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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

22QCENTRAL, an Arizona Non-Profit Corporation,

Plaintiff,

vs.

PHARM EAST, INC., an Hawaiian corporation dba PEARLCIUM INTERNATIONAL, and dba FARM EAST, INC.; PHARM EAST HAWAII, INC., an Hawaiian corporation, dba FARM EAST HAWAII, INC.; RULIN XIU, a single woman, resident of Hawaii; and RUSSELL SNEEDEN, a married man, resident of North Carolina;

Defendants.

CASE NO.: 2:11-cv-00086-DKD

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR:

- I. BREACH OF CONTRACT;**
 - II. WRONGFUL TERMINATION**
 - III. WRONGFUL TERMINATION OF AND INTERFERENCE WITH BUSINESS EXPECTANCIES AND CONTRACTUAL RELATIONSHIPS;**
 - IV. CONVERSION; AND**
 - V. NEGLIGENCE**
- (JURY TRIAL DEMANDED)**

COMES NOW the Plaintiff, by and through its attorney undersigned and for its

1 First Amended Complaint of the Plaintiff, alleges as follows:
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3 **SUBJECT MATTER JURISDICTION**
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5 1. The Plaintiff, 22QCENTRAL, hereinafter “Plaintiff,” “Plaintiff corporation,”
6 or “Plaintiff 22QCENTRAL,” is an Arizona non-profit corporation, organized and
7 existing under the laws of Arizona and is a qualified Section 501(c)(3) tax exempt
8 organization under the laws of the United States, and has at all times hereto been a
9 citizen of the State of Arizona.
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11 2. The Defendants, PHARM EAST, INC., an Hawaiian corporation dba
12 PEARLCIUM INTERNATIONAL, and dba FARM EAST, INC., and PHARM
13 EAST HAWAII, INC., an Hawaiian corporation, dba FARM EAST HAWAII,
14 INC. (hereinafter collectively referred to as “Defendant corporations” or
15 “PEARLCIUM”) are Hawaiian corporations organized and existing under the laws
16 of Hawaii, with their principal place of business in Hawaii, on the (Big) Island of
17 Hawaii, in the City of Kea’au and have been citizens of Hawaii at all material
18 times. Defendant RULIN XIU, hereinafter “Defendant XIU” is a resident of
19 Hawaii and has been at all material times. Defendant Russell SNEEDEN,
20 hereinafter Defendant SNEEDEN is a resident of North Carolina, and has been at
21 all material times.
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1 3. Because the citizenship of Plaintiff and that of the Defendants is in complete
2 diversity, this Court has jurisdiction over the subject matter of this case due to
3 diversity of citizenship under the provisions of 28 U.S.C. §1332. The amount in
4 controversy exceeds \$75,000.00 exclusive of interests and costs.
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6 **PERSONAL JURISDICTION AND VENUE**

7 4. The Defendant corporations, through their authorized agents and representatives,
8 have entered into hundreds or thousands of contracts, conducted extensive sales,
9 business meetings, product deliveries and use of the mails and international
10 telecommunications lines, involved itself in ongoing business operations, as well
11 as multiple other commercial activities and substantial, constituting, constant,
12 continuing and systematic contacts in Arizona, as such contacts relate to the
13 Plaintiff herein as well as multiple third parties. The individual Defendant XIU is
14 the CEO of the Defendant corporations, and has personally guided the formation,
15 growth and business operations of said corporations. Through her individual
16 actions and through her corporate authority and capacity has tortiously caused the
17 wrongful termination of the Plaintiff as a distributor of PEARLCIUM and
18 wrongfully acted in violation of and interfered with the contractual rights of the
19 Plaintiff with PEARLCIUM and in intentional violation of the Policies and
20 Procedures of PEARLCIUM and has caused a multiplicity of events to occur in
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1 Arizona out of which this action arises. The individual Defendant SNEEDEN, by
2 cooperating in the misappropriation of and the conversion of the bonuses and
3 commissions due to Plaintiff's distributorship through a so-called "roll-up" of
4 Plaintiff's distributor business to him, through his individual actions has tortiously
5 participated in the wrongful termination of the Plaintiff as a distributor of
6 PEARLCIUM and wrongfully acted in violation of and interfered with the
7 contractual rights of the Plaintiff with PEARLCIUM and in intentional violation of
8 the Policies and Procedures of PEARLCIUM and has thereby caused events to
9 occur in Arizona out of which this action arises. The Defendants and each of them
10 have participated jointly in the wrongdoing and breaches complained of herein, and
11 therefore should be found jointly and severally liable in all respects as to all such
12 misconduct and breaches.
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14 5. Plaintiff demands a jury trial of this matter.

