

1 Brandon D. Fox (SBN 290409)  
Bfox@jenner.com  
2 An N. Tran (SBN 267685)  
Atran@jenner.com  
3 Sati Harutyunyan (SBN 313138)  
Sharutyunyan@jenner.com  
4 Jenner & Block LLP  
515 South Flower Street, Suite 3300  
5 Los Angeles, CA 90071-2246  
Telephone: +1 213 239 5100  
6 Facsimile: +1 213 239 5199

7 Attorneys for Plaintiff  
8 Jesse Powell

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO

12 JESSE POWELL,

13 Plaintiff,

14 v.

15 VERGE CENTER FOR THE ARTS, a California  
16 nonprofit public benefit corporation, PHILLIP  
17 CUNNINGHAM, an individual, and DOES 1  
through 25, inclusive,

18 Defendants.  
19

Case No.

**COMPLAINT AND JURY TRIAL  
DEMAND FOR:**

**1) FRAUD AND DECEIT;  
2) DECLARATORY RELIEF;  
3) PROMISSORY ESTOPPEL;  
4) UNJUST ENRICHMENT; AND  
5) DEFAMATION.**

20 Plaintiff Jesse Powell complains of Defendants Verge Center for the Arts (“Verge”), Phillip  
21 M. Cunningham, and Does 1 through 25, inclusive, and alleges:

22 **NATURE OF THE ACTION**

23 1. In 2007, Mr. Powell—determined to elevate and bring lasting change to  
24 Sacramento’s art scene—gave the city something it never had: a sophisticated art collective  
25 organized around local artists, visiting art lovers, and students. He conceived and built Verge.

26 2. At 27 years old, Mr. Powell invested every spare resource he had into making Verge  
27 a success. In doing so, Mr. Powell invested over \$1 million and years of sweat equity to develop  
28

1 the collective from a mere concept to the thriving art-focused enterprise he imagined. Mr. Powell  
2 hired staff, leased space, and purchased furniture, technology, and equipment for the enterprise.  
3 He also prospected for, organized, and became the founding member of Verge’s Board of Directors  
4 (“Board” or “Board of Directors”). After Verge became a nonprofit organization, Mr. Powell  
5 regularly fortified Verge’s coffers with additional contributions totaling over \$550,000. As the  
6 organization’s founder, promoter, and lead benefactor, Mr. Powell had a lifetime seat on the Board  
7 and was excused from attending Board meetings at his election.

8         3. As part of Mr. Powell’s support to Verge, he established and helped maintain  
9 Verge’s internal and public-facing online presence. He registered, paid for, and maintained a web  
10 domain as well as various web-based accounts that he then permitted Verge and its staff members  
11 to access and use. Verge regularly sought Mr. Powell’s assistance with technological issues and,  
12 as an extension of his contributions to Verge, Mr. Powell provided Verge with regular technology  
13 services and technical support. Both Verge and Mr. Powell knew and understood that Mr. Powell  
14 owned and controlled these web domains and web-based accounts.

15         4. Mr. Powell’s contributions and hard work paid off. Over the course of 15 years,  
16 Verge became a professional home to dozens of local aspiring artists. It also curated and displayed  
17 contemporary art for the public to enjoy—free of charge—while also hosting regular workshops,  
18 classes, and other arts-focused events.

19         5. Things changed in June 2022 when, unbeknownst to Mr. Powell, Verge turned on  
20 him. On June 20, 2022, Verge’s executive director Liv Moe, Board President Gwenna Howard,  
21 and Board Treasurer Mr. Cunningham held a secret meeting to oust Mr. Powell from the Board.  
22 The meeting and its resulting vote purportedly declaring Mr. Powell’s seat vacant violated Verge’s  
23 bylaws and were ineffective.

24         6. At the June 2022 meeting, the Verge Board recognized that Mr. Powell owned the  
25 domain and accounts Verge had historically used with Mr. Powell’s permission. Following the  
26 meeting, Verge transitioned to new accounts and abandoned its use of Mr. Powell’s accounts and  
27 domain.



1 who has donated millions of dollars to charitable causes, including to support communities in  
2 Sacramento, where he resided for many years. In 2007, Mr. Powell founded Verge Gallery and  
3 Studio Project and in 2010, he established Defendant Verge.<sup>1</sup> Mr. Powell is and always has been  
4 a member of Verge’s Board of Directors.

5 12. Verge is a California nonprofit public benefit corporation with its principal place  
6 of business at 625 S. St., Sacramento, CA 95811. Thanks in large part to Mr. Powell’s benevolence,  
7 Verge provides low or no cost workplaces for artists, organizes educational programming for the  
8 arts, and hosts exhibitions and other art events.

9 13. Mr. Cunningham is an individual, a resident of California, an attorney licensed to  
10 practice in California, and the Treasurer of the Board of Directors for Verge.

11 14. The fictitious defendants Does 1 through 25 (“Doe Defendants”) are sued pursuant  
12 to the provisions of Code of Civil Procedure Section 474. Mr. Powell is unaware of the true names  
13 and capacities of Defendants Does 1 through 25 and therefore sues them under fictitious names.  
14 Upon information and belief, these 25 Defendants may have been responsible in some manner for  
15 the events herein alleged and Mr. Powell will appropriately identify these Doe Defendants when  
16 their true names and capacities are ascertained.

17 **JURISDICTION AND VENUE**

18 15. This Court has jurisdiction under Section 410.10 of the California Code of Civil  
19 Procedure.

20 16. Venue is proper in this Court’s judicial district in the County of Sacramento, State  
21 of California, pursuant to Sections 395 and 395.5 of the California Code of Civil Procedure.

22 17. Defendants, or some of them, own and control businesses, maintain residences, and  
23 conduct substantial business relevant to this dispute in Sacramento County. In addition, the  
24 wrongful acts and/or omissions at issue in this action occurred in Sacramento County and the  
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26 <sup>1</sup> Mr. Powell initially established Verge Gallery and Studio Project as a for-profit entity, which he  
27 operated until 2010. In 2010, Mr. Powell incorporated Defendant Verge Center for the Arts as a  
28 nonprofit entity with the same mission and operational objective as Verge Gallery and Studio  
Project and carried the “Verge” name to the new entity.

1 unlawful conduct of Defendants was in Sacramento County.

2 **GENERAL ALLEGATIONS**

3 **A. Mr. Powell Envisions, Creates, and Operates Verge.**

4 18. Verge was born out of Mr. Powell’s love for art, those who create it, and the  
5 community of Sacramento. Mr. Powell founded Verge Gallery and Studio Project in 2007 to  
6 elevate Sacramento’s art scene and provide local artists with a unique and sophisticated art  
7 collective. Mr. Powell’s founding mission for the organization was to offer aspiring artists studio  
8 spaces and residencies, curate exhibitions showcasing contemporary art, and host educational  
9 programs.

10 19. To bring his vision to life, Mr. Powell invested over \$1 million of his personal funds  
11 and countless hours into Verge Gallery and Studio Project. A 27-year-old, self-made entrepreneur,  
12 Mr. Powell invested every spare penny of his personal resources into the endeavor. The project  
13 placed a significant financial burden on Mr. Powell, but he persisted in growing the organization  
14 because he saw its positive impacts on and adoration by the Sacramento arts community.

15 20. Mr. Powell originally established the organization as a for-profit entity and served  
16 as its Chief Executive Officer. Mr. Powell was the organization’s sole financial contributor, and  
17 his investments kept Verge Gallery and Studio Project operational.

18 21. To help manage operations, Mr. Powell interviewed and hired Liv Moe in 2007 as  
19 Verge Gallery and Studio Project’s executive director. Before being hired, Ms. Moe was one of  
20 the artists to whom Mr. Powell had given free studio space. Ms. Moe had just received her Master  
21 of Fine Arts and was hoping to start a career in the arts during a serious economic recession. Mr.  
22 Powell provided Ms. Moe that opportunity. Ms. Moe reported directly to Mr. Powell and was  
23 responsible for overseeing the day-to-day management and affairs of Verge. Ms. Moe is still  
24 Verge’s executive director today, and her duties are essentially the same as those Mr. Powell hired  
25 her to carry out.

26 22. Mr. Powell also hired other staff members, including an associate executive director  
27 to assist Ms. Moe.

1           23.     In April 2010, Mr. Powell incorporated a nonprofit corporation called Verge Center  
2 for the Arts (Defendant Verge) with the same mission and operational objectives as Verge Gallery  
3 and Studio Project. On the Statement of Information submitted to the State of California, Mr.  
4 Powell was listed as Verge’s Chief Executive Officer, Chief Financial Officer, and Secretary.

5           24.     Shortly before incorporating Verge Center for the Arts, Mr. Powell executed a new  
6 lease in his individual capacity for the location Verge operates in today. Verge was growing  
7 quickly and a key factor driving Mr. Powell’s decision to relocate was the need and desire for a  
8 larger space so that Verge could accommodate additional artists, expand its gallery offering, and  
9 put on more events. Mr. Powell funded the purchase of furniture, computers, and other technology  
10 for use at Verge’s new location.

11           25.     Thanks to Mr. Powell’s vision and leadership, Verge was an immediate and  
12 continuous success. In short, beginning in 2007, Mr. Powell conceived, funded, and brought to life  
13 a thriving and well-respected arts organization that did not previously exist in Sacramento.

14           **B.     Mr. Powell Assembles the Board and Continues to Fund and Support Verge.**

15           26.     In 2010, pursuant to Verge’s then-operative bylaws, Mr. Powell assembled and  
16 appointed a Board of Directors. Mr. Powell joined the Board at this time as President of the Board.<sup>2</sup>

17           27.     Mr. Powell also continued to be the organization’s primary benefactor. In addition  
18 to his initial investment, Mr. Powell has donated more than \$550,000 to Verge since 2010.

19           28.     On occasion, Mr. Powell donated staff salaries. For instance, in February 2014, Mr.  
20 Powell donated \$50,000 specifically to ensure that Verge’s executive director Ms. Moe would  
21 receive a raise to her normal salary.

22           29.     Mr. Powell’s contributions to Verge did not end there. Mr. Powell leveraged his  
23 expansive personal and professional networks to help Verge achieve its fundraising goals and grow  
24 its donor base. To help Verge gain exposure and establish its own footprint, Mr. Powell funded  
25 travel and covered expenses for Verge staff members to attend events and make connections in

26 \_\_\_\_\_  
27 <sup>2</sup> In 2014, Verge merged with an organization called Center for Contemporary Art Sacramento.  
28 Mr. Powell’s role at Verge did not change post-merger. Verge was the surviving entity and the  
merger resulted in the adoption of new bylaws.

1 different cities across the country. This also allowed Verge staff members to bring back fresh ideas  
2 and new art to Verge’s headquarters in Sacramento.

3 30. In addition, for years, Mr. Powell performed technology services work that Verge  
4 benefited from at no charge. For example, in 2008, Mr. Powell registered a new domain name:  
5 vergeart.com. Mr. Powell paid for this domain and its hosting fees. Mr. Powell allowed Verge to  
6 use this domain name, which Verge took advantage of until mid-2022.

7 31. Mr. Powell also obtained and provided Verge and its employees with the ability to  
8 use G Suite and Slack accounts.<sup>3</sup> Verge relied on Mr. Powell to service these accounts. For  
9 example, Verge asked Mr. Powell to grant other members of the organization administrative  
10 privileges in connection with these accounts.

11 32. Relatedly, Verge regularly sought Mr. Powell’s assistance with and consultation on  
12 technological problems or questions. In other words, Mr. Powell established and helped maintain  
13 an internal and public-facing online presence that he allowed Verge to benefit from.

14 **C. Mr. Powell is Excused From Attending Every Board Meeting.**

15 33. As Verge’s founder, incorporator, and primary benefactor, Mr. Powell was given a  
16 lifetime Board seat and was excused from regularly attending Board meetings.

17 34. Indeed, since he assembled the Board in 2010, Mr. Powell has been permitted to  
18 attend meetings as needed or as his schedule permitted. Mr. Powell has had the option of dialing  
19 in telephonically to Board meetings instead of attending in person.

20 35. The Board and Ms. Moe approved of this approach for years; neither the Board nor  
21 Ms. Moe ever raised concerns about Mr. Powell’s attendance at Board meetings. To the contrary,  
22 Mr. Powell received and reviewed Board meeting minutes for any meeting he did not attend. He  
23 was also briefed by Ms. Moe on important discussions and stayed apprised of significant decisions.

24 \_\_\_\_\_  
25 <sup>3</sup> G Suite, now known as Google Workspace, provides web-based computing, productivity, and  
26 collaboration tools like Gmail (an email service), Calendar, Meet (video conferencing), Chat  
27 (instant messaging), Drive (storage), Docs (document creation and editing), Sheets (spreadsheets),  
28 Slides (slideshow presentations), and others. Slack is a cloud-based communication and  
collaboration tool that allows users to communicate and share files through one-on-one direct  
messages and group messages.

1           36.     Upon information and belief, other Board members had similar arrangements with  
2 respect to meeting attendance. Several other Board members rarely attended meetings but  
3 contributed financially and/or leveraged their expansive networks to drive event attendance and  
4 fundraising for Verge. Stated differently, Verge never took issue with irregular attendance by  
5 Board members who contributed to Verge’s mission through other means.

6           37.     Moreover, for as long as Mr. Powell has served on the Board, it has been common  
7 for Board meetings to be cancelled. This occurs anytime the Board and Ms. Moe felt there was  
8 nothing important for the Board to discuss, which happened often. One such instance occurred on  
9 May 31, 2022, when a scheduled Board meeting was cancelled because “[the Board has] no action  
10 items to address at this time.”

11           **D.     A Clandestine Meeting Takes Place in Violation of Verge’s Bylaws.**

12           38.     On Friday June 17, 2022, 17 days after the regularly scheduled meeting was  
13 cancelled, Board President Ms. Howard sent an email to call “a special Board Meeting with  
14 mandatory attendance because we need to vote on some decisions that are time sensitive.” Ms.  
15 Howard sent the invitation on a Friday evening and scheduled the meeting for the following  
16 Monday, June 20, 2022, just three days later. Ms. Howard provided no further context for her  
17 urgent meeting.

18           39.     Ms. Howard did not provide notice to Mr. Powell. Indeed, she specifically excluded  
19 Mr. Powell and another Board member—who has a strong personal and professional relationship  
20 with Mr. Powell—from the list of meeting invitees. Mr. Powell did not receive notice through  
21 other means and remained ignorant of the meeting for several months, as discussed below.

22           40.     On June 20, 2022, the time-sensitive meeting Ms. Howard requested (the “June  
23 2022 Meeting”) proceeded as scheduled. It turned out to be a covert, rushed, ineffective, and ill-  
24 fated attempt by her and Mr. Cunningham (and others working with them) to oust Mr. Powell from  
25 Verge. The meeting lasted one hour, and the sole topic of discussion was whether to declare Mr.  
26 Powell’s Board seat vacant.

27           41.     Six directors, including Mr. Powell and another director who was also not informed  
28



1 of the “mandatory” meeting, were absent.

2 42. According to minutes from the June 2022 Meeting, Mr. Cunningham presented “an  
3 overview of the events leading to this special meeting,” after which Mr. Cunningham offered a  
4 motion to declare Mr. Powell’s Board seat vacant as of October 2019. Mr. Cunningham’s motion  
5 was passed by those in attendance. The stated reason for declaring the seat vacant was three  
6 unexcused absences by Mr. Powell in 2019. But this was pretextual. Upon information and belief,  
7 Mr. Cunningham and Ms. Moe wanted Mr. Powell removed because they disagreed with what  
8 they believed to be his views on certain social, cultural, and political issues. Mr. Cunningham also  
9 wanted to remove Mr. Powell so he could take credit for Verge’s creation, despite not becoming  
10 affiliated with Verge until Verge took over Mr. Cunningham’s failing organization in 2014—years  
11 after Mr. Powell founded Verge.

12 43. The June 2022 Meeting was not effective in declaring Mr. Powell’s seat on the  
13 Board vacant because it (and Mr. Cunningham’s motion during it) violated Verge’s bylaws in,  
14 without limitation, the following ways:

- 15 a. The meeting took place without five days’ notice;
- 16 b. The meeting took place without written notice to all directors;
- 17 c. Mr. Powell did not sign a notice of waiver for the meeting;
- 18 d. Mr. Powell was never provided a copy of the meeting minutes by Verge;
- 19 e. Mr. Powell’s seat was declared vacant without the participation and vote of all  
20 Verge directors; and
- 21 f. Mr. Powell’s seat was declared vacant for unexcused absences in 2019 even  
22 though Mr. Powell’s absences were excused.

