

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JUDG
BRIAN P. CLARK
Nevada Bar #004236
KARL L. NIELSON, ESQ.
Nevada Bar #005082
JONES VARGAS
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89109
Telephone: (702) 734-2220
ATTORNEYS FOR DEFENDANTS/
COUNTERCLAIMANTS

FILED

APR 8 12 29 PM '02

Shelby B. Pangione
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

GARY DAHLBERG and KELLY DAHLBERG,

Plaintiffs,

vs.

PRISM, INC., a Nevada corporation,
FRONTIER PHARMACEUTICAL
DISTRIBUTORS, INC., a Nevada Corporation,
ROBERT FENTON, IRENE FENTON,
JEANNE MULLEN, individually and as trustee
of the FENCO SYSTEMS TRUST, and
SIERRA LANE TRUST and DOES I - X,

Defendants.

Case No. A404780
Dept. No. XII

AMENDED JUDGMENT

Date of Trial: November 6, 2001
Time of Trial: 9:00 a.m.

AND RELATED COUNTERCLAIMS.

The parties having appeared for trial on the 6th day of November, 2001, Plaintiffs/Counterdefendants Gary and Kelly Dahlberg (collectively "Plaintiffs") and Counterdefendant Dwayne Dahlberg appearing through their attorneys James R. Hales, Esq. and Robert L. Esensten, Esq.; Defendants Prism, Inc., Frontier Pharmaceutical Distributors, Inc., Robert Fenton, Irene Fenton, Jeanne Mullen, Fenco Systems Trust, and Sierra Lane Trust (collectively "Defendants"), and Counterclaimants Fenco Systems Trust and Frontier Pharmaceutical Distributors, Inc. (collectively "Counterclaimants") appearing through their attorneys, the law firm of Jones Vargas, the Court took evidence from the parties through November 16, 2001 and made the following findings of fact and conclusions of law in

03 2002
CITY C

1 rendering its decision:

2 THE COURT FINDS AND CONCLUDES that NRS 87.060 defines a partnership under Nevada
3 law and states that a partnership is "an association of two or more persons to carry on as co-owners a
4 business for profit." To create a partnership, the partners must agree to become partners. See Shaw v.
5 Delta Airlines, 798 F. Supp. 1453 (D. Nev. 1992). A partnership cannot arise out of the expectations
6 of the Plaintiffs alone.

7 THE COURT FURTHER FINDS AND CONCLUDES that in this case, there was no such
8 agreement among Plaintiffs and Defendants Robert Fenton, Irene Fenton, and Jeanne Mullen and
9 therefore, no partnership existed. Specifically, the following factors demonstrate the lack of a
10 partnership:

11 - There was no beginning date to the alleged partnership because Plaintiffs could not establish
12 a point in time where the alleged partnership actually began;

13 - There never was a meeting where the alleged partnership was agreed upon;

14 - There was no capital contribution from the Plaintiffs to the alleged partnership;

15 - There was no conveyance of property to the alleged partnership;

16 - There was no sharing of losses;

17 - Plaintiffs could not establish their right of control of the business, the critical criterion for
18 establishing a partnership. Irene Fenton, as the sole shareholder and owner of the corporation, Frontier
19 Pharmaceutical Distributors, Inc., rather than Plaintiffs, controlled the business. There was no evidence
20 Irene Fenton ever relinquished her control;

21 - Plaintiffs were paid well for their services, including the use of cars and houses. Compensation
22 for services, however, does not create a partnership or establish the requisite control to establish such
23 a partnership.

24 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Plaintiffs' claim for
25 breach of fiduciary duty, there could be no such breach as a matter of law given there was no
26 partnership. Furthermore, there was no evidence presented at trial to support such a claim.

27 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Plaintiffs' claim for
28 breach of contract, there was insufficient evidence presented at trial to support the existence of an

1 agreement and therefore, insufficient evidence to support a claim for breach.

2 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Plaintiffs' claim for
3 fraud, there was no sufficient evidence presented at trial to support such a claim.

4 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Counterdefendant
5 Gary Dahlberg's use of the American Express credit card, his use of the card to charge personal items
6 became a pattern which continued throughout his employment at Counterclaimant Frontier
7 Pharmaceutical Distributors, Inc. ("Frontier"). There was no evidence Gary Dahlberg was ever
8 requested to stop charging personal items, to return the credit card or that there was a written or clear
9 policy regarding the reimbursement of personal charges to the business. In addition, Counterdefendants
10 Gary and Kelly Dahlberg received 1099 forms from Frontier for the personal expenses charged on the
11 credit cards.

12 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Counterclaimant
13 Frontier's claim for the return of commissions paid to Gary Dahlberg and Dwayne Dahlberg, the
14 evidence established that in May 1998, Irene Fenton was aware commissions were being paid but failed
15 to make a demand of repayment of the commissions and failed to take any action to prevent further
16 payments of commissions. In addition, Counterdefendants Gary and Dwayne Dahlberg received 1099
17 forms from Frontier for the commissions. Frontier is estopped to claim other than what is contained
18 in these forms. With respect to the September 30, 1998 check to Dwayne Dahlberg, the check indicates
19 that it was for a commission and the evidence was insufficient to establish otherwise.

20 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Counterclaimant
21 Frontier's claim for intentional interference with contractual relations and prospective economic
22 advantage, the evidence established that: (1) R&W Pharmacy and Liberty Consulting, Inc. transacted
23 business with Frontier as a result of Patti Reed's relationship with her brother, Gary Dahlberg; (2) that
24 there was no exclusive contract between Patti Reed's companies and Frontier since Patti Reed could
25 transact business with whomever she chose; and (3) R&W Pharmacy and Liberty Consulting, Inc.
26 stopped doing business with Frontier due to Gary and Kelly Dahlberg leaving Frontier. There was
27 insufficient evidence to establish Frontier lost profits due to any conduct by Plaintiffs.

28 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Counterclaimant

1 Frontier's claim for breach of fiduciary duty based on Gary and Kelly Dahlberg's status as director and
2 secretary, respectively, there was no breach due to the short period of time Gary and Kelly Dahlberg
3 were listed as officers or directors of Frontier.

4 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Counterclaimant
5 FENCO Systems Trust's ("FENCO") claim for the 1998 Fleetwood 29L Motorhome, VID
6 #1FDXE40S4WA46378 ("Motorhome"), the Motorhome was owned by FENCO and properly titled
7 therein. Kelly Dahlberg, without authority to do so, signed over title to the Motorhome to herself and
8 Gary Dahlberg. The value of the Motorhome after credits is \$48,000.00.

9 THE COURT FURTHER FINDS AND CONCLUDES that with respect to Counterclaimant
10 Frontier's claims against Dwayne Dahlberg arising out of the payment of commissions, there was
11 insufficient evidence to support such claims.

12 Having made the foregoing findings of fact and conclusions of law, the Court issued its decision
13 and judgment as follows:

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants are awarded
15 judgment against Plaintiffs with respect to all causes of action and relief asserted by Plaintiffs against
16 Defendants in Plaintiffs' Third Amended Complaint, including the First Claim for Relief for breach of
17 oral partnership, the Second Claim for Relief for breach of fiduciary duty, the Third Claim for Relief
18 for breach of contract, the Fourth Claim for Relