42** are FX USA records showing transfers of money into and out of Rumpegarden.

362. In addition, Tueller causing Rumpegarden to guaranty FX USA's unauthorized bank debt has imperiled Rumpegarden's current and future distributions due to it from FX USA.

363. Specifically, the Exhibit 24 loan documents show that Tueller and Elvegaard have caused Rumpegarden to sign a guaranty of \$2,000,000.

364. The guaranty was arranged and executed without the authority of Rumpegarden's sole member, violating its operating agreement.

365. As shown in these documents, Rumpegarden has guaranteed the PNC \$2 Million loan.

366. Tueller never disclosed or discussed this guaranty with Rumpegarden.

367. In addition, the document shows Elvegaard's involvement in this debt.

368. According to FX USA's own documents, FX USA currently has borrowed over \$1,300,000 from PNC bank.

369. Tueller pledging the assets of Rumpegarden by the guaranty given to PNC Bank has impaired the ability of FX USA to make distributions to Rumpegarden. If any distributions ultimately are paid to Rumpegarden, then PNC can sue Rumpegarden on the guaranty.

370. The Exhibit 2 Operating Agreement for Rumpegarden contains the same \$200 spending limitation on managers: "No manager shall have the authority to spend or incur liability of more than \$200 for any transaction unless first approved by a majority of the membership owners."

371. There has only been one membership owner throughout Rumpegarden's existence, and that owner is Manufacturer.

372. Manufacturer has never agreed for Rumpegarden to sign a guaranty and incur potential liability of \$2 Million.

Breach 3 – Tueller neglects Rumpegarden to the point of dissolution

373. N.C. Gen. Stat. § 57D-2-04 requires that each North Carolina limited liability company file an annual report. The report must be filed by April 15 of the following year.

374. Upon hiring counsel and having that counsel examine records of the North Carolina Secretary of State, Rumpegarden discovered that Rumpegarden itself was dissolved by the North Carolina Secretary of State for failure of Tueller to file annual reports required by law.

375. Specifically, Tueller caused annual reports for 2018 and 2019 to be filed with the North Carolina Secretary of State but failed to file reports for 2020, 2021, and 2022.

376. Rumpegarden was administratively dissolved on May 16, 2023, after the North Carolina Secretary of State provided notice to Elvegaard dated January 13, 2023.

377. Rumpegarden hired counsel to undo the dissolution.

378. Counsel successfully reversed the dissolution and obtained the reinstatement of Rumpegarden on July 27, 2023.

379. Rumpegarden removed Tueller as a manager as of July 27, 2023.

380. Rumpegarden notified Tueller in writing of the foregoing on July 31, 2023.

Breach 4 – Tueller improperly involved his wife in Rumpegarden and filed documents under Fredrik Axelsson’s name without his permission

381. While he was a manager of Rumpegarden, Tueller caused annual reports to be filed stating that Elvegaard was the registered agent for Rumpegarden.

382. Tueller further improperly affixed Fredrik Axelsson’s name to an annual report without his permission.

383. Attached as **Exhibit 43** and incorporated herein by reference are records from the North Carolina Secretary of State falsely stating that Elvegaard was registered agent for Rumpegarden and the annual report falsely showing Mr. Axelsson’s name affixed as the Certifier of the report.

384. Fredrik Axelsson did not authorize his name to be affixed to this report.

Breach 5 – After being removed from Rumpegarden, Tueller refuses to return Rumpegarden’s records and property and takes unauthorized actions

385. As a result of the foregoing actions, in the summer of 2023 Rumpegarden removed Tueller as a manager.

386. Neither Tueller nor Elvegaard currently have any authority to act on behalf of Rumpegarden.

387. Counsel for Tueller and Elvegaard has been informed of same.

388. Rumpegarden's current manager has demanded that Tueller turn over to it all bank accounts, financial records, or property of Rumpegarden.

389. To date, Tueller has failed and refused to do so. Thus, Rumpegarden at this point has no idea of its financial history or current financial standing.

