

---

Ethylon B. "E.B." Brown, *et al*,

Civil Case No. 27-CV-09-2277

Plaintiffs,

**SECOND AMENDED COMPLAINT**

v.

*[PROPOSED: ADDITIONS ARE BOLDED  
AND [ ] INDICATES A DELETION]*

**Jordan Area Community Council, as  
nominal defendant and defendant employer,**

Michael "Kip" Brown, John "P.J." Hubbard,  
Robert Hodson, Ann McCandless,  
Don Samuels (in his individual and  
official capacities), Barbara Johnson  
(in her individual and official capacities),  
Michael Martin (in his individual and  
official capacities), and John Does 1-5,

Defendants.

---

**SUMMARY OF CLAIMS** *[sections have been removed]*

The Jordan Area Community Council ("JACC"), is a duly-organized Minnesota Non-profit Corporation, pursuant to Minn. Stat. Chap. 317A. Plaintiffs sue under Minn. Stat. §317A.751 for various violations of fiduciary duty or other corporate duties or expectations. Plaintiffs allege that certain City Defendants aided and abetted the other defendants in violating various duties or laws as alleged herein.

Plaintiffs also sue those who intentionally interfered with the contract/Bylaws of JACC, and/or who aided and abetted same.

This complaint contains additional claims Including breach of fiduciary duty and breach of contract (for Plaintiff Jerry Moore).

## **PARTIES**

### ***Plaintiffs***

1. Plaintiff Ethylon B. “E.B.” Brown is a resident of Hennepin County, a “voting member” of JACC, and a “director” for purposes of Minn. Stat. §317A.751 and under the Bylaws of the corporation. She was duly elected an Officer (Chair) in November 2008, and as such was duly a member of the Executive Committee as of January 2009. She has never resigned her Officer position, and never acquiesced in the unlawful takeover. She sues in her capacity as voting member, director, and Officer.

2. Plaintiff Benjamin E. Myers is a resident of Hennepin County, a “voting member” of JACC, and a “director” for purposes of Minn. Stat. §317A.751 and under the Bylaws of the corporation. He was duly elected an Officer (Vice Chair (he is also ex officio Vice Chair due to his capacity as immediate past Chair)) in November 2008, and as such was duly a member of the Executive Committee as of January 2009. He has never resigned his Officer position, and never acquiesced in the unlawful takeover. He sues in his capacity as voting member, director, and Officer.

3. Plaintiff Robert “Bob” Scott is a resident of Hennepin County, a “voting member” of JACC, and a “director” for purposes of Minn. Stat. §317A.751 and under the Bylaws of the corporation. He was duly elected an Officer (Treasurer) in November 2008, and as such was duly a member of the Executive Committee as of January 2009. He was disgusted by the events of January 14, 2009, but sues now in his capacity as voting member and director.

4. Plaintiff Shannon Hartfiel is a resident of Hennepin County, a “voting member” of JACC, and a “director” for purposes of Minn. Stat. §317A.751 and under the Bylaws of the corporation. She was duly elected an Officer (Secretary) in November 2008, and as such was duly a member of the Executive Committee as of January 2009. She has never resigned her

Officer position, and never acquiesced in the unlawful takeover. She sues in her capacity as voting member, director, and Officer.

5. Plaintiff Robert Wilson is a resident of Hennepin County. He is a director of JACC and a voting member, and he sues in both those capacities.

6. Plaintiff Steve Jackson is a resident of Hennepin County. He is a director of JACC and a voting member, and he sues in both those capacities.

7. Plaintiff Dokor Dejvongsa is a resident of Hennepin County. She is a former director of JACC and a voting member. She sues in her capacity as voting member.

8. Plaintiff William J. Brown is a resident of Hennepin County and a voting member of JACC, and sues in that capacity.

9. Plaintiff Kenya Weathers is a resident of Hennepin County and a voting member of JACC, and sues in that capacity.

10. Plaintiff DeEett Davis is a resident of Hennepin County and a voting member of JACC, and sues in that capacity.

11. Plaintiff Tamara Hardy is a resident of Hennepin County and a voting member of JACC, and sues in that capacity.

12. Plaintiff Jernel McLane is a resident of Hennepin County and a voting member of JACC, and sues in that capacity.

13. Plaintiff Lafeyette Butler is a resident of Hennepin County and a voting member of JACC, and sues in that capacity.

14. Plaintiff Jerry Moore is a resident of Hennepin County and was hired by JACC as Executive Director, pursuant to a definite term written employment contract. He sues as an individual, but he also is/was a member of JACC by virtue of his employment with JACC.