15 6. PEARLCIUM's Policies and Procedures purport to require arbitration in the
16 State of Hawaii, but in point and in fact the Policies conflict with and contradict
17 each other with confusing references to arbitration under the American Arbitration
18 Association and then in the next section purporting to require Arbitration by a
19 member of the National Academy of Arbitrators and erroneously designating said
20 organization's website:
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1 Amway Corp.) Policies and Procedures requiring arbitration of every distributor in
2 Michigan where its corporate headquarters were based violated the protections
3 afforded under the principles of both substantive and procedural unconscionability.
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8 **FACTS**

9 8. The Plaintiff was a distributor for the Defendants PEARLCIUM, who operate a
10 multilevel marketing company which uses a structure in the nature of a pyramid to
11 compensate its distributors (hereinafter “MLM” or “pyramid”). The Defendants
12 promote a lineup of unregulated dietary supplements, with PEARLCIUM as its
13 flagship product. 22QCENTRAL, is an Arizona Non-Profit Corporation, and the
14 owner of PEARLCIUM Distributor business center #4492959. 22QCENTRAL’s
15 website, 22QCENTRAL.org is a national clearinghouse for information and
16 support concerning the disorder known as 22q11, a genetic disorder that is the
17 result of missing DNA from one of the two chromosomes inherited from one’s
18 parents. This can be either inherited from one or both parents, or a mutation where
19 there is no known cause.
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25 9. In a letter dated August 11, 2010, Defendant XIU erroneously purported to
26 suspend/terminate Plaintiff’s distributorship by communicating her intention to do
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1 so to Ms. Marty Peoples. As Defendant XIU was aware at that time, Ms. Peoples
2 was not the owner of Distributor business center #4492959, having previously
3 donated the business center to 22QCENTRAL. Ownership was transferred of
4 record prior to that date, on or around February 16, 2010, with Defendant XIU's
5 knowledge and approval, and the distributorship business was being conducted
6 through the authorized representatives of 22QCENTRAL since the transfer date.
7 Accordingly the attempt to terminate the distributorship was of no validity, force or
8 effect. However, PEARLCIUM has failed and refused to pay commissions due
9 and owing to 22QCENTRAL, since the date of Defendant XIU's purported
10 suspension/termination letter. Her correspondence included quoted references to
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12 Pearcium Policies and Procedures, including:
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14 "Sanctions and Enforcement Action – Sanctions will not be employed lightly, nor
15 will the Company be arbitrary or unfair in their use."
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18 However, Distributor business center #4492959 was averaging \$3,000.00 per
19 month as of August 11, 2010, down from the approximately \$6,000.00 per month
20 in residual income being generated by Ms. Peoples, who consistently ranked as the
21 top one or two producing distributors for the company, only one year before the
22 purported termination. Ms. Peoples had painstakingly built the distributorship
23 under PEARLCIUM's compensation plan. The reduction of commissions
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1 generated by the distributorship from \$6,000.00 to \$3,000.00 per month was in
2 large part the result of Defendants' misdeeds, misrepresentations, and mishandling.