390. Rumpegarden hereby sues Tueller for an order to turn over Rumpegarden's property and records.

391. On information and belief, Rumpegarden further alleges that Tueller and/or Elvegaard took action with PNC concerning the PNC loan after the time that Tueller had been informed that Tueller was removed as a manager and had no authority.

392. All conditions precedent to filing this lawsuit have been satisfied.

FIRST CAUSE OF ACTION

INSPECTION OF LLC RECORDS (Against FX USA)

1. Rumpegarden realleges and incorporates by reference each of the preceding paragraphs of this Complaint as though fully set forth herein.

2. Plaintiff Rumpegarden is a member of FX USA.

3. N.C. Gen. Stat. § 57D-3-04(a) establishes the statutory right of Rumpegarden to inspect certain records of FX USA.

4. One of the matters Rumpegarden can inspect is all information necessary to ascertain its capital interest in FX USA.

5. Each of the financial irregularities set out above has made the book value of Rumpegarden's capital interest in FX USA inaccurate.

6. Until these irregularities are investigated and resolved, Rumpegarden will not be able to determine its true capital interest.

7. In North Carolina, an operating agreement can modify and expand statutory rights.

8. The Exhibit 1 operating agreement for FX USA expands Rumpegarden's statutory right of inspection.

9. FX USA's operating agreement does not limit the access of members to the documents specified in the N.C. Gen. Stat. § 57D-3-04(a). Instead, the operating agreement reads "upon reasonable request of a member, managers shall supply information or copies of the company's books and records."

10. The "books and records" of FX USA include all the books and records of FX USA.

11. In addition, Rumpegarden's agent Fredrik Axelsson also was a manager of FX USA and independently had the right to examine whatever records of FX USA he chose to inspect.

12. Rumpegarden, or one of its agents, previously made demand on FX USA through the Exhibit 32 letter dated July 26, 2023 to inspect certain books and records of FX USA.

13. Rumpegarden or its agent gave reasonable notice and further accommodated additional requested delays.

14. At the scheduled inspection of books and records, Tueller caused Gomez to fail to produce the documents requested.

15. Despite follow ups, only a small percentage of the requested documents have been produced.

16. In addition, counsel requested explanations for five questionable transactions.

17. Tueller has caused FX USA to fail and refuse to answer the five simple questions.

18. The right of Rumpegarden's agent to inspect FX USA records has been correctly and properly acknowledged by counsel for Tueller and Elvegaard.

19. Rumpegarden hereby requests and is entitled to a summary order allowing a full and complete inspection and copying of the requested records, at FX USA's expense.

20. Given the stonewalling that has occurred to date, Rumpegarden hereby requests and is entitled to recover its reasonable attorney's fees in connection with its record inspection efforts.

SECOND CAUSE OF ACTION

PAYMENT OF DISTRIBUTIONS/BREACH OF OPERATING AGREEMENT (Against FX USA)

21. Rumpegarden realleges and incorporates by reference each of the preceding paragraphs of this Complaint as though fully set forth herein.

22. N.C. Gen. Stat. § 57D-2-31 establishes that a North Carolina limited liability company is deemed to be a party to its operating agreement and bound by its terms.

23. EverGuard is a party to the operating agreement of FX USA.

24. N.C. Gen. Stat. § 57D-04-03 requires that distributions be proportional.

25. The Exhibit 1 operating agreement for FX USA further requires that net profits and losses "shall be allocated to the Members in proportion to the Member's capital contribution and interest in the company" and distributions made annually (Exhibit 1, Page 2, Article III).

26. The Exhibit 6 summary prepared by an accountant hired by Rumpegarden shows various monies have been disbursed to EverGuard and/or Tueller between 2021 and 2023.

27. Tueller and EverGuard understood and agreed that after August 2019 EverGuard and Tueller would only be paid their portion of the profits of FX USA.

28. Tueller/EverGuard have caused FX USA to take profits of FX USA and disburse them to Tueller/EverGuard.

29. According to the Exhibit 1 operating agreement, those disbursements are distributions.

30. Upon information and belief, between 2019 and 2023 FX USA distributed over \$1,000,000 to Tueller/EverGuard.

31. Because of the refusal and failure of Tueller to turn over Rumpegarden records, described below, Rumpegarden is unable to determine whether any tax distributions have been made on its behalf.

32. Tueller failed and refused to cause FX USA to pay Rumpegarden the distributions that should have been paid in proportion to the distributions paid to EverGuard and/or Tueller.

33. Accordingly, based on the operating agreement contract, FX USA has breached the operating agreement by making distributions to Tueller/EverGuard and failing to make the corresponding proportional distributions to Rumpegarden.

34. Rumpegarden's loss of the distributions it should have received is a loss individual to itself and is a damage separate and distinct from any loss suffered by EverGuard, the other member.

35. Rumpegarden hereby seeks a money judgment against FX USA for payment of distributions owed to Rumpegarden.

36. As a direct and proximate result of Defendants FX USA's breach, Rumpegarden suffered damages in an amount to be established at trial.

THIRD CAUSE OF ACTION

TORTIOUS INTERFERENCE WITH CONTRACT (Against Elvegaard)

37. Rumpegarden realleges and incorporates by reference each of the preceding paragraphs of this Complaint as though fully set forth herein.

38. As the wife of Tueller, and owner of EverGuard, and an active person in the business of FX USA (over the objections of Rumpegarden), Elvegaard was aware that the

operating agreement for FX USA was valid contract between Rumpegarden and FX USA and conferred upon Rumpegarden contractual rights against FX USA.

39. Elvegaard intentionally induced EverGuard, Tueller and FX USA not to perform the operating agreement.

40. Elvegaard acted without justification.

41. Among other things, Defendant Elvegaard intentionally interfered with EverGuard and FX USA performing the operating agreement by violating the \$200 spending limitation on Tueller in many ways as set forth above, participating in authorized loans to EverGuard, participating in unauthorized loans with PNC, involving companies she owns in the finances of FX USA, diverting funds to Puerto Rico entities she is affiliated with, insinuating herself into the management of FX USA over Rumpegarden's objections, withdrawing monies, whether as money or loans or diversions to her other companies, all of which is tortiously interfering with the contractual relationship that is the operating agreement.

42. Defendant Elvegaard's intentional conduct proximately caused Rumpegarden substantial damages, including but not limited to the loss of its valuable contractual right to control the payments and liabilities of FX USA and the proportional distributions that should have been made to it, in an amount to be determined at trial.

43. Elvegaard's conduct was willful, wanton, malicious, and oppressive, and thus justifies the awarding of exemplary and punitive damages.

FOURTH CAUSE OF ACTION

DISREGARD THE CORPORATE FORM OF EVERGUARD HOLDINGS, LLC (Against Tueller, Elvegaard, and EverGuard Holdings, LLC)

44. Rumpegarden realleges and incorporates by reference each of the preceding paragraphs of this Complaint as though fully set forth herein.

45. Upon information and belief, EverGuard has other members in addition to Tueller and Elvegaard.

46. As set forth above, Tueller and Elvegaard exercise, and have exercised, such dominance and control over the actions of EverGuard such that this company does not have a separate mind or existence of its own, but instead is a mere instrumentality of, or alter ego for, Tueller and Elvegaard.

47. Upon information and belief, Tueller and Elvegaard completely dominate EverGuard's finances, operations, and business decisions and practices.

48. Tueller, in concert with his wife Elvegaard, through the conduct alleged above, has used his domination and control over EverGuard to violate Rumpegarden's legal rights as a member of FX USA, commit fraud, perpetrate violations of duties to Rumpegarden, and commit dishonest and wrongful acts in contravention of Rumpegarden's rights.

49. FX USA and Rumpegarden have suffered damages as a proximate result of Tueller and Elvegaard's actions and improper dominance over EverGuard, in an amount to be set forth at trial.

50. Rumpegarden is accordingly entitled to an order setting aside the corporate form of EverGuard, and to hold Tueller and Elvegaard personally liable for the liabilities of EverGuard.

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY TO RUMPEGARDEN AND AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (Against Tueller and Elvegaard)

51. Tueller was a manager of Rumpegarden up until the time he was removed by Rumpegarden in July 2023.

52. As a manager of Rumpegarden, pursuant to N.C. Gen. Stat. § 57D-3-21, Tueller owed Rumpegarden fiduciary duties.

53. Specifically, Tueller was required to discharge his duties to Rumpegarden (i) in good faith (ii) with the care an ordinary prudent person in a like position would exercise under

similar circumstances and (iii) subject to the operating agreement, in a manner that he believed to be in the best interest of the LLC.

54. The operating agreement of Rumpegarden does not diminish or disclaim Tueller's fiduciary duties.

55. Tueller breached his fiduciary duties through the conduct alleged above, both by failing to act in good faith and with due regard to Rumpegarden's interests, and by affirmatively acting in bad faith and with a conscious, willful, and intentional disregard for his duties and Rumpegarden's interests,

56. Elvegaard was aware of Tueller's fiduciary duty to Rumpegarden, both because she was his wife but also because of her intimate involvement with FX USA and Rumpegarden, including but not limited to filing legal documents for Rumpegarden and participating the PNC loan in which Rumpegarden was a guarantor.

57. Tueller breached his fiduciary duty to manage Rumpegarden properly, failing to comply with its operating agreement, failing to act in good faith, falsifying and directing subordinates to falsify books and records of Rumpegarden, allowing it to be dissolved, shuttling money in and out of Rumpegarden and calling it a "mistake," causing Rumpegarden to incur potential liabilities to PNC Bank, and imperiling distributions that Rumpegarden is demanding from FX USA by subjecting them to the prior claims of PNC Bank.

58. Elvegaard at all times participated in and aided and abetted Tueller's breaches of fiduciary duty to Rumpegarden.

59. Tueller's breaches of fiduciary duties to Rumpegarden, and Elvegaard's aiding abetting of those breaches, proximately caused Rumpegarden substantial financial damages, in an amount to be proven at trial.

60. Tueller's breaches, and Elvegaard's aiding abetting of those breaches, were willful, wanton, malicious, and oppressive, and thus justifies the awarding of exemplary and punitive damages.

SIXTH CAUSE OF ACTION

CONSTRUCTIVE FRAUD (Against Tueller, Elvegaard, and EverGuard)

61. Rumpegarden realleges and incorporates by reference each of the preceding paragraphs of this Complaint as though fully set forth herein.

62. Rumpegarden's owners reposed special trust and confidence in Tueller in connection with the creation and operation of Rumpegarden because of self-proclaimed knowledge of the American legal system and limited liability companies, his fluency in English, and the fact that they were foreigners located over 4000 miles away whereas he was on site in Wilmington, North Carolina.

63. Tueller, as a manager of Rumpegarden, and Elvegaard, by inserting herself into the management of Rumpegarden and taking legal actions on its behalf and assuming duties commensurate with such actions, each held positions of trust and confidence in relation to Rumpegarden, and thus owed fiduciary duties to Rumpegarden, as a result of their de jure or de facto roles.

64. Tueller exercised such domination and control over FX USA so as to create a fiduciary duty directly to Rumpegarden within FX USA.

65. Elvegaard was aware of Tueller's fiduciary duty and the special trust and confidence that Rumpegarden's owners reposed in Tueller.

66. Tueller owed a special duty to Rumpegarden that he did not owe to FX USA because Tueller served as a manager to Rumpegarden and accordingly owed it a separate duty.

67. Tueller and Elvegaard took advantage of these positions of trust and confidence, breaching their duties by their conduct alleged above, including converting company property to their own use, using company funds to pay for their personal expenses, engaging in surreptitious

and self-dealing transactions with EverGuard and other entities they control located within the United States and in Puerto Rico in order to siphon off FX USA's funds and Rumpegarden's equity, shuttling money in and out of Rumpegarden and calling it a "mistake," and providing exorbitant salaries and expenditures to themselves, their family, and their chosen employees, including Greg T. Myers.