23 44. After the June 2022 Meeting, Ms. Moe—who typically briefed Mr. Powell on  
24 important discussions that occurred during Board meetings Mr. Powell does not attend—did not  
25 inform Mr. Powell of the meeting or what happened during the meeting, including Mr.  
26 Cunningham’s motion attempting to declare Mr. Powell’s seat vacant.

1           **E.       Orchestrators of the Secret Ouster Attempt to Erase Traces of Mr. Powell.**

2           45.       For months after the June 2022 Meeting, Ms. Moe, Ms. Howard, Mr. Cunningham,  
3 and others working with them kept Mr. Powell in the dark about the motion purporting to remove  
4 Mr. Powell from the Board of Directors. At the same time, they worked quickly behind the scenes  
5 to erase any signs of Mr. Powell from the organization he founded.

6           46.       For example, Mr. Powell was removed from the Board’s distribution list and all  
7 traces of Mr. Powell were wiped from Verge’s public-facing platforms. Upon information and  
8 belief, Ms. Moe caused Verge to write Mr. Powell out of the organization’s history page and to  
9 otherwise remove any mention of him from the website.

10          47.       In addition, the individuals behind the ineffective ouster also spread a false  
11 narrative to media outlets about Verge’s history and founding—one that specifically excluded Mr.  
12 Powell. One such alternate narrative appeared in the Sacramento Press and stated that Verge was  
13 “established in 2006 by the Center of Contemporary Art Sacramento.” Of course, Verge was not  
14 established by the Center of Contemporary Art; it was established by Mr. Powell. Indeed, Verge  
15 was not linked to the Center for Contemporary Art until the two organizations merged in 2014,  
16 with Verge being the surviving organization. Mr. Cunningham was the President of the Center of  
17 Contemporary Art, which was failing before Verge offered it a life preserver through a  
18 combination with Verge. Upon information and belief, Mr. Cunningham, Ms. Moe, and/or others  
19 working at their direction supplied the false narrative about the history of Verge which omitted  
20 Mr. Powell.

21          48.       Between June 2022 and late October 2022, Verge staff registered a new domain  
22 name, vergecontemporary.org, as well as email and other accounts for the entity. And although  
23 Ms. Moe and members of Verge’s staff concealed the ouster attempt from Mr. Powell, they did  
24 tell Mr. Powell about their new domain and accounts and specifically informed Mr. Powell that  
25 Verge had “abandoned” use of the old accounts Mr. Powell owned and allowed Verge staff to use.

26          49.       Upon information and belief, in a further attempt to hide the truth from Mr. Powell  
27 and in violation of Verge’s document retention policy, Ms. Moe deleted certain files and  
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1 documents, including those relevant to this dispute.

2 50. During this same period, because the ouster attempt was concealed from Mr.  
3 Powell, Mr. Powell had not yet revoked the administrative privileges of certain Verge staff  
4 members for vergeart.com—the domain owned by Mr. Powell and previously used by Verge.  
5 Upon information and belief, Ms. Moe or staff members acting at her direction improperly  
6 redirected Mr. Powell’s vergeart.com domain to vergecontemporary.org, Verge’s newly  
7 established domain, without Mr. Powell’s permission or awareness.

8 51. Upon information and belief, Verge established the new accounts and domain  
9 because Ms. Moe, Mr. Cunningham, and other Verge Board and staff members recognized that  
10 Mr. Powell was the owner of and controlled the existing accounts and domain. Verge’s Board and  
11 Ms. Moe knew that Mr. Powell was neither required nor likely to relinquish those accounts if he  
12 learned of Verge’s wrongful attempt to oust him from the Board. It was for these reasons that  
13 Verge abandoned Mr. Powell’s accounts, which he had allowed Verge to use.

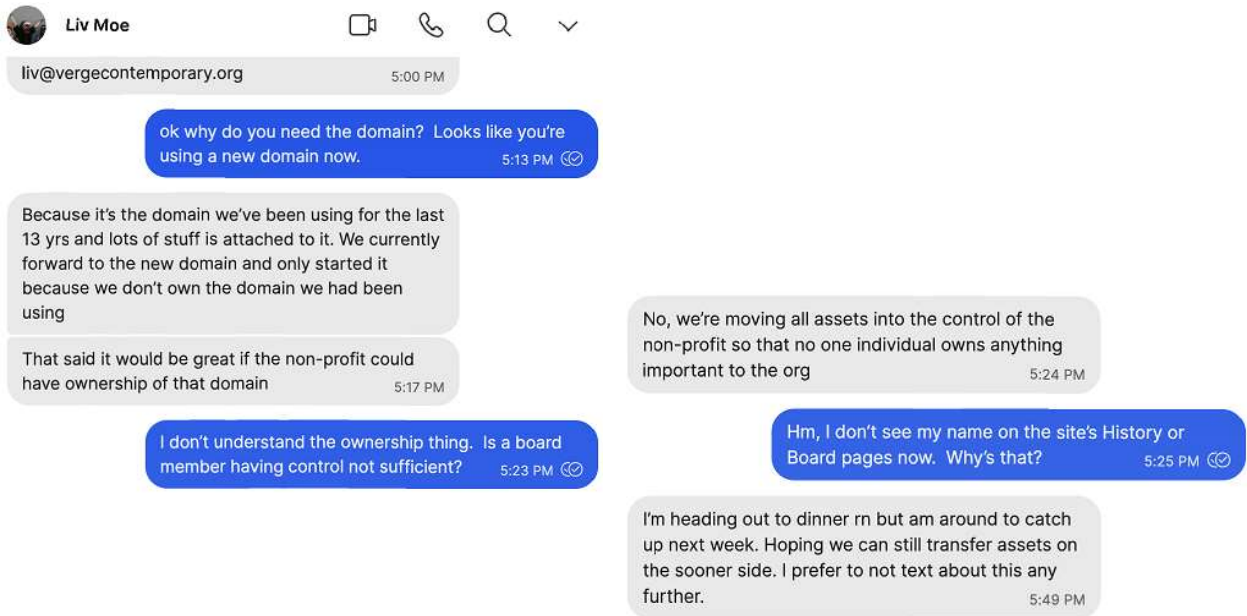
14 **F. Mr. Powell Receives Demands to Relinquish His Property.**