3 However, the distributorship built by Ms. Peoples, despite the challenges posed to
4 it by PEARLCIUM's management practices, has brought in hundreds of thousands
5 of dollars in sales volume to PEARLCIUM, thereby generating residual
6 commission income to Plaintiff which cannot be forfeited upon Defendant XIU's
7 arbitrary decision to do so.
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10 10. PEARLCIUM publishes Policies and Procedures which purport to bind the
11 distributors and PEARLCIUM to certain standards of conduct. PEARLCIUM's
12 Policies and Procedures state in pertinent part with respect to the termination of a
13 distributorship:
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16 "33) Termination or Suspension of Distributor's Membership - Pearlcium, Inc.
17 reserves the right to terminate any Distributor at any time, or suspend said
18 Distributor for a probationary period, when it is determined that the Distributor has
19 violated the provisions of the Distributor Agreement, including the provisions of
20 these rights and procedures as they now exist or may be amended, or the provisions
21 of applicable laws and standards of fair dealing. Good communications is vital on
22 the part of the Company and the Distributors.

23 a) In the case of one Distributor making a complaint against another Distributor,
24 the complaint shall be sent to the Pearlcium, Inc. home office in writing signed in
25 ink. No phone or email complaints will be accepted.

26 b) Normally, the first warning of a violation of policies or procedures shall be in a
27 phone call to the Distributor. This phone call will be documented and kept in file.

28 c) A second violation will be in writing by certified mail (including common
29 carrier) to the Distributor. Suspension of payment of commissions may occur at
this time.

d) At the third violation, the Company will ask the offending Distributor if they

1 want to sell their downline in the next 30 days. This can be done by phone or
2 certified mail (including common carrier) at which time the Distributor will have
3 30 days to complete the action. An exception to this or other paragraphs above is if
4 the Distributor has committed violations that bring attention from regulatory
5 authorities (FTC, FDA, or AG) and the Company has to immediately terminate the
6 Distributor to preserve the integrity of the Company.

7 e) If none of the above is viable to dispute resolution, the Company may terminate
8 the Distributor. Upon such a termination, the Company shall notify the Distributor
9 by certified mail at the latest address listed with the Company.

10 f) The terminated Distributor agrees to immediately cease representing
11 himself/herself as a Distributor, and will never be allowed to return to the position
12 of Distributor with Pearlcium, Inc... Where applicable state law on termination of a
13 Distributor is inconsistent with Company policy, such state law termination
14 procedures shall be in force.

15 g) If the Distributor wishes to appeal the termination, Pearlcium, Inc. must receive
16 the appeal, in writing, within fifteen (15) days from the date of mailing of the
17 Company's termination letter. If the appeal is not received within the 15-day
18 period, the termination will be automatically deemed final. If the Distributor files a
19 timely appeal of termination, Pearlcium, Inc. will review and reconsider the
20 termination, consider any other appropriate action, and notify the Distributor of its
21 decision in writing within (30) thirty days. The decision of the Company will be
22 final and subject to no further review.

23 h) In the event that the termination is not rescinded, the termination will be
24 effective as of the date of the Company's original termination notice.

25 i) Upon termination of a Distributor's membership, all rights to commissions,
26 position, and wholesale purchasing rights cease. The terminated Distributor's
27 organization shall be transferred to his/her sponsor. The terminated Distributor will
28 not be eligible for future sponsorship.”

29 11. Defendant XIU violated PEARLCIUM's own Policies by totally ignoring and
failing to follow the required termination procedure and by purporting to take the
business away from Ms. Peoples, when ownership of the business center had
already been transferred to Plaintiff, and “arbitrarily” and “unfairly” giving it to
Defendant SNEEDEN, thereby wrongfully misappropriating and converting the

business center to the ownership of Defendant SNEEDEN.