68. The object and purpose of Tueller and Elvegaard's actions was their illicit and improper personal benefit, taking the form of embezzled funds and converted company funds and property.

69. The conduct of Tueller and Elvegaard injured Rumpegarden and caused actual damage of Rumpegarden, in an amount to be proven at trial.

70. Tueller and Elvegaard's conduct was willful, wanton, and malicious, and thus justify the awarding of exemplary and punitive damages.

SEVENTH CAUSE OF ACTION

UNFAIR AND DECEPTIVE TRADE PRACTICES, N.C. GEN. STAT. § 75-1.1 (Against Tueller, Elvegaard, and EverGuard)

71. Rumpegarden realleges and incorporates by reference each of the preceding paragraphs of this Complaint as though fully set forth herein.

72. Defendants, by the acts described above, have engaged in unfair and deceptive trade practices in and affecting commerce in violation of N.C. Gen. Stat. § 75-1.1.

73. The actions of Tueller going to a foreign country, soliciting a manufacturer, creating the legal entities necessary for business and drafting their operating agreements in a way to his advantage while knowing the linguistic and legal knowledge limitations of the foreign manufacturer, coupled with Tueller having a fiduciary duty to Rumpegarden until July 2023, constitute violations of N.C. Gen. Stat. § 75-1.1,

74. Specifically, Defendant Tueller, in conjunction with his ownership of EverGuard, did the following:

- a. Misrepresented many aspects of FX USA's rights, finances, and other matters to Rumpegarden and third parties;
- b. To cover up Tueller's deceitful conduct, he and his agents created a new email system;
- c. Engaged in a pattern and practice of fraudulent creation, manipulation and destruction of financial records of books of FX USA;
- d. Used Gomez to circumvent Rumpegarden's access to legitimately keep abreast of financial activities of FX USA via the Monitor system, the repeated embezzlements of company funds through personal purchases, loans to himself or his wife or EverGuard, channeling money to Puerto Rico, and the other activities set out above;
- e. Hid or misrepresented banking records, credit and debit cards, borrowings, and other liabilities of FX USA;
- f. Misrepresented facts about FX USA, Rumpegarden and its owners, and other aspects, to third parties and members of the industry; and
- g. Employed unfair and dishonest tactics that resulted in FX USA being permanently banned from the SHOT show, which hurt the FX brand in the industry;

75. All such actions were in or affecting commerce in North Carolina.

76. All such actions were unfair.

77. All such actions were deceptive.

78. As a result, Rumpegarden has suffered direct actual damages, and such other damages proximately caused by Defendants' unlawful conduct, in an amount to be proven at trial.

79. Defendants have acted willfully and under circumstances in which they either knew or should have known that their actions were immoral, unethical, unscrupulous, and malicious.

80. Pursuant to N.C. Gen. Stat. §§ 75-16 and 75-16.1, Rumpegarden is entitled to recover treble its actual damages resulting from Defendants' unfair and deceptive trade practices, in addition to its reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

CIVIL CONSPIRACY TO COMMIT COUNTS 2-7 (Against All Defendants)

81. Rumpegarden realleges and incorporates by each of the preceding paragraphs of this Complaint as though fully set forth herein.

82. Upon information and belief, the Defendants coordinated their actions to engage in an unlawful scheme to defraud Rumpegarden, violate its rights, and convert its monies and property as set forth herein.

83. The Defendants' coordinated conduct pursuant to a common agreement proximately caused Rumpegarden severe financial loss and actual damages, and it appears that losses are likely to greatly increase.

84. Rumpegarden is entitled to recover consequential and punitive damages caused by the Defendants' conspiracy.

NINTH CAUSE OF ACTION

APPOINTMENT OF A GENERAL RECEIVER UNDER N.C. GEN. STAT. § 1-507.20 et. seq. AND NORTH CAROLINA COMMON LAW (Against All Defendants)

85. Rumpegarden realleges and incorporates by reference each of the preceding paragraphs of this Complaint as though fully set forth herein.