15 52. After setting up a new domain and related accounts, upon information and belief,  
16 Verge staff used their administrative privileges with the old domain and accounts to obtain copies  
17 of or transfer the information they needed to operate Verge. Verge also notified third parties of  
18 their transition to new email addresses and a new domain. By October 2022, Verge had the ability  
19 for four full months to transfer all necessary material from the domain and G Suite and Slack  
20 accounts owned by Mr. Powell to their new accounts.

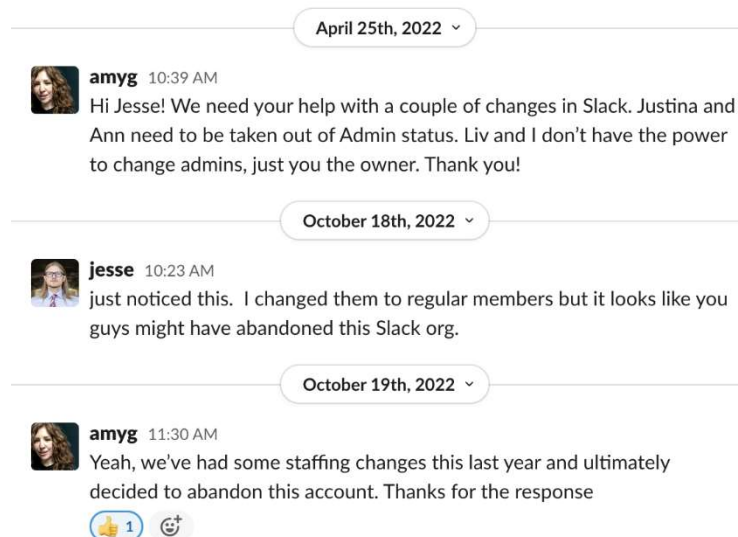
21 53. In late October 2022, after Verge completed these actions, and once the new  
22 website and emails were functioning, Ms. Moe asked Mr. Powell to relinquish the domain he  
23 owned and do the related work to transfer the domain to Verge, for free.

24 54. In making this request, Ms. Moe confirmed in writing that Mr. Powell owned the  
25 property Verge was no longer using but seeking ownership of. For example, in the communication  
26 below from October 2022, Ms. Moe confirmed that Mr. Powell owns the vergeart.com domain  
27 and that Verge is no longer using it—while omitting the fact of the June 2022 Meeting and her  
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1 purported belief that Mr. Powell was no longer on the Board. Ms. Moe concealed this information  
2 from Mr. Powell and tried to mislead him into believing that no action against him had been  
3 attempted or taken so that he would be more likely to relinquish ownership and control of the  
4 domain and accounts:



15 55. Verge staff members made similar misstatements to Mr. Powell in an attempt to  
16 hide the wrongful ouster from him. For example, Verge deputy director Amy Greer exchanged the  
17 following messages with Mr. Powell, in which she acknowledged that Verge had abandoned use  
18 of Mr. Powell's Slack account:



1           **G.     Mr. Powell Confronts Verge About the Improper Ouster Attempt.**

2           56.     Despite attempts to hide the improper ouster of Mr. Powell, Mr. Powell began to  
3 suspect that something was wrong. On October 21, 2022, Mr. Powell emailed fellow Board  
4 members stating that he recently received a “request from [Ms. Moe] to transfer to her ownership  
5 and control of certain assets (including the vergeart.com domain).” Mr. Powell explained that Ms.  
6 Moe provided no explanation for the impetus behind her request, and he asked for an explanation  
7 for why he no longer appeared as a Verge Board member on the organization’s website and had  
8 not received Board updates in recent months.

9           57.     Three days later, on October 24, 2022, Ms. Howard responded to Mr. Powell,  
10 informing him for the first time of the Board’s attempt to wrongfully remove him months earlier.  
11 Ms. Howard wrote: “your seat was declared vacant at a special meeting of the board held on June  
12 21, 2022, pursuant to Article 3, Section 3.5 (c) (3) of the bylaws because you had 3 unexcused  
13 absences within a 12 month period.”

14           58.     Ms. Howard’s stated basis for removal was a clear pretext given that Mr. Powell  
15 had been excused from attending every Board meeting, and no one ever informed him that any of  
16 his nonappearances were unexcused.



17           59.     The pretextual nature of Mr. Powell’s email was confirmed by other statements in  
18 Ms. Howard’s email. Ms. Howard referred to Verge’s Guiding Principles and stated that Mr.  
19 Powell had behaved inconsistently with those principles. Without providing further specifics, Ms.  
20 Howard wrote: “The Board finds your views to be completely contrary to Verge’s Guiding  
21 Principles.”

22           60.     In relevant part, the Guiding Principles of Verge state that “Verge is committed to  
23 becoming a more open and welcoming organization” and seeks to embrace “different ethnicities,  
24 skin colors, gender identities and body types, religious beliefs, physical or cognitive challenges,  
25 or socio-economic standing.”

26           61.     Ms. Howard’s unexplained reference to the Guiding Principles confounded Mr.  
27 Powell, whose views or behavior had never been raised to him by any Board or Verge staff  
28

1 member. Indeed, Mr. Powell’s personal views align with what is set out in the Guiding Principles.

2 62. Ms. Howard’s use of the Guiding Principles as an excuse to create distance between  
3 Mr. Powell and Verge was especially surprising when Mr. Powell soon discovered that Ms. Moe—  
4 Verge’s executive director—published public tweets that plainly ran afoul of the Guiding  
5 Principles. Below are two of many such tweets by Ms. Moe:

6  **Liv Moe** @Liv\_Moe   
7 Just encountered a doofy lookin white dude on R  
8 Street wearing cargo shorts and a T advising you to  
9 “manifest your luck.” The desire to strike him was  
overwhelming.

10  **Liv Moe** @Liv\_Moe   
11 Fucking despicable. The top headline this morning  
12 was Melania remodeling the rose garden as we are  
13 sliding in authoritarianism. If one more fucking white  
14 boy natters about their fucking wariness re: the dem  
ticket, they can kindly get fucked along with the rest  
of this garbage. [twitter.com/andrewkimmel/s...](https://twitter.com/andrewkimmel/s...)

15 63. The organization’s Guiding Principles were apparently selectively applied and not  
16 applied at all to the organization’s executive director.

17 64. Ms. Howard’s email further stated, also for the first time, that the Board “believes”  
18 Verge owns the vergeart.com domain and related accounts, although she provided no basis for  
19 such a belief. She also made a “request” to Mr. Powell to “relinquish control” of the domain and  
20 related accounts.

21 65. Ms. Howard did not articulate any basis—legal or otherwise—for Mr. Powell to  
22 relinquish his property. Nor did she say that Mr. Powell should stop accessing the domain or the  
23 accounts he owned, registered, and over the years maintained. By this time, Ms. Howard, Ms. Moe,  
24 and others had repeatedly provided Mr. Powell with information suggesting and showing they had  
25 abandoned use of the domain and G Suite and Slack accounts Mr. Powell was allowing Verge to  
26 use.

27 66. Mr. Powell repeatedly attempted to contact Board members for clarification but did  
28

1 not receive any response.

2 **H. Mr. Powell is Defamed in a Letter Filled with Falsehoods to His Employer.**

3 67. On November 2, 2022, less than one week after Ms. Howard sent her email and  
4 before Mr. Powell even had an opportunity to respond in earnest, Mr. Cunningham sent a letter to  
5 Mr. Powell’s employer containing false and defamatory accusations about Mr. Powell.

6 68. Specifically, Mr. Cunningham falsely accused Mr. Powell of:

- 7 a. Wrongfully blocking Verge from accessing “its” accounts when, in fact, as  
8 Mr. Cunningham and Verge knew, Mr. Powell owned the G Suite and Slack  
9 accounts and Verge had abandoned use of those accounts.
- 10 b. Blocking access to Verge’s website, email accounts, and Slack account, and  
11 otherwise interfering with Verge’s unspecified “technology services” when,  
12 in fact, as Mr. Cunningham and Verge knew, Verge had created a new  
13 domain where users could access Verge’s website and had abandoned use of  
14 the Slack and G Suite accounts Mr. Powell owned and controlled.
- 15 c. Refusing to relinquish control over Verge’s website, email accounts, and  
16 Slack account when, in fact, as Mr. Cunningham and Verge knew, Mr.  
17 Powell did not control the website, email accounts, or Slack account that  
18 Verge was using. Mr. Powell only controlled the domain, email account, and  
19 Slack account that he owned and that Verge had abandoned using months  
20 prior.
- 21 d. Controlling Verge’s confidential data and personal property in a way that is  
22 likely to harm Verge when, in fact, as Mr. Cunningham and Verge knew,  
23 Mr. Powell was not obligated to stop controlling accounts he owned, and  
24 Verge no longer used these accounts to store the organization’s data.
- 25 e. Accessing Verge’s confidential data and property for Mr. Powell’s own  
26 wrongful purposes when, in fact, as Mr. Cunningham and Verge knew, Mr.  
27 Powell was not obligated to stop accessing accounts he owned, and Verge  
28

1 no longer used the accounts Mr. Powell owned to store the organization's  
2 data. Further, Mr. Powell did not access any confidential document or  
3 property for a wrongful purpose.

4 69. Mr. Cunningham also falsely claimed that the actions he alleged Mr. Powell had  
5 taken purportedly caused Verge to obtain and register new accounts, thereby damaging Verge. As  
6 Mr. Cunningham and Verge knew, Verge had obtained a new domain, a new email account, and a  
7 new Slack account months *before ever informing Mr. Powell that it had purportedly voted him*  
8 *off the Board*. It was thus not even possible for Mr. Powell's alleged actions to have caused Verge  
9 to obtain and register its new accounts.

10 70. Mr. Cunningham sent the letter as an agent of Verge. Mr. Cunningham specifically  
11 stated that he was writing to Mr. Powell's employer "in [his] official capacity as counsel" for  
12 Verge.

13 71. Mr. Cunningham filled this letter with falsehoods in a clear attempt to harass,  
14 humiliate, and intimidate Mr. Powell in front of his employer. Mr. Cunningham wrote these lies  
15 to Mr. Powell's employer to intentionally damage Mr. Powell. There was no link to any of Mr.  
16 Powell's purported actions and his employer, and Mr. Cunningham did not provide one. Mr.  
17 Cunningham knew that Mr. Powell was employed in the heavily regulated financial services  
18 industry. Mr. Cunningham crafted his accusations carefully; the false claims were designed to  
19 impute illegal, dishonest, and questionable conduct to Mr. Powell as a an executive and director  
20 of a licensed financial services firm.

21 72. Upon information and belief, Mr. Cunningham and Verge made similar false  
22 statements to others.

23 73. Such accusations were and are especially damaging to an individual whose  
24 livelihood depends on his reputation and user trust in the service or platform provided.

25 **FIRST CAUSE OF ACTION**  
26 **Fraud and Deceit Based on Concealment**  
(Against Verge)

27 74. Mr. Powell incorporates herein by reference every allegation contained in the  
28



1 preceding paragraphs of this Complaint as though fully set forth herein.

2 75. Verge concealed and suppressed material facts from Mr. Powell. Among other  
3 things, Verge concealed the June 2022 Meeting from Mr. Powell and the resulting vote seeking to  
4 oust Mr. Powell from Verge’s Board of Directors.

5 76. As specifically required by Verge’s bylaws, Verge had a duty to disclose to Mr.  
6 Powell the June 2022 Meeting and the resulting vote seeking to oust Mr. Powell from Verge’s  
7 Board of Directors.

8 77. In concealing these facts from Mr. Powell, Verge intended to defraud Mr. Powell.  
9 Verge sought to mislead Mr. Powell into believing that Mr. Powell was still being treated as a  
10 Board member. Verge misled Mr. Powell so that Mr. Powell would not revoke Verge’s access to  
11 Mr. Powell’s property, namely Mr. Powell’s vergeart.com domain, G Suite accounts, and Slack  
12 account. Verge wanted access to Mr. Powell’s property so that it could use it for its own  
13 purposes—including to improperly redirect Mr. Powell’s vergeart.com domain to  
14 vergecontemporary.org without Mr. Powell’s permission or awareness. Verge further wanted to  
15 mislead Mr. Powell so that it could continue to seek and accept donations and complimentary  
16 technological services and support from Mr. Powell and his friends and associates who continued  
17 to support the organization believing Mr. Powell was still a Board member.

18 78. Mr. Powell was unaware of the facts Verge concealed from him, and he would not  
19 have continued donating money to Verge and providing complimentary technological services and  
20 support if he had known the truth.

21 79. As a proximate result of Verge’s conduct, Mr. Powell has suffered and will suffer  
22 damages in an amount to be determined at trial.

23 **SECOND CAUSE OF ACTION**  
24 **Declaratory Relief**  
(Against Verge)

25 80. Mr. Powell incorporates herein by reference every allegation contained in the  
26 preceding paragraphs of this Complaint as though fully set forth herein.

27 81. An actual controversy exists between Mr. Powell, on the one hand, and Verge, on  
28

1 the other, regarding the ownership of the vergeart.com domain and the G Suite and Slack accounts  
2 Mr. Powell registered, paid for, and maintained for years.

3 82. An additional controversy exists between Mr. Powell, on the one hand, and Verge,  
4 on the other, regarding whether Mr. Powell was properly and effectively removed from the Verge  
5 Board.

6 83. A declaratory judgment is therefore needed to resolve these controversies  
7 concerning the parties' rights and interests.

8 84. Specifically, Mr. Powell seeks a declaration that he owns the following domain  
9 names and the following accounts:

10 a. vergeart.com;

11 b. Slack accounts Mr. Powell allowed Verge to use before October 2022; and

12 c. G Suite accounts Mr. Powell allowed Verge to use before October 2022.

13 85. Mr. Powell seeks a declaration that he has at all times had a right to access the  
14 accounts listed in Paragraph 84 and the contents therein.

15 86. Mr. Powell seeks a declaration that Verge abandoned use of the accounts listed in  
16 Paragraph 84.

17 87. Mr. Powell seeks a further declaration that his absences at Verge Board of Directors  
18 meetings before the June 2022 Meeting were not unexcused, and that any absences at Verge Board  
19 of Directors meetings after June 2022 were not unexcused.

20 88. Mr. Powell seeks a further declaration that he remains a member of the Board of  
21 Directors for Verge and that Mr. Cunningham's motion passed at the June 2022 Meeting was not  
22 effective to remove Mr. Powell from the Board of Directors.

23 **THIRD CAUSE OF ACTION**  
24 **Promissory Estoppel**  
(Against Verge)

25 89. Mr. Powell incorporates herein by reference every allegation contained in the  
26 preceding paragraphs of this Complaint as though fully set forth herein.

27 90. As the organization's founder, incorporator, and most significant donor, Verge  
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1 promised Mr. Powell certain benefits vis-à-vis the organization, namely a lifetime seat on the  
2 Board and the ability to be excused from attending all Board meetings.

3 91. Mr. Powell justifiably and foreseeably relied on these promises to his detriment. In  
4 light of Verge's promises, Mr. Powell continued to invest time, effort, and funds into Verge,  
5 including by donating hundreds of thousands of dollars and by providing Verge complimentary  
6 technological services and technical support for years.

7 92. Had Verge informed Mr. Powell that his attendance at Board meetings was  
8 mandatory, he would not have invested this time, effort, and funds into Verge, and would not have  
9 continued to donate money to Verge and provide Verge with complimentary technological services  
10 and technical support. Mr. Powell also would not have allowed Verge to use the web domain and  
11 web accounts that he had owned, registered, and controlled.

12 93. As a proximate result of Verge's conduct, Mr. Powell has suffered and will suffer  
13 damages in an amount to be determined at trial.

14 **FOURTH CAUSE OF ACTION**  
15 **Unjust Enrichment**  
16 **(Against Verge)**

17 94. Mr. Powell incorporates herein by reference every allegation contained in the  
18 preceding paragraphs of this Complaint as though fully set forth herein.

19 95. Through its misconduct and wrongdoing, Verge has wrongfully obtained and  
20 accessed Mr. Powell's assets and services.

21 96. Specifically, while secretly purporting to have declared Mr. Powell's Board seat  
22 vacant as of October 2019, Verge solicited and collected from Mr. Powell more than \$18,500 in  
23 Board member dues and charitable donations since October 2019. Verge also continued to solicit  
24 and rely upon technology services provided by Mr. Powell without compensating Mr. Powell for  
25 those services. Until it abandoned use of the accounts, Verge further continued to use and rely on  
26 the web domain and G Suite and Slack accounts that Mr. Powell owned without compensating Mr.  
27 Powell.

28 97. Verge knew or should have known that it acted in violation of the organization's

1 bylaws in purporting to remove Mr. Powell and that it received benefits deriving from its  
2 misconduct. Verge reaped significant benefit from its wrongful removal of Mr. Powell from the  
3 Board of Directors, and from its wrongful concealment of the same. It would therefore be  
4 inequitable and unjust for Verge to retain the benefits of its unlawful and improper conduct.

5 98. Mr. Powell seeks restitution and an accounting and disgorgement of Verge's ill-  
6 gotten gains.

7 **FIFTH CAUSE OF ACTION**

8 **Defamation**

(Against Verge and Phillip Cunningham)

9 99. Mr. Powell incorporates herein by reference every allegation contained in the  
10 preceding paragraphs of this Complaint as though fully set forth herein.

11 100. In his letter dated November 2, 2022, Mr. Cunningham, individually and acting as  
12 an agent and on behalf of Verge, made false statements to Mr. Powell's employer.

13 101. In telling Mr. Powell's employer that, among other things, Mr. Powell effectively  
14 hacked Verge's domain and accounts, blocked Verge's access to its accounts and domain, and  
15 refused to relinquish control over Verge's domain and accounts, Mr. Cunningham, individually,  
16 and Verge, acting through Mr. Cunningham as its agent, expressed false statements about Mr.  
17 Powell and implied that Mr. Powell was unprofessional and dangerous, and that he had committed  
18 a crime.

19 102. Mr. Cunningham's and Verge's statements were defamatory *per se* for many  
20 reasons, including because they: (a) falsely accused Mr. Powell of committing a crime; (b) injured  
21 Mr. Powell in his office, profession, trade, and business; (c) alleged that Mr. Powell violated the  
22 confidence reposed in him; and (d) charged Mr. Powell with treachery against his associates at  
23 Verge.

24 103. Mr. Powell's employer reasonably understood that Mr. Cunningham's and Verge's  
25 statements were about Mr. Powell. Mr. Powell's employer reasonably understood the above-  
26 described statements to impute dishonesty or questionable professional conduct to Mr. Powell.  
27 The above-described statements convey a defamatory meaning. They harmed Mr. Powell's  
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1 reputation by lowering it.

2 104. Mr. Cunningham and Verge intentionally lied, acted with actual malice, and failed  
3 to use reasonable care to determine the truth or falsity of the statements in the letter.

4 105. Mr. Cunningham and Verge made these statements without privilege or  
5 justification.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

8 1. A final judgment declaring that:

- 9 a. Mr. Powell owns the domain name and accounts listed in Paragraph 84;  
10 b. Mr. Powell has at all times had a right to access the accounts listed in  
11 Paragraph 84 and the contents therein;  
12 c. Verge abandoned use of the accounts listed in Paragraph 84;  
13 d. Mr. Powell's absences at Verge Board of Directors meetings before the June  
14 2022 Meeting were not unexcused, and that any absences at Verge Board of  
15 Directors meetings after June 2022 were not unexcused; and  
16 e. Mr. Powell seeks a further declaration that he remains a member of the  
17 Board of Directors for Verge and that Mr. Cunningham's motion passed at  
18 the June 2022 Meeting was not effective to remove Mr. Powell from the  
19 Board of Directors.

20 2. A preliminary and permanent injunction, prohibiting Verge from:

- 21 a. Holding itself out as having removed Mr. Powell from the Board of  
22 Directors; and  
23 b. Demanding or otherwise claiming that Mr. Powell must relinquish control of  
24 the vergeart.com domain and G Suite and Slack accounts owned by Mr.  
25 Powell.

26 3. Direct, compensatory, incidental, and consequential damages in an amount  
27 according to proof at trial, and exemplary and/or punitive damages to the extent permitted by law.

1           4.       An order disgorging Verge’s ill-gotten gains and any other revenues unjustly  
2 obtained as a result of the misconduct alleged herein.

3           5.       Costs of suit, attorneys’ fees and costs, and prejudgment interest to the extents  
4 recoverable by law.

5           6.       For such other and further relief as this Court may deem just and appropriate.  
6

7 Dated:   June 16, 2023

JENNER & BLOCK LLP

8  
9 By: 

10           Brandon D. Fox  
11           An Tran  
12           Sati Harutyunyan

13           Attorneys for Plaintiff  
14           Jesse Powell

1 **DEMAND FOR A JURY TRIAL**

2 Plaintiff hereby demands a jury trial.

3  
4  
5 Dated: June 16, 2023

JENNER & BLOCK LLP

6  
7 By: 

8 Brandon D. Fox  
9 An Tran  
10 Sati Harutyunyan

11 Attorneys for Plaintiff  
12 Jesse Powell  
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