15. Plaintiffs sue for direct claims. However, in the event any of these are deemed derivative claims, then Plaintiffs note that it would have been futile to make a demand on the [] **takeover** team claiming management **at the time the Complaint was filed**, because they are not disinterested and/or independent, **and because they have been accused of misconduct in conducting the affairs of the corporation**. For all the reasons noted below, they have worked in concert with third parties and not in the best interests of the corporation/membership, they have been disloyal to the corporation (one cannot act loyally as a corporate director by causing the corporation to violate the positive laws it is obliged to obey), and they lack independence because they are subject to a claim for breach of fiduciary duty (see below).

### ***Defendants***

16. Defendant Jordan Area Community Council (“JACC”) is a non-profit corporation duly organized under the law of the State of Minnesota (Chapter 317A), and granted 501(c)(3) status by the Internal Revenue Service. It began its corporate status as the Jordan Area Action Committee, in 1965, duly filing its Articles of Incorporation and Bylaws with the Minnesota Secretary of State, Charter No. F-780. The corporation changed its name and filed Articles of Incorporation with the Secretary of State in 1970 (Attachment A hereto **initial complaint**). Change of address forms have been filed since that date. JACC is a nominal defendant for purposes of the declaratory judgment under Minn. Stat. §317A.751. It is an **employer** defendant for purposes of Jerry Moore’s breach of contract claim. JACC is not a part of the City of Minneapolis, and nothing in its Articles of Incorporation or Bylaws allow the City

of Minneapolis to dictate its actions or governance. It is governed by its Articles and Bylaws, and pursuant to state statute.

17. Defendant Michael “Kip” Browne is a resident of Hennepin County, and a member of JACC. He was elected a director in October 2007. He worked with Minneapolis Council Member Don Samuels **and others** to stage a **takeover** [] of JACC governance [] he is now claiming that he is the “Chair” of JACC and its Executive Committee. []

18. Defendant John “P.J.” Hubbard is a resident of Hennepin County, and a member of JACC. He was elected a director in October 2007. He worked with **others** [] to stage a **takeover** [] of JACC governance, and as a result of the illegal process (which failed to follow JACC Bylaws or state statute), he is now claiming that he is the “Vice Chair” of JACC. []

19. Defendant Robert Hodson is a resident of Hennepin County, and a member of JACC. He was elected a Director on January 12, 2009. He worked with **others** [] to stage a takeover [] of JACC governance, and as a result of the illegal process (which failed to follow JACC Bylaws or state statute), he is now claiming that he is the “Treasurer” of JACC. []

20. Defendant Anne McCandless is a resident of Hennepin County, and a member of JACC. She was elected a Director on January 12, 2009. She worked with **others** [] to stage a **takeover** [] of JACC governance, and as a result of the illegal process (which failed to follow JACC Bylaws or state statute), she is now claiming that she is the “Secretary” of JACC. [] Anne McCandless specifically sought “endorsements” from key political and/or other figures she and those she was working with deemed to have power, and specifically used their “endorsements” to work to effectuate the coup.

21. Don Samuels is a resident of Hennepin County, and a Minneapolis City Council Member. He is neither a director or officer of JACC, and his position as City Council Member does not give him any authority over JACC. Samuels is the Chair of the Public Safety

Committee, and as such holds sway over Minneapolis Police officers. He is sued in his individual capacity, and in his official capacity (he is alleged to be a Policymaker for purposes of Section 1983). He is sued for intentionally interfering with the Bylaws as contract, and/or for aiding and abetting, and violation of First Amendment rights.

22. Barbara Johnson is a resident of Hennepin County, and a Minneapolis City Council Member, serving now as President of the Council. She is neither a director or officer of JACC, and her position as City Council Member does not give her any authority over JACC. She is sued in her individual capacity, and in her official capacity (she is alleged to be a Policymaker for purposes of Section 1983). She is sued for intentionally interfering with the Bylaws as contract, and/or for aiding and abetting, and violation of First Amendment rights.

23. Michael Martin is a resident of Hennepin County, and is the Inspector of the Minneapolis Police Department in the Fourth Precinct. He is sued in his individual and official capacities (he may be a Policymaker for purposes of Section 1983). He is sued for intentional interference with the Bylaws as contract, and/or for aiding and abetting, and violation of First Amendment rights.

24.  **Intentionally left blank.**

25.  **Intentionally left blank.**

26. John Does 1-5 are reserved for additional defendants whose identities become known during discovery.

27. For purposes of immunities, the actions of government officials alleged herein constitute deliberate indifference, reckless disregard for the rights of Plaintiffs, and/or malice.

28. The City of Minneapolis is sued because its officials are sued in part in their official capacity, under the theory of *respondeat superior* for the torts, and under *Monell* theory

for purposes of Section 1983 liability, because of the stature of the Council Members, either as Chief Policymakers, ratification, or other *Monell* theory of liability.

### **JURISDICTION**

The Minnesota Court System has jurisdiction over this action, pursuant to Minn. Stat. §317A.751 (Plaintiffs include more than one director, as well as more than 10% of the voting members of JACC), state common law claims, and also over the claims under 42 U.S.C. §1983.

### **VENUE**

This case is properly venued in the Fourth Judicial District Court. All elected officials who are sued reside in Hennepin County.

### **FACTUAL STATEMENT**

1. All of the facts alleged in the “Parties” Section above are adopted by reference.
2. The JACC Bylaws (Attachment B hereto) provide for a Board of Directors. (Att. B, Art. V). The Board is representative of the organization and its actions are binding on the organization. The Board is responsible for the overall policy and direction of JACC. Board members serve 2-year terms, but are eligible for re-election. Att. B, Art. V, Sec. 1b. The Board is to hold regular board meetings at a pre-determined time once per month. Art. V, Sec. 2d. JACC held its regular board meetings on the second Wednesday of each month. Attempts to remove Board members must, pursuant to Bylaws Art. V, Sec. 4, proceed through all 4 steps in order.
3. The JACC Bylaws also provide for Board Officers: Chair, Vice Chair, Treasurer and Secretary. (Att. B, Art. VI, Sec. 1). The immediate past Chair serves *ex officio* as the Vice Chair, by function of Bylaws, for one year. Att. B, Art. VI, Sec. 2. Pursuant to Art. VI, Sec. 2, the

officers shall be elected annually by the Board of Directors. The Officers can only be removed from office by following the precise steps set forth in Art. V, Sec. 4 (Att. B, Art. VI, Sec. 3).

4. The Bylaws also provide for an Executive Committee, which is comprised of the Officers of the organization (Chair, Vice Chair, Treasurer, and Secretary). The Executive Committee is to set forth the agenda for the monthly board meetings, act in place of the full Board of Directors when deemed necessary for time-specific decisions, and other duties not specified. Att. B, Art. VI, Sec.

5. [] Plaintiffs allege that **certain defendants have** [] worked hand in hand with various city officials, including but not limited to those who are defendants herein, in order to effectuate the take over and claim *de facto* control of the corporation.

5.5 Although there are some contractual relations between the City and JACC, and the City has a minimal oversight function regarding funds, the City of Minneapolis does not have a role in the internal governance of JACC. The City does have, however, great power and influence due to its status as a government entity and as such the dispersal valve and sometime fiscal agent for purposes of the disbursement of federal and state funds. This power and influence was used unlawfully in this situation, with City Officials misusing their authority in order to assert their will and/or political agenda, and not for any legitimate oversight function.

6. Board Directors serve 2-year staggered terms. By the end of 2008, **the number of seats up for re-election was in dispute** []. Michael Browne chaired the Nominations Committee. []. **Before, during or after the Annual meeting (to be held in October each year) Michael Browne worked to get certain names of “pro community” members off of the list of candidates, and worked to get those who supported him, Don Samuels, or “pro-City” members onto the list.**



7. Pursuant to Art. V, Sec. 1c of the Bylaws, JACC is to hold an annual meeting each October to elect new board members to fill all vacant seats.

8. According to the JACC bylaws, Art. VI, Sec. 2, all Officers shall be elected by the Board annually during the October Board meeting.

9. The JACC Executive Committee (with Myers as Chair) and the Executive Director Jerry Moore began to voice disagreement with the agenda of Council Members Don Samuels and Barbara Johnson about what to do with the Federal HUD monies that were flowing through the State to the Jordan neighborhood. The Executive Committee and the Jerry Moore were **viewed** [] by Samuels and Johnson as a thorn in the side of their political agenda, which included control over where the monies went and which individuals and entities profited from the monies. These individuals were exercising their First Amendment rights to criticize government. They were attempting to have a voice in the way in which federal monies were going to be used in their community, an important socio-political issue.