86. As set forth above and as set forth in the supporting affidavits submitted in connection with the motion for appointment of a receiver, there has been gross mismanagement of FX USA, non-payment of creditors when their accounts were due, shuttling money in and out of FX USA and various other entities, including Rumpegarden, what appears to be additional imminent anticipated future financial fraud using the FX brand name, and improper transfers of great sums of FX USA's money.

87. Rumpegarden prays for appointment of a receiver over FX USA pursuant to N.C. Gen. Stat. § 1-507.20 et. seq.

88. Rumpegarden has standing because it is a party in interest, as set forth in N.C. Gen. Stat. § 1-507.24.

89. Additional grounds exist under N.C. Gen. Stat. § 1-507.24(e)(2) because FX USA is not paying its debts to suppliers who are creditors as they become due, and such debts are not the subject of any bona fide dispute.

90. Manufacturer supplied goods for FX USA on 60 day terms.

91. Some invoices from Manufacturer are over nine months past due.

92. Specifically, FX USA currently is in default to FX AB, the supplier of its airgun inventory, in the amount over \$6,000,000.

93. FX AB has made demand for payment of its outstanding indebtedness that is in default but has not been paid by FX USA.

94. Furthermore, Rumpegarden is informed and believes that FX USA is in default on payments to various suppliers that are creditors, including GRS, Patriot, Goldtip, JRB, and Airgun Nation.

95. According to the financial books prepared by Gomez, FX USA was insolvent at the end of the year 2022, but matters were probably worse because Rumpegarden believes Gomez fraudulently manipulated those numbers.

96. Additional grounds exist under N.C. Gen. Stat. § 1-507.24(e)(3) because FX USA is unable to pay all its debts as they become due.

97. Additional grounds exist under N.C. Gen. Stat. § 1-507.24(e)(4) because, as shown by the banking records submitted herewith and the Twelve Month Plan of Acquisitions, FX USA is in imminent danger of insolvency.

98. Additional grounds exist under N.C. Gen. Stat. § 1-507.24(e)(6) because FX USA is so dominated and controlled by Tueller and Elvegaard that it has effectively forfeited its legal existence.

99. Additionally, many decisions that need to be made for FX USA have reached an impasse.

100. Additionally, Tueller appears to be working on numerous acquisitions without consultation or agreement of Rumpegarden.

101. Additionally, on information and belief Tueller and/or Elvegaard have hired a senior employee who appears to be a convicted criminal and military imposter, bringing FX USA into the crosshairs of Stolen Valor organizations.

102. Additionally, Tueller has caused FX USA to fail and refuse to cooperate with investigations into FX USA's financial condition, making an analysis of FX USA's true financial condition impossible.

103. Plaintiff prays that The Finley Group be appointed as a general receiver over FX USA to carry out the management obligations of FX USA, preserve all assets for creditors, and investigate all wrongdoing on the part of Tueller or Elvegaard or EverGuard.

104. As part of the appointment of the receiver, Plaintiff also requests that the court enjoin all persons from interfering with the receiver and the performance of such receiver's duties.

105. The current situation is untenable. Defendants EverGuard, Tueller and Elvegaard currently exercise total control over FX USA to advance their own improper purposes.

106. Rumpegarden is powerless to stop the conduct of defendants without court intervention. Tueller wrote the operating agreement in a way that he can block actions against himself. Without court intervention, Rumpegarden cannot stop Defendants' misconduct.

107. In light of the Defendants' proven willingness to misappropriate substantial assets of FX USA, Rumpegarden further believes that the appointment of a receiver on an emergency basis is necessary to take control of FX USA and the company's finances and is filing a motion to that effect simultaneous to the filing of this complaint.

108. One concern is that FX USA has over \$3,000,000 of portable assets Tueller can easily move, secrete, transfer, conceal and waste.

