



### III. PARTIES

3. John L. Lewis (“Lewis”) is an individual residing in McLennan County, Texas. Lewis is a former 33.33% Member of Square MB, LLC d/b/a Magnolia Realty.

4. Richard L. Clark (“Clark”) is an individual residing in McLennan County, Texas. Clark is a former 33.33% Member of Square MB, LLC d/b/a Magnolia Realty.

5. Chip C. Gaines (“Chip”) is an individual and resident of McLennan County, Texas. Chip may be served with process through personal service at 10095 North Highway 6, Crawford, Texas 76638, or wherever he may be found in the State of Texas. Chip is a former 33.33% Member of Square MB, LLC d/b/a Magnolia Realty. Upon information and belief, Chip is currently the 100% Member of Square MB, LLC d/b/a Magnolia Realty.

6. Square MB, LLC d/b/a Magnolia Realty (“Magnolia Realty”) is a limited liability company organized under the laws of the State of Texas. Magnolia Realty is authorized to, and does conduct business in Texas with its principal place of business in McLennan County, Texas. Magnolia Realty may be served with process through personal service on its registered agent for service of process in Texas, Ken Mathis, at the registered office of the registered agent, 7503 Bosque Boulevard, Suite 201, Waco, Texas 76712.

7. Scripps Networks Interactive, Inc. (“SNI”) is a foreign corporation organized under the laws of the State of Delaware which has engaged in conduct constituting business in Texas as defined in *Texas Civil Practice and Remedies Code* § 17.42. It has no place of business in Texas and no registered agent for service and can therefore be served through its statutory agent for service, the Texas Secretary of State at 1019 Brazos Street, Citations Unit, Room 220, Austin, Texas 78701, pursuant to the *Tex. Civ. Prac. & Rem Code* § 17.44.

The Secretary of State should then immediately forward a copy of the citation and petition to its home business at 9721 Sherrill Blvd., Knoxville, Tennessee 37932.

8. Scripps Networks, LLC, (“Scripps Networks”) is a foreign limited liability company organized under the laws of the State of Delaware and may be served with process through its registered agent CT Corporation System at 1999 Bryan St., Suite 900, Dallas, Texas 75201.

9. High Noon Productions, LLC, d/b/a High Noon Entertainment, (“High Noon”) is a foreign limited liability company organized under the laws of the State of Colorado which has engaged in conduct constituting business in Texas as defined in *Texas Civil Practice and Remedies Code* § 17.42. It has no place of business in Texas and no registered agent for service and can therefore be served through its statutory agent for service, the Texas Secretary of State at 1019 Brazos Street, Citations Unit, Room 220, Austin, Texas 78701, pursuant to the *Tex. Civ. Prac. & Rem Code* § 17.44. The Secretary of State should then immediately forward a copy of the citation and petition to its home business at 3035 South Parker Road, Suite 500, Denver, Colorado, 80014.

#### IV. VENUE AND JURISDICTION

10. This Court has subject-matter jurisdiction over this lawsuit because the amount in controversy is within this Court’s jurisdictional limits.

11. Venue is proper in McLennan County, Texas:

- (a) Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), because all or a substantial part of the events or omissions giving rise to the claims asserted herein occurred in McLennan County, Texas;

(b) Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(2), because at the time the causes of action accrued, Chip’s residence was in McLennan County, Texas; and

(c) Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(3) because Magnolia Realty’s principal office is in McLennan County, Texas.

## V. FACTUAL BACKGROUND

### A. Magnolia Realty Owes Its Existence to Chip’s Relationship With Plaintiffs

12. Magnolia Realty is a full-service real estate company that was formed in May 2007, from humble beginnings in Waco, Texas. Magnolia Realty was co-founded by Waco residents Lewis, Clark, and Chip (the “Initial Members”), who initially envisioned the enterprise as a property management company.

13. For the first six years following Magnolia Realty’s inception, it largely operated with one real estate agent in Waco, Texas. Today, Magnolia Realty is now a major real estate company, operating in Waco, Austin, Dallas, Houston, Temple, Belton and Killeen, Texas, with an army of over 93 real estate agents.