10. Elections for [] six board seats [] were delayed until January 12, 2009. []

11. On January 12, 2009, elections were held from those that the Nominating Committee said were eligible. Among those elected to the board were Robert Hodson and Anne McCandless. Michael Browne, P.J. Hubbard, Robert Hodson, and Anne McCandless are closely aligned with Minneapolis Council Member Don Samuels.

12. On January 14, 2009, JACC held its monthly board meeting. During that meeting, **without any notice**, *ultra vires*, and in violation of the Bylaws, Michael Browne and Anne McCandless led a coup and takeover of JACC. **It is clear that those members had been working together, and that they affirmatively decided *not* to tell the other Board members (plaintiffs) about the agenda items for the meeting. Michael Browne decided not to disclose that these agenda items would be discussed, because he knew that the**

**plaintiff-board-members would not vote in favor of his position. However, outsiders (non-board-members) who were aligned with these defendants (Browne, Hodson, McCandless and Hubbard) were consulted and told about these agenda items. For example, an email sent by McCandless the night before the meeting date indicated that “Jerry Moore has to go,” with widespread distribution. McCandless even discussed and then called the developer that JACC rented from, to request that the locks be changed before the vote to install the new board officers. At the January 14 Board Meeting:** First, the agenda prepared by the Executive Committee (proper under the Bylaws) was rejected and a new agenda instantly inserted. This had not been sent to board members before the meeting. Second, the Board began discussing whether to fire Jerry Moore, the Executive Director. It remains unclear whether any legitimate board action was taken on that point; at no point did the assembled group follow the requirements of the written employment agreement between Jerry Moore and JACC. When legitimately-elected Chair, still filling her one-year term, E.B. Brown began to declare that that Michael Browne and his followers were out of order and started to disagree with Michael Browne about the termination of Jerry Moore, Michael Browne called for an immediate voice vote to oust the Chair, Vice Chair, Treasurer and Secretary. The legitimate Executive Committee also voiced verbal objections to this process. E.B. Brown refused to vote for the motion to take nominations for a new Chair. This purportedly carried on a voice vote of majority (it is unclear quite what the vote was). Those voting to oust the duly elected Executive Committee included the board members just elected on January 12, 2009, who are closely aligned with Don Samuels.

13. Very soon after the voice vote (which did not comply with the Bylaws for removal of Officers), the **takeover** [] group began to claim that it had authority to take action for JACC. Michael Browne, claiming to be the Chair, sent a letter instructing Jerry Moore not to take any action as ED, **and alleging he was terminated for “misconduct.” In particular, JACC (or those claiming to be in charge of JACC at that time) did not provide Jerry**

**Moore with the precise facts that constituted the alleged “misconduct,” as required by the written, definite term employment agreement.”** The **takeover** [] team called for the Ackerberg group to come change the locks on the JACC offices. The *de jure* officers were literally “locked out.”

14. The **takeover** [] team began to assemble political cover and endorsements. The **takeover** [] team has contacted the surrounding neighborhood organizations, community partners, major funders, elected officials, the police department, the media, and others claiming to be the legitimate Officers of JACC, and manipulating, misrepresenting, cajoling or otherwise coopting individuals and entities to take part in the coup, or to aid and abet it. On January 16, 2009, Council Members Barbara Johnson and Don Samuels, in their official capacities, and on City of Minneapolis letterhead, stated, “[W]e would like to congratulate and officially recognize the newly elected board and its officers of the Jordan Area Community Council (JACC).” Attachment C hereto. The letter made a list of the officers and board members, according to them. Notably, Benjamin Myers, who was Vice Chair for one year following his term as Chair, pursuant to the Bylaws, was listed in the Council Member’s letter merely as “ex officio member” and not described as an officer, at all.

15. On or about January 17, 2009, Megan Goodmundson, who has held a position as Campaign Co-Chair for Don Samuels’ political campaign(s), and who is closely aligned with Samuels in his political agenda as well as this “takeover project,” posted a notice of press release for the “new” (**takeover** []) Executive Committee of JACC, stating that Michael “Kip” Browne was holding a press conference (purportedly on behalf of JACC). The interlopers held this at the JACC office.

16. [] **Intentionally left blank.**

17. While Michael Browne held his press conference purportedly on behalf of JACC, Minneapolis Council Member Samuels stood behind him. The two were clearly working

together on the “project” of the illegitimate takeover of JACC. At one point during that press conference, Don Samuels crossed the room and physically accosted a citizen who he viewed as a supporter of the *de jure* Officers (and indeed, who was trying to ask Michael Browne about whether the takeover was illegal). The citizen was removed by police, who worked to further Samuels’ stated instructions, and/or pursuant to Samuels’ status as City Council Member and Chair of the Public Safety Committee. Samuels, notwithstanding his physical accosting of a citizen trying to assert First Amendment rights, took advantage of his position as City Council Member to influence police perceptions and actions, in favor of his agenda, and against the citizen.

18. On January 20, 2009, Michael Martin, the Inspector of the Minneapolis Police Department Fourth Precinct, released an email to the Fourth Precinct Minneapolis police Supervisors, carbon copy to: Anne McCandless, Don Samuels, Barbara Johnson, and others, stating,

The Jordan Area Community Council has elected a new board and fired former Executive Director Jerry Moore. ... I want to make it very clear that MPD employees shall only work with the current, legally elected board of JACC. Former Board Chair Ben Myers and former Executive Director Jerry Moore are no longer affiliated with the Board and no longer legally represent the neighborhood. The new Board Chair is Michael “Kip” Browne.

Plaintiffs herein dispute the facts asserted in this email, and include it here only to show Martin’s interference with the JACC Bylaws and/or aiding and abetting the takeover (and not for the truth of his statements). Upon information and belief, the information included in Martin’s email came from Don Samuels, and that Samuels in fact asked Minneapolis Police to support his **takeover** [] team in the takeover, again, using his influence as City Council Member in order to affect police perception and actions. Upon information and belief, Martin knew about the JACC Bylaws, and knew about the unlawful takeover, yet supported Browne and the **takeover** [] team because of the influence of Samuels or other City officials.

19. The **Myers-board Officers** sent various cease and desist letters to the **takeover** team, but the **takeover** team refused to do so.

20. Because of the manipulation and/or control of Minneapolis Police, by the **takeover** team or other Defendants herein, and the position taken by Inspector Martin that police will only deal with the **takeover** team, the MPD will not be able to perform a neutral investigation of any issues concerning JACC, and the MPD lacks authority to make a determination of this civil dispute. Plaintiffs allege that the police department **was** being misused, and in an intimidating fashion, in an attempt to effectuate the coup, including thinly-veiled threats that the legitimate Officers will be arrested and/or charged with a crime.

21. **If the takeover team as discussed above in fact became the controlling officers, then they are responsible for their acts as controlling officers. Those controlling officers abused their control. Officers and a directors of a corporation owe a duty to the corporation under common law. A touchstone for identifying the shareholder's reasonable expectations is the standard of conduct identified in the common law as fiduciary duty, and referred to in the statute as the duty which all shareholders owe to one another to act in an honest, fair, and reasonable manner in the operation of the corporation.**

22. **Minn. Stat. §317A.231 permits telephonic board meetings only under certain conditions. An “emergency” or special telephonic board meeting could only be held by the JACC Board if the JACC Bylaws provision(s) regarding notice were followed. Minn. Stat. §317A.231, Subd. 4. The JACC Bylaws provide in part:**

- **Art. V, Sec. 2(d) provides, “A special meeting of the Board of Directors may be called by the Chair alone, or the Chair must call a meeting upon request of two members of the Board of Directors.”**

- **Art. VI, Sec. 1(c) provides, “The Secretary shall be responsible for keeping records of Board actions, including overseeing the following: taking of minutes at all board meetings, sending out meeting announcements, distributing copies of minutes and agenda to each Board member...**

**23. Defendant McCandless called a non-noticed, “telephonic” meeting on January 15, 2009, which i) violated the Bylaws (by failing to provide an agenda and then minutes of that meeting to all directors); and ii) violated state statute (by failing to provide notice to all directors, failing to have approval of the board before utilizing remote communication, and failing to have all parties on the line at the same time during the “meeting”). Those actions could also be characterized as “illegal,” “breach of fiduciary duty,” “unfairly prejudicial” to the board members who were not noticed (or even called), as well as other terms.**

**24. Defendant takeover-team-controlling-officers manipulated the rules, abused their authority, abused the funds of the organization, signed a false bank resolution, illegally transferred the bank signatories, had a “secret” meeting without notifying other directors, wasted corporate funds, agreed to give money to an “insider” (Rother) who was living in a committed relationship with one of the officers (Hodson), in purported repayment for legal fees, even though Rother had not tendered the claim to JACC for defense and/or indemnification, terminated all then-current officers after making a secret (not disclosed to other board members) plan to do so, and otherwise engaged in misconduct within the meaning of Minn. Stat. §317A.751.**

**COUNT I  
(For equitable Relief under Minn. Stat. §317A.751)  
(Against All Defendants)**

Plaintiffs reallege all allegations in this complaint as if fully set forth herein, and allege as follows.