109. FX USA also has substantial receivables due it from dealers that Tueller could divert to his own personal uses.

110. Rumpegarden respectfully request that the court, after appointing a receiver over FX USA, grant the receiver the powers and duties under N.C. Gen. Stat. § 1-507.28 *et seq.*, including, but not limited to, the following powers (collectively, the "proposed powers"):

- A. To manage the affairs and conduct of the day-to-day business of FX USA.
- B. To inspect and review the books, records, accounts and other information maintained by or on behalf of FX USA as is necessary to perform their duties. This includes, but is not limited to, all FX USA's financial accounting, tax, and banking records.
- C. To contact any bank, credit card company or any other entity with which FX USA has and account and gain control of those accounts.
- D. To secure and maintain the inventory and other assets of FX USA.
- E. To engage one or more agents to assist in the management and operation of FX USA.

F. To maintain such business, financial and accounting records necessary for FX USA during operation under the receivership.

G. To collect obligations owed to FX USA including revenue received in the normal course of business.

H. To direct payments across and expenses necessary to the operation of FX USA and to negotiate contracts on matters in the normal course of business.

I. To direct the preparation of tax returns and direct payment of taxes and other governmental obligations and to file all necessary and appropriate returns or documents.

J. To retain additional accountants and other professionals in the course of performing the duties authorized under any order appointing a receiver.

K. Any additional powers under the statute that may be necessary or reasonable.

111. Plaintiff requests that the receiver be compensated with FX USA's funds from operations.

112. Plaintiff proposes The Finley Group located in Charlotte, North Carolina serve as the receiver. The Finley Group has significant experience to similar matters. The Finley Group has been appointed as a general receiver in Superior Court cases in North Carolina, including in the North Carolina Business Court. The Finley Group also has served as Trustee in multiple U.S Bankruptcy proceedings and as a Chief Financial Officer, Chief Restructuring Officer, and Chief Liquidation Officer.

113. All Defendants should be enjoined from interfering with the receivership.

TENTH CAUSE OF ACTION
PERMANENT INJUNCTION FOR SPECIFIC PERFORMANCE
(Against Tueller and EverGuard)

114. Rumpegarden realleges and incorporates by reference each of the preceding paragraphs of this Complaint as though fully set forth herein.

115. The Operating Agreement is a valid contract.

116. One of the express terms of the Operating Agreement is that the manager(s) of FX USA may not make payments or incur debts in excess of \$200 per transaction without the approval of FX USA's majority member, Rumpegarden.

117. Rumpegarden has performed its obligations under the Operating Agreement.

118. As set forth above, Tueller and EverGuard have repeatedly flouted and disregarded the \$200 spending limitation in the operating agreement, but Rumpegarden is powerless to stop such conduct.

119. The contractual power to control FX USA's purse is a right that Rumpegarden cannot adequately protect with any other remedies available at law.

120. Accordingly, Rumpegarden is entitled to a permanent injunction prohibiting the manager(s) of FX USA from making payments or incurring debts in excess of \$200 per transactions without the express written approval of Rumpegarden.

PRAYER

Wherefore, Rumpegarden respectfully prays the court enter orders and judgments against Defendants on all counts alleged herein, as follows:

1. Order that FX USA pay to Rumpegarden its proportional distributions due Rumpegarden from FX USA;

2. Order in summary fashion the production of all of the documents set out in the Exhibit 32 letter dated June July 26, 2023;

3. Order Defendants to immediately deliver and return all Rumpegarden property and assets and records and financial authority in their possession;

4. Order an interim general receiver for FX USA and, upon trial, enter a judgment appointing a general receiver for FX USA;

5. Order that the receiver have the proposed powers;
6. Order that Defendants not interfere with, and fully cooperate with, the receiver;
7. Impose a constructive trust over all the property of Tueller, Elvegaard and EverGuard to prevent the unjust enrichment, enrichment through fraud, breaches of duty, and other conduct set forth above that would make it inequitable for them to retain such property against Rumpegarden;
8. Award Rumpegarden its actual damages in an amount to be determined at trial, such damages to be trebled pursuant to N.C. Gen. Stat. § 75-16;
9. Award Rumpegarden punitive damages and its attorneys' fees incurred in this action;
10. Tax all costs of this actions to the Defendants; and
11. Award or order such other and further relief as the Court considers appropriate.

This 3rd day of October, 2023.

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