14. As discussed below, the Defendants’ promotion of “Magnolia Realty” as the creation of Chip and Joanna Gaines (collectively, “the Gaines”) is part of a branding strategy: the co-mingling Magnolia Realty with a collection of other “Magnolia” entities that ride the coat-tails of the Gaines’ reality television show *Fixer Upper*. The satellite “Magnolia” entities, including Magnolia Realty, have financially benefited from Defendants’ uncompensated promotion of those businesses and the “Magnolia” name through the nationally broadcast show *Fixer Upper*, which airs on HGTV, a station owned and operated by Defendants SNI and Scripps Networks.

15. Immediately prior to, and as a condition of, the meteoric launch of *Fixer Upper* by SNI, Scripps Networks, and High Noon, the Defendants sought to consolidate the Gaines ownership of “Magnolia” related businesses. After a meeting of “a group of secret top ranking executives at HGTV” and the decision to air the Gaines’ show, Chip Gaines contacted Plaintiffs Lewis and Clark about buying out their two-thirds ownership interest in Square MB, LLC, d/b/a Magnolia Realty. On April 26, 2013, when Chip Gaines initiated the buyout discussion with John Lewis, Chip Gaines knew that Magnolia Realty was about to receive nationwide advertising through HGTV’s airing of *Fixer Upper*. On April 28, 2013, Chip Gaines writes to Lewis, “I’d be scared to see how this would work if it [Magnolia Realty] was worth something.... The only thing I have to have is magnolia when the dust clears.”

16. Chip Gaines did not disclose to Lewis or Clark that HGTV decided to broadcast *Fixer Upper* nationally and that the show prominently featured the “Magnolia” brand name.

17. On April 29, 2013, Chip Gaines filled out and signed Texas Secretary of State Form 424 deleting Lewis and Clark as members of Square MB, LCC. On May 1, 2013, Chip Gaines told Lewis that he would buy Lewis’ and Clarks’ ownership interest in the Square MB, LLC, d/b/a Magnolia Realty. Also on May 1, 2013, Douglas Eastland, an employee of Chip Gaines, wrote to Rick Clark saying that the transfer of ownership of Magnolia Realty needed to be completed by May 6, 2013.

18. The purchase of 66% of Magnolia Realty for \$5,000.00 by the Gaines was finalized on May 6, 2013. Two days later, on May 8, 2013, Chip Gaines publicly announced that his show was picked up to be broadcast across the nation on HGTV. In

Chip Gaines' e-mail, he stated that the decision by SNI, Scripps Networks, and High Noon had been made three weeks earlier.

19. In summary, at a time when only the Defendants knew that *Fixer Upper* had been fast-tracked for a one-hour premier on HGTV and was on the verge of radically changing their lives and business enterprises, Chip Gaines conspired to eliminate his business partners—notwithstanding their longstanding friendship—in order to ensure that he alone would profit from Magnolia Realty's association with *Fixer Upper*.

20. With this insider information in hand, Chip Gaines convinced Plaintiffs to sell their membership interests in Magnolia Realty quickly to him before a public announcement that *Fixer Upper* was picked up by HGTV. Chip Gaines forced the sale of the business for a fraction of its true value by hiding the fact that “Magnolia” was soon to receive nationwide advertising and branding. Chip Gaines told Lewis and Clark, “There are no assets” and that the company is “less than worthless.” As discussed below:

- (a) Chip Gaines was in a position of greater knowledge than Plaintiffs about the Gaines' new relationship with *Fixer Upper* and the financial boon it would bring to Magnolia Realty;
- (b) Chip deliberately withheld information given to him by SNI and Scripps Networks from, and engaged in half-truths with, Plaintiffs, who trusted him, when he had a duty to speak;
- (c) Chip pressed Plaintiffs to sell him their membership interests in Magnolia Realty for \$2,500 each, describing Magnolia Realty as a distressed company, all the while remaining silent about the Gaines' new relationship with SNI, Scripps Networks and High Noon; and

(d) Chip has profited greatly from this conduct, buying the remaining 66.6% of Magnolia Realty at a “fire sale” price—a company whose revenue and profits have since grown exponentially following *Fixer Upper*, and which has gone from employing a lone real estate agent to over 93 real estate agents all over Texas and which has been described by the *Austin Business Journal* as “among the most successful in town.”