21. JACC has between 50-100 voting members. More than 10 voting members (10%) are plaintiffs herein. At least one director is a plaintiff (indeed, multiple directors are plaintiffs herein). Plaintiffs were prejudiced because those in “control” (albeit without authority) of the corporation have acted fraudulently, illegally, or in manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers.

22.  **Intentionally left blank.**

23. Plaintiffs seek attorney fees, costs and disbursements, in addition to equitable relief **up to and including dissolution, pursuant to Minn. Stat. 317A.751 (for example, invalidating certain elections or actions of the Board/officers, voiding the fraudulent bank resolution, requiring the disgorgement of monies, and other).**  **Plaintiffs hereby give notice that they reserve the right to seek dissolution of the corporation.**

**COUNT II**  
**(Intentional Interference with Contract)**

Plaintiffs reallege all allegations in this complaint as if fully set forth herein, and allege as follows.

24.  Defendants Michael Browne, P.J. Hubbard, Robert Hodson, Anne McCandless, **with the assistance of other defendants**, procured the breach of the Bylaws contract.  Plaintiff members, Directors and Officers were damaged in that they lost their ability to do as they saw fit for JACC, and the community in which they lived.

25. Damages were proximately caused by the conduct of Defendants, and Plaintiffs are entitled to judgment and compensatory damages in excess of \$50,000, as well as costs and disbursements herein.

**COUNT III**  
**(Aiding and abetting the Tortious Conduct of Another)**

Plaintiffs reallege all allegations in this complaint as if fully set forth herein, and allege as follows.

26. The primary tortfeasors (Michael Browne, P.J. Hubbard, Robert Hodson, and Anne McCandless, the “rogue takeover team”) committed a tort that caused injury to Plaintiffs (see above). Barbara Johnson, Don Samuels, [] and Michael Martin **(and John Doe defendants)** knew that the conduct of those four on the [] takeover team, **knew that it interfered with the Bylaws contract, and they []** substantially assisted the primary tortfeasors in the achievement of the breach.

27. Damages were proximately caused by the conduct of these Defendants, and Plaintiffs are entitled to judgment and compensatory damages in excess of \$50,000, as well as costs and disbursements herein.

**COUNT IV**  
**Violation of 42 U.S.C. §1983**  
**(Against Defendants Don Samuels, Barbara Johnson and Michael Martin)**

Plaintiffs reallege all allegations in this complaint as if fully set forth herein, and allege as follows.

28. This claim arises under Title 42 of the United States Code (Civil Rights Act of 1964, as amended), including but not limited to §1983.

29. Defendants acted alone and/or together (two or more in concert), and one or more of them committed some act to violate Plaintiffs rights, and Plaintiffs were damaged, prejudiced in their roles as active citizens attempting to have some control over their neighborhood, and as acting as they saw best behooved the neighborhood, in their capacities as Directors/Officers/Executive Committee of JACC, which included speaking out on issues even if they challenge City Council Member political agendas, and/or desires regarding who got the federal funds, and how it was used.

30. Defendants deprived Plaintiffs of their rights, privileges, and immunities secured by the United States Constitution, and specifically the Fourteenth and First



Amendments to the United States Constitution, in conjunction with other rights, which grant the Plaintiffs the right to express their views, criticize government, and petition government for redress of just grievances.

31. Defendants Samuels, Johnson and Martin (and each of them) knew they were violating the federal law and constitutional rights of Plaintiffs and/or acted with intent and/or deliberate indifference to the rights of Plaintiffs as noted above, or with malice. The Defendants acted under color of law of a statute, ordinance, regulation, resolution, policy, custom or usage when they deprived Plaintiffs of their Constitutional rights, privileges, and immunities. Defendants acted with reckless disregard or with deliberate indifference to the rights of Plaintiffs, or they acted with intent to harm.