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2 12. Although PEARLCIUM's website purports to claim and profess community
3 involvement and support for charitable organizations such as Plaintiff, such
4 representations are totally contrary to the wrongful treatment of Plaintiff referenced
5 herein, is used by PEARLCIUM is used by it to attract and keep new distributors.
6 Such actions in this matter are in direct conflict with PEARLCIUM'S attempts to
7 portray PEARLCIUM as a good corporate citizen as professed in its motto:
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10 “[O]ur Grass Roots Charity Program will foster, support and nurture a community
11 of team members that believe the prosperity and wellness we create together with
12 PEARLCIUM International should be shared with those in need within our own
13 local communities... We, as people, must recognize that there are people in need in
14 every community regardless of age, gender or ethnicity.”

15 13. In a letter to Defendant XIU dated August 31, 2010 signed by Tishri Solmon,
16 Director for 22QCENTRAL, Ms. Solmon proposed on behalf of 22QCENTRAL
17 that Defendants pay for the business that they wrongfully purported to
18 misappropriate from 22QCENTRAL. Defendants have failed and refused to do so.
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20 14. Accordingly, Defendants must repudiate the purported termination of
21 Plaintiff's business and transfer of the rights flowing from its Distributor business
22 center #4492959 to Defendant SNEEDEN and compensate Plaintiff for the loss of
23 commissions to date, compensate Plaintiff for the wrongful forfeiture with
24 compensatory damages including consequential damages as a result of the
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1 wrongful termination of the distributorship, as well as pay punitive damages in a
2 just amount for the willfully malicious nature of the actions by the Defendants and
3 each of them.

4 15. The actions of the Defendants in breaching oral and/or written, express and/or
5 implied contractual undertakings with Plaintiff, and defending this action through
6 the guise of groundless defenses, gives rise to an award of reasonable attorney fees
7 under the provisions of A.R.S. §§12-341.01 et seq.
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12 **COUNT I**

13 **BREACH OF CONTRACT**

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15 16. Plaintiff realleges each and every allegation set forth hereinabove.

16 17. Defendants have breached the covenant of good faith and fair dealing
17 implied in every contract, expressed and implied. Plaintiff, through the
18 PEARLCIUM approved transfer of the distributorship to it from its donor,
19 Marty Peoples, assumed the rights of Ms. Peoples under her distributorship
20 agreement with PEARLCIUM to commissions generated and to be generated by
21 the distributorship and its large downline distributor organization.
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25 18. The Defendants by their conduct in breaching the covenant of good faith
26 and fair dealing and wrongfully terminating the Plaintiff's distributorship in
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contravention of its obligations under its own Policies and Procedures and the distributorship agreement between the parties, have deprived the Plaintiff of lost monthly commission income to the date of this Complaint as well as the “residual income” for the life of its distributorship, promised by the Defendants under the PEARLCIUM compensation plan which was a part of the distributorship agreement, and as supported by statements contained on the PEARLCIUM website and made orally by Defendants’ agents and representatives throughout the course of Defendants’ relationships with the Plaintiff and with Marty Peoples, donor of the distributorship to the Plaintiff. Said promises were a part of the expressed and implied contractual undertakings of the Defendants to the Plaintiff, which “residual income” Defendants promised would result from the building of the large downline distributorship organization built by Plaintiff and the Plaintiff’s donor, Marty Peoples. Prior to the wrongful termination of the distributorship, the Plaintiff reasonably expected the distributorship transferred to it to continue for decades, but under no circumstances, for less than twenty five years. Plaintiff relied on the monthly payment of commissions and promises of “residual income” referenced herein to support its charitable functions and reasonably expected that over the life of the distributorship, those payments to the Plaintiff would

1 increase over time due to the natural and reasonably expected growth of the
2 dollar volume of sales made and correspondingly, that commissions accruing
3 together with those due and owing to date, would total not less than
4 \$2,000,000.00.
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6 WHEREFORE Plaintiff prays for judgment against the defendants jointly and
7 severally for:
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- 9 1) compensatory damages in an amount not less than FIVE MILLION
10 DOLLARS (\$2,000,000.00);
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- 12 2) an order for the reinstatement of the subject wrongfully terminated
13 PEARLCIUM distributorship held by the Plaintiff, ID #4492959.
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- 15 3) reasonable attorneys' fees pursuant to A.R.S. §§12-341.01 et seq.; and
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- 17 4) such other and further relief as the Court deems just.
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21 **COUNT II**

22 **WRONGFUL TERMINATION**

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24 19. Plaintiff realleges each and every allegation set forth hereinabove.

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26 20. The conduct of the Defendants complained of hereinabove constitutes the
27 tort of wrongful termination in the context of the intentionally wrongful
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1 termination of the distributorship transferred to Plaintiff, which transfer had
2 been approved by Defendants.

3 WHEREFORE Plaintiff prays for judgment against the defendants jointly
4 and severally for:

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6 1) compensatory damages in an amount not less than TWO MILLION
7 DOLLARS (\$2,000,000.00) to be determined at trial;

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9 2) punitive damages in an amount not less than THREE MILLION Dollars
10 (\$3,000,000) to be determined at trial ;

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12 3) reasonable attorneys' fees pursuant to A.R.S. §§12-341.01 et seq.; and

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14 4) such other and further relief as the Court deems just.
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20 **COUNT III**

21 **WRONGFUL TERMINATION OF AND INTERFERENCE WITH**
22 **BUSINESS EXPECTANCIES AND CONTRACTUAL RELATIONSHIPS**

23 21. Plaintiff realleges each and every allegation set forth hereinabove.
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25 22. The conduct of the Defendants complained of hereinabove in failing to undo
26 and set right the wrongful conduct done by them against the Plaintiff has
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1 resulted in the misappropriation of the Plaintiff's downline distributor
2 organization and the wrongful termination of and interference with business
3 expectancies and contractual relationships which the Plaintiff had with the
4 members of its destroyed downline distributor organization.
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6 WHEREFORE Plaintiff prays for judgment against the defendants jointly
7 and severally for:
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9 1) compensatory damages in an amount not less than TWO MILLION
10 DOLLARS (\$2,000,000.00) to be determined at trial;
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12 2) punitive damages in an amount not less than THREE MILLION Dollars
13 (\$3,000,000) to be determined at trial ;
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15 3) reasonable attorneys' fees pursuant to A.R.S. §§12-341.01 et seq.; and

16 4) such other and further relief as the Court deems just.
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19 **COUNT IV**

20 **CONVERSION**

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22 23. Plaintiff realleges each and every allegation set forth hereinabove.

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24 24. The conduct of the Defendants complained of hereinabove in failing to undo
25 and set right the wrongful conduct done by the Defendants against the Plaintiff has
26 resulted in the misappropriation of the Plaintiff's organization and said conduct
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constitutes the tort of conversion by the Defendants against the Plaintiff.

WHEREFORE Plaintiff prays for judgment against the defendants jointly and severally for:

1) compensatory damages in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) to be determined at trial;

2) punitive damages in an amount not less than THREE MILLION Dollars (\$3,000,000) to be determined at trial ;

3) such other and further relief as the Court deems just.

COUNT V

NEGLIGENCE

25. Plaintiff realleges each and every allegation set forth hereinabove.

26. In the alternative, Plaintiff alleges that if the breaches, interference and other misconduct complained of herein is not found to be intentional, deliberate, or in reckless disregard of the rights of the Plaintiff, that in such event, said misconduct was negligently undertaken and inflicted by the Defendants.

WHEREFORE Plaintiff prays for judgment against the defendants jointly and severally for:

1) compensatory damages in an amount not less than TWO MILLION

DOLLARS (\$2,000,000.00) to be determined at trial;

2) such other and further relief as the Court deems just.

Respectfully submitted this 13th day of January, 2011.

LAW OFFICES OF DAVID G. EISENSTEIN, P.C.

_____/s/_____
by, David G. Eisenstein
attorney for the Plaintiff