**B. Before the Formation of Magnolia Realty, Lewis Developed A Close, Personal Relationship Of Trust And Confidence With Chip**

21. Lewis first met Chip in approximately 1999. At the time, Chip was seeking legal services and he was referred to Lewis, who is an attorney, by a Baylor University business professor. Over the ensuing years, Lewis and Chip gladly provided their professional services to each other, free of charge. Lewis provided Chip with his legal services, as needed, and Chip reciprocated by occasionally performing repairs to Lewis’ home, free of charge.

22. While Chip by far received the better financial end of the bargain with this arrangement, Lewis did not mind because his professional relationship with Chip eventually blossomed into a close personal and professional friendship, due to their shared interests and mutual trust for one another.

**C. Lewis And Chip Decided To Co-Found Magnolia Realty With Clark, Who Would Serve As The Company’s Sponsoring Real Estate Broker**

23. As a product of this friendship and mutual trust, Lewis and Chip began to socialize with one another more and more. In 2006, they began to discuss the possibility of starting a new business venture that would provide property management services. Lewis’ and Chip’s once casual conversations eventually transformed into concrete plans to start a real estate brokerage firm that would initially provide property management services.

24. In order to form a real estate brokerage firm, the company would need to be sponsored by a real estate broker. Accordingly, with the agreement of Chip, Lewis invited his longtime friend, Clark, a licensed real estate broker, to become a third co-founder and equal Member of the company. While Clark was not close with Chip at the time, he felt comfortable becoming a business partner with Chip based upon Chip's close, personal relationship of trust and confidence with Lewis, whom Clark knew he could trust.

25. The Initial Members ultimately agreed to name the company "Square MB, LLC, d/b/a Magnolia Realty," and Magnolia Realty was formed on or about May 4, 2007.

**D. Magnolia Realty's Bylaws Vest Each Member/Manager—and Former Member/Manager—With the Right to Indemnification, Including Attorney Fees**

26. At the time Magnolia Realty was formed, the Initial Members memorialized the company's bylaws and the initial capital contributions of its Members in the Company Agreement. Pursuant to the Company Agreement, the Initial Members became the initial three Members and Managers of Magnolia Realty and each held a 33.33% ownership interest in the company.

27. As Members, the Company Agreement vested the Initial Members with the right to indemnification by Magnolia Realty for any expenses—including attorney's fees—incurred in any proceeding related to their being Members and Managers of Magnolia Realty. The right to indemnification survives membership in Magnolia Realty. Consequently, by virtue of having been Members and Managers of Magnolia Realty, Plaintiffs still have the right to indemnification by Magnolia Realty (emphasis added):

**10.01 Right to Indemnification.** Subject to the limitations and conditions as provided in this Article, **each person** who was or is made a party or is threatened to be made a party to or is **involved in any Proceeding**, or any appeal in such a Proceeding, or any inquiry or investigation that could lead to such a Proceeding, **by reason of the fact that he or she**, or a person of whom he or she is the legal representative, **is or was a Member or Manager of the**

**Company** or while a Member or Manager of the Company is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise **shall be indemnified by the Company to the fullest extent permitted by the TBOC**, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) **against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorney's fees) actually incurred by such person in connection with such Proceeding, and indemnification under this Article shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder.** The rights granted pursuant to this Article shall be deemed contract rights, and no amendments, modification or repeal of this Article shall have the effect of limiting or denying any such rights with respect to actions taken or Proceeding arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article could involve indemnification for negligence or under theories of strict liability.

**E. Lewis' Close, Personal Relationship Of Trust And Confidence With Chip Was Further Solidified Following Magnolia Realty's Formation**

28. Over the course of the ensuing years, Lewis' close personal and professional relationship with Chip continued to blossom and Lewis became accustomed to being guided by the judgment and advice of Chip. Lewis frequently went to lunch with Chip, they went on several hunting excursions together, and they talked with each other at least every other day—often sharing opinions on properties that were listed on the Multiple Service Listing (“MLS”).

29. Lewis' and Chip's appreciation of one another also bled into their families, who also happened to live in the same neighborhood, mere houses away from one another and from Clark.

30. As such, it was not uncommon for their families to interact with each other. Indicative of their friendship, on May 17, 2012, Chip jokingly sent Lewis an e-mail stating,

“Jojo says she wants to kiss you,” which was meant to thank Lewis for recent legal services he had provided free of charge.

31. Similarly, through the operation of Magnolia Realty, Chip and Clark also became friends and would occasionally have lunch together to socialize and discuss opinions on properties that were listed on the MLS.

**F. After Secretly Learning That *Fixer Upper* Was To Be Fast-Tracked For A One-Hour Premier On HGTV, Chip Devised A Plan To Build The “Magnolia” Name Into An Empire Without His Business Partners**

32. At some point in 2012 or perhaps earlier, the Gaines began communicating with a production company—now known to be Defendant High Noon, doing business as “High Noon Entertainment”—about being filmed and possibly pitched for a reality television show. The Gaines filmed in October 2012 for a pilot episode that might be aired on cable TV at some point in the future. However, Chip was largely silent about this opportunity and Plaintiffs, who were not privy to any ongoing discussions the Gaines were having with HGTV, had no reason to believe that anything would ever materialize from the work with High Noon. When Chip pressured Plaintiffs to sell him their membership interests in Magnolia Realty for a relatively nominal amount in April 2013, Plaintiffs had no reason to believe that Chip had an ulterior business motive.

33. Unbeknownst to the general public, including Plaintiffs, in April 2013, executives with SNI and Scripps Networks decided to fast-track *Fixer Upper* for a one-hour special on HGTV network instead of first vetting the show through a series of focus groups. The Gaines were privy to this information and understood that SNI’s and Scripps Networks’ decision to accelerate the premiere of *Fixer Upper* on national television translated to the impending success of the Gaines, and with them, the Magnolia brand. Armed with this knowledge, Chip devised a plan to eliminate his business partners—notwithstanding

their longstanding friendship—in order to ensure that he alone would profit from Magnolia Realty’s association with *Fixer Upper*.

34. At this time, Chip and Joanna Gaines had plans to build the “Magnolia” name into an empire using *Fixer Upper* as a catalyst—a similar strategy that has been used by other individuals to capitalize on their fame. For example:

- (a) The Olson Twins used their fame following *Full House* and various other acting roles to create and promote a fashion empire that now commands annual sales of \$1 billion.
- (b) Martha Stewart used her fame following her successful foray into the homemaking industry to promote her media and licensing empire, which is now valued at over \$1 billion.
- (c) The Kardashians monetized their last name, following *Keeping Up with the Kardashians*, to create clothing lines and mobile apps that have generated millions of dollars in annual revenue.

35. While Chip fully intended to monetize the Magnolia Realty name, the thought of sharing with his business partners any benefits that flowed from *Fixer Upper* was apparently repulsive to him. As has become clear, Chip regarded his business partners—longstanding friends—as an impediment because they owned 2/3 of Magnolia Realty. Simply put, Chip wanted the entire pie for himself. Sharing the “Magnolia” name with anyone else was unacceptable.

**G. Chip Pressured Plaintiffs To Sell Him Their Membership Interests In Magnolia Realty Before They Discovered The Company’s Value Was Radically Enhanced By *Fixer Upper***

36. On April 26, 2013, Chip reached out to Lewis and said they needed to talk. Lewis called Chip, who abruptly pressured Plaintiffs to sell him their membership interests

in Magnolia Realty, framing Magnolia Realty as a distressed company that was barely worth anything. Chip further reiterated Magnolia Realty's nominal value in subsequent text messages to Lewis (emphasis added):

But we have rent mon or tues so that's why Doug says its hi [sic] at the end of the mo. He said in a week and a half it will be 8k. So if he [Clark] balks tell him let's wait a week or so and do it then, 2500 as embarrassing as it is. Is not bad on 0\$ invested.

. . .

I really am ok w what ever [sic]. **There are no assets.** The acct fluctuates so its [sic] hard to nail that down. . . .

37. Chip further explained that if Plaintiffs refused to sell their membership interests, he would start a competing real estate brokerage firm and would take Magnolia Realty's sole real estate agent, Doug Eastland ("Eastland"), with him. Furthermore, Chip made it clear that all he wanted was the Magnolia name: "The only thing I have to have is [M]agnolia when the dust clears."

#### **H. Plaintiffs Sold Their Membership Interests In Magnolia Realty, Unaware Of Chip's Discussions With HGTV, Or The True Value Of The Company**

38. Chip became so fixated on securing the Magnolia name that he didn't care if he offended or threatened anyone along the way. For example, when Clark made it clear he wasn't happy with Chip trying to lower the buyout even more, Chip sent the following text message to Lewis, threatening to resort to crass school yard behavior (emphasis added):

**You better tell Rick to be careful.** I don't come from the nerdy prep school he's from. **And when people talk to me that way they get their asses kicked.** And if he's not ready to do that he better shut his mouth. I'm not the toughest guy there is, but I can assure you that would not end well for [R]ick.

39. Ultimately, Plaintiffs agreed to sell each of their respective membership interests to Chip for \$2,500. On May 1, 2013, at the direction of Chip, Eastland sent an e-mail to Clark, pushing for the transition to be completed by May 6, 2013 (emphasis added):

Chip told me Sunday about the changes going on and that an agreement between the three of you had been reached. I hope that works out best for you guys.

...

**If possible for you, we would like to make the change this coming Monday, May 6th.** If that works for all three, I will move forward with that process and cut checks to you and John at Chips [*sic*] direction.

40. Following this buyout, a Certificate of Amendment was filed with the Office of the Secretary of State of Texas, expelling Plaintiffs from the company. Had Plaintiffs been privy to the Gaines' ongoing discussions with SNI and Scripps Networks, or known what Chip knew, including the prospects for Magnolia Realty, they would have never agreed to sell their membership interests in Magnolia Realty for \$2,500.

41. At the time that Chip induced Plaintiffs to sell their membership interests in Magnolia Realty, Chip was privy to information regarding the future of *Fixer Upper* and he knew that *Fixer Upper's* future with HGTV stood to be a financial windfall for Magnolia Realty—precipitating the urgent need for Chip to eliminate Plaintiffs as Members of Magnolia Realty before the pilot episode of *Fixer Upper* aired on television.

42. In doing so, Chip was deliberately silent when he had a duty to speak. Again, had Plaintiffs been privy to the Gaines' knowledge about the future of *Fixer Upper*, they would have never agreed to sell their membership interests in Magnolia Realty for the amount agreed upon.

43. Following the sale of Plaintiffs' shares in Magnolia Realty, the final e-mail Lewis ever received from Chip—in a friendship that had previously enjoyed the exchange of hundreds, if not thousands, of e-mails—was on May 8, 2013, inviting him to come to a watch party for *Fixer Upper*, which would be airing later that month (emphasis added):

You may have heard by now, but JoJo and I have spent (nearly) the last year of our lives working on a pilot for HGTV. If you are like me, a year ago, I would have almost no idea what that means. Simply put, Joanna was contacted by a production company about a year ago regarding some work she had done online for a fellow blogger. That lead [sic] through 3 series of cuts (versions of the show). Each more complicated and time consuming than the one before it. The name of the show ranged from “keeping up with the Gaines”, which was my vote all along for obvious reasons, all the way to what we have today, which is “Fixer Upper”.

**The final obstacle was just a few weeks ago when a group of secret top ranking executives (who probably don't even exist, or have any idea who we are) at HGTV sat down and watched our show. The 2 options that could have come from that meeting were: 1. Take this product to a series of focus groups and have them revise it even more or [2.] skip the focus groups and air it as a one hour special. They chose the latter, and our show, “Fixer Upper” will officially air May 23, 2013, at (check your local listings) 7, 8, or 9pm.**

44. This was the first instance in which Plaintiffs learned that HGTV's executives had decided to fast-track *Fixer Upper* for a one hour special instead of first vetting the show through a series of focus groups. Likewise, it was also the first instance in which Plaintiffs had any indication that the Gaines' television show may actually become a reality.

#### **I. The Gaines Have Used *Fixer Upper* To Self-Promote The Magnolia Brand, Which Has Grown Exponentially As A Result Of The Gaines' Marketing**

45. Without a doubt, Chip has profited from his silence and subsequent acquisition of all membership interests in Magnolia Realty. Since May 2013, Magnolia Realty has grown from employing one individual to over 93 real estate agents, and a support staff, and now operates in nearly every major city in Texas.

46. In December 2015, the Austin Business Journal published an article discussing the Gaines' “Magnolia” empire:

Though the TV gig—now in its third season—would be success enough for most, behind the scenes the couple also own a construction company, manage a residential real estate brokerage firm and operate Joanne's design and décor retail store called Magnolia Market at the Silos, the new flagship store opened in October.

Humble beginnings have multiplied into a workforce approaching 100 and an economic impact on Waco—about 100 miles north of Austin on I-35—that is hard to quantify other than to say, “It’s big.”

47. Magnolia Realty’s unheralded growth can be directly attributed to *Fixer Upper*’s popularity on HGTV. Indeed, the prevalence of “Magnolia” on *Fixer Upper* has not gone unnoticed. For example, *Looper*, an online entertainment publication, reported (emphasis added):

**Even occasional watchers of Fixer Upper will quickly notice a recurring theme: [M]agnolia. The Gaines’ real estate business is named Magnolia Realty, and their property renovation company is called Magnolia Homes. The gated community they’re building is known as Magnolia Villas, and Joanna’s retail store is the Magnolia Market. Their new bakery? Magnolia Flour. Their 40-acre home sweet home is called Magnolia Farms. Their bed and breakfast is the Magnolia House. It’s safe to assume the word bears significance.**

48. *Fixer Upper*’s positive impact on Magnolia Realty cannot be understated. Indeed, the Austin Business Journal has reported that real estate agents have relocated to Waco, Texas, merely for the opportunity to work with the Gaines:

[T]heir real estate agents are among the most successful in town. Some of them moved to Waco for the sheer joy of working for the Gaineses.

49. Furthermore, the scope of the Gaines’ self-promotion of their “Magnolia Empire”—*e.g.*, Magnolia Realty, Magnolia Homes LLC, Magnolia Silos LLC—on (1) *Fixer Upper*, (2) social media, and (3) retail markets arguably rivals Donald Trump’s ubiquitous brand marketing. For example:

- (a) The Gaines’ Magnolia House Bed and Breakfast is promoted on HGTV’s website;
- (b) The Gaines have promoted Magnolia Realty on Twitter—a social networking site in which Chip has over 228,000 followers and Joanna has over 286,000 followers;

- (c) The Gaines have promoted Magnolia Realty on Instagram—a social networking site in which Chip has 1.2 million followers and Joanna has 2.8 million followers;
- (d) The Gaines have promoted Magnolia Realty through their magnoliamarket.com website, which co-mingles the “Magnolia Empire” with *Fixer Upper* on one website;
- (e) Further, the Gaines continue to promote the “Magnolia” name through their book, *The Magnolia Story*, which was released in late 2016; and
- (f) Similarly, the Gaines have promoted the “Magnolia” name—which their publisher has labeled the “Powerhouse Magnolia Brand”—in a new lifestyle magazine launch in the Fall of 2016, with an initial circulation of 400,000 copies nationwide.

50. Finally, Chip and Magnolia Realty have reaffirmed their intent to continue to use the “Magnolia” name. On June 28, 2016, Magnolia Realty filed an Assumed Name Certificate with the Office of the Secretary of State of Texas regarding its intent to use—and profit from—“Magnolia Realty” as an assumed name for the next ten years.00

## **VI. CONSPIRACY LIABILITY OF ALL DEFENDANTS**

51. On information and belief, Defendants Chip, SNI, Scripps Networks, High Noon and Magnolia Realty combined, had a meeting of the minds and conspired to commit one or more of the acts and omissions described above with the unlawful goal of wrongfully inducing Plaintiffs to sell their majority membership interest in Magnolia Realty to Chip for a fraction of its true value.

52. As a proximate result of such acts, Plaintiffs have suffered damages, including, but not limited to actual damages, consequential damages and exemplary

damages as a result of Defendants' intentional conduct, as set forth in detail herein and incorporated herein by reference.

53. As such, Defendants Chip, SNI, Scripps Networks, High Noon and Magnolia Realty are vicariously liable for the tortious conduct alleged herein and for the damages to Plaintiff proximately caused as a result.

## VII. CLAIMS AND CAUSES OF ACTION

### **Count 1: Breach of Fiduciary Duty**

54. The preceding paragraphs are incorporated herein by reference as if repeated verbatim.

55. As a personal friend and confidant of Lewis, whom Lewis justifiably became accustomed to being guided by the judgment and advice of, Chip had a special relationship of trust and confidence with Lewis and therefore owed him a fiduciary duty.

56. Lewis was justified in his belief that Chip would act in his best interest because he had become accustomed to being guided by the judgement or advice of Chip and there was a long-standing professional and personal relationship between the two individuals, separate and apart from the relationship involving Magnolia Realty.

57. Chip breached his fiduciary duty to Lewis by failing to disclose *Fixer Upper's* future with HGTV, including but not limited to, HGTV's executives' decision to fast-track *Fixer Upper* for a one-hour special instead of first vetting the show through a series of focus groups—information that would have changed Lewis' valuation of Magnolia Realty, as well as any business plans to develop the Magnolia brand for the benefit of Magnolia Realty.

58. Lewis' damages are a proximate result of Chip's intentional breach of his fiduciary duties to Lewis, which directly and indirectly injured Lewis. Chip breached his

fiduciary duties to Lewis intentionally, with the purpose of gaining numerous, valuable, additional, and unwarranted benefits for himself at the expense of Lewis.

59. Lewis seeks the following remedies and damages for Chip's breach of his fiduciary duties:

- (a) Rescission of the sale of Plaintiffs' membership interests in Magnolia Realty; or, in the alternative, fair value for Plaintiffs' 2/3 ownership interest in Magnolia Realty;
- (b) Payment of all salaries, bonuses, in-kind benefits and distributions Plaintiffs would have received had they remained Members and Managers of Magnolia Realty;
- (c) Disgorgement of all profits, including distributions, made by and through the breach of Chip's fiduciary duties;
- (d) Forfeiture of all fees collected by Chip, including distributions and salary, made by and through the breach of Chip's fiduciary duties;
- (e) Exemplary damages, as a result of Chip's intentional breach of his fiduciary duties; and
- (f) An accounting of all valuable tangible and intangible property of Chip.

**Count 2: Fraud by Nondisclosure**

60. The preceding paragraphs are incorporated herein by reference as if repeated verbatim.

61. Chip concealed from and failed to disclose key information to Plaintiffs regarding *Fixer Upper's* future with HGTV, including but not limited to, HGTV's executives' decision to fast-track *Fixer Upper* for a one-hour special instead of first vetting the show through a series of focus groups—information that would have changed Plaintiffs' valuation

of Magnolia Realty, as well as business plans to develop the Magnolia brand for the benefit of Magnolia Realty. Chip had a duty to disclose this information to Plaintiffs because (1) Chip had informal fiduciary duties to Lewis; and (2) Chip created a false impression that Magnolia Realty was less valuable than it actually was by engaging in a series of half-truths that only addressed the company's tangible assets when he knew the company was worth much more as a result of *Fixer Upper*.

62. In doing so, Chip was deliberately silent when he had a duty to speak. Worse, Chip knew that Plaintiffs were unaware *Fixer Upper* was being fast-tracked for a one-hour special and had business plans to develop the Magnolia brand for the benefit of Magnolia Realty. By failing to disclose the existence of crucial information to Plaintiffs, Chip intended to induce Plaintiffs to sell their membership interests to him for a fraction of their true value.

63. Plaintiffs relied upon Chip's half-truths to their detriment. Had Plaintiffs been privy to Chip's ongoing discussions with HGTV, and known what Chip knew, they would have never agreed to sell their membership interests in Magnolia Realty to Chip for \$2,500 apiece.

64. As a proximate cause, Plaintiffs were damaged and will continue to be damaged in an amount exceeding the jurisdictional minimum of this Court. Accordingly, Plaintiffs seek to recover their damages including, but not limited to rescission of Plaintiffs' sale of their membership interests in Magnolia Realty, and exemplary damages as a result of Chip's intentional conduct.

### **Count 3: Statutory Fraud**

65. The preceding paragraphs are incorporated herein by reference as if repeated verbatim.

66. Chip committed fraud in a transaction involving stock in a corporation. Specifically, by engaging in a series of half-truths that only addressed the company's tangible assets when he knew the company was worth far more as a result of *Fixer Upper*, Chip made false representations of material fact.

67. Chip had actual awareness of the falsity of his representations (*i.e.*, half-truths) to Plaintiffs, he failed to disclose the falsity of these representations to Plaintiffs, and he benefited from the false representations he made to Plaintiffs.

68. Chip made these representations to Plaintiffs for the purpose of inducing Plaintiffs to agree to sell their membership interests in Magnolia Realty for \$2,500 apiece.

69. Plaintiffs relied upon Chip's half-truths to their detriment. Had Plaintiffs been privy to Chip's ongoing discussions with HGTV and marketing plans for Magnolia Realty, and known what Chip knew, they would have never agreed to sell their membership interests in Magnolia Realty for \$2,500 apiece.

70. Plaintiffs are statutorily entitled to seek redress under TEX. BUS. & COMM. CODE ANN. § 27.01. Accordingly, Plaintiffs seek the following remedies and damages for Chip's statutory fraud, as authorized by statute and in equity:

- (a) Rescission of the sale of Plaintiffs' membership interests in Magnolia Realty; or, in the alternative, fair value for Plaintiffs' 2/3 ownership interest in Magnolia Realty;
- (b) Exemplary damages, as a result of Chip's actual awareness of the falsity of his representations;
- (c) Reasonable and necessary attorney's fees;
- (d) Expert witness fees;
- (e) Costs for copies of depositions; and

(f) Costs of Court.

**Count 4: Declaratory Judgment**

71. The preceding paragraphs are incorporated herein by reference as if repeated verbatim.

72. A genuine case and controversy exists between Plaintiffs and Defendants, within the jurisdiction of this Court, and involving rights, status, and other legal relations of the parties. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.002(b).

73. Pursuant to the UNIFORM DECLARATORY JUDGMENTS ACT, Plaintiffs seek the following declarations from the Court:

(a) Lewis and Clark own 2/3 of Magnolia Realty

(b) Pursuant to the Company Agreement, Members and Managers of Magnolia Realty have a right to indemnification by Magnolia Realty for any expenses—including attorney’s fees—incurred in any proceeding related to their being Members or Managers of Magnolia Realty;

(c) Pursuant to the Company Agreement, former Members and Managers of Magnolia Realty also have a right to indemnification by Magnolia Realty for any expenses—including attorney’s fees—incurred in any proceeding related to their being previously Members or Managers of Magnolia Realty; and

(d) Pursuant to the Company Agreement, as previous Members and Managers of Magnolia Realty, Plaintiffs have a right to indemnification by Magnolia Realty for all expenses incurred in this lawsuit—including attorney’s fees—regardless of whether they prevail on a central issue in this lawsuit.

74. Furthermore, separate from Plaintiffs’ right to indemnification under the Company Agreement, pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009, Plaintiffs are

entitled to recover their reasonable attorneys' fees and costs, which are prayed for herein. Plaintiffs have retained the undersigned attorneys and have agreed to pay their reasonable and necessary attorneys' fees.

### **VIII. Conditions Precedent**

75. Pursuant to Texas Rule of Civil Procedure, Rule 54, all conditions precedent to Plaintiffs' recovery against Defendants have been performed, have occurred, or have been waived.

### **IX. Prayer for Relief**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that they be awarded a judgment against Defendants for:

- (i) Declaratory relief in accordance with the relief requested in Paragraph 49, above;
- (ii) Rescission of the sale of Plaintiffs' membership interests in Magnolia Realty; or, in the alternative, fair value for Plaintiffs' 2/3 ownership interest in Magnolia Realty;
- (iii) Payment of all salaries, bonuses, in-kind benefits and distributions Plaintiffs would have received had they remained Members and Managers of Magnolia Realty;
- (iv) Disgorgement of all profits, including distributions, made by and through the breach of Chip's fiduciary duties;
- (v) Forfeiture of all fees collected by Chip, including distributions and salary, made by and through the breach of Chip's fiduciary duties;

- (vi) Imposition of a constructive trust on proceeds, funds, or property obtained as a result of the breach of Chip's fiduciary duties;
- (vii) Exemplary damages, as a result of Chip's intention breach of his fiduciary duties;
- (viii) An accounting of all valuable tangible and intangible property received by Chip;
- (ix) Reasonable and necessary attorneys' fees and expenses through trial and the appeals process;
- (x) Prejudgment and post-judgment interest;
- (xi) Costs of Court;
- (xii) Costs for copies of depositions;
- (xiii) Expert witness fees;
- (xiv) All other relief, at law or in equity, to which Plaintiffs are justly entitled.

**X. REQUEST FOR DISCLOSURE TO DEFENDANTS**

Pursuant to Rule 194, you are requested to disclose, within fifty (50) days of service of this Request, the information or material described in Texas Rule of Civil Procedure 194.2.

Respectfully submitted,

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