32. As a direct and proximate result of the Defendants' conduct (some of which was perpetrated by Chief Policymakers), inaction, policy or customs as set forth in more detail above, Plaintiffs suffered the deprivation of his/her constitutional and/or federal statutory rights and suffered humiliation, mental anguish and suffering, and emotional distress, and Plaintiffs were prevented from exercising their right to freedom of expression/to speak, at a crucial time in the decision about how to use the federal funds, which gave an advantage to Samuels and that faction of the City Council that wanted to use the funds in that particular way.

33. The timing is extremely short for the decision process of how to utilize these federal funds, and decisions are being made at a rapid rate. Plaintiffs therefore seek to enjoin the Defendants from taking further action to stifle their speech, including their speech in their rightful roles as Directors, Officers and/or voting members of JACC.

34. By reason of the foregoing, Plaintiffs are entitled to a negative injunction against Defendants, prohibiting them from further harassing, threatening, retaliating, intimidating, or preventing Plaintiffs' expression or speech, and judgment for damages

(including compensatory, nominal, presumed and/or punitive damages) and costs and attorney fees, in excess of \$50,000.

## COUNT V

### **Breach of fiduciary duty**

#### **(Against Browne, Hubbard, McCandless and Hodson)**

Plaintiffs reallege all allegations in this complaint as if fully set forth herein, and allege as follows.

35. The Defendants named in this Count owed a fiduciary duty to the organization and its members. The Defendants breached that duty by acting in bad faith, in a manner that was other than the purpose of advancing the best interests of the corporation, acting with the intent to violate applicable positive law, or intentionally failing to act in the face of a known duty to act, and they substantially participated in the breach.

36. Plaintiffs or some of them, were damaged by the breach of the duty, not in the way that all members were damaged, and not by virtue of losing their seats as officers, but because they were unable to exercise their own duty to prevent director misconduct and/or violations of applicable and positive law (including but not limited to breach of the Bylaws, and breach of Jerry Moore's employment agreement), thereby subjecting them to liability or other harm. **Further, JACC suffered harm due to the breach of fiduciary duty that was owed to it by its controlling-officer-directors. The pecuniary harm was proximately caused by the breach.**

## COUNT II

### **(Breach of Written Contract: Jerry Moore v. JACC)**

Plaintiffs reallege all allegations in this complaint as if fully set forth herein, and allege as follows.

37. Jerry Moore entered into a definite term employment agreement with JACC. Moore, for his part, performed on that contract. JACC, for its part, breached the requirement of the written contract to provide the facts supporting the allegation of misconduct.

38. Moore was damaged by the breach in that he was unable to earn the remainder due under the contract.

39. Moore is entitled to judgment against JACC including compensatory damages in excess of \$50,000, as well as costs and disbursements herein.

#### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs pray for relief in the form of an injunction against Defendants, and each of them, and/or as follows:

1. Equitable relief as requested above, and pursuant to the Court's authority under Minn. Stat. §317A.751, and for declaratory judgment pursuant to Minn. Chap. 555, as well as attorney fees, costs and disbursements for having to bring this action;

2. Damages in excess of \$50,000;

3. Interest on the aforesaid amounts, as well as costs and disbursements;

4. Issuing a temporary and/or permanent negative injunction prohibiting Defendants, or any others who have or would facilitate them, from **further damaging JACC or its finances, or []** interfering with the exercise of First Amendment rights of Plaintiffs and other similarly situated.

5. Plaintiffs seek punitive damages on all federal claims for those defendants for which a demand for punitive damages can lie.

\*\*\*

Plaintiffs hereby demand a trial by jury on all applicable Counts. Plaintiffs reserve the right to amend to add a claim for punitive damages under State law.

Dated: August 24, 2009

**ATTORNEYS FOR PLAINTIFFS  
JILL CLARK, P.A.**

*proposed*

---

By: Jill Clark, Esq. (#196988)  
2005 Aquila Avenue North  
Minneapolis, MN 55427  
(763) 417-9102

## **ACKNOWLEDGEMENT**

The undersigned hereby acknowledged that, pursuant to Minn. Stat. § 549.21, Subd. 2, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party of parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated: August 24, 2009

**ATTORNEYS FOR PLAINTIFFS  
JILL CLARK, P.A.**

---

By: Jill Clark, Esq. (#196988)  
2005 Aquila Avenue North  
Minneapolis, MN 55427  
(763) 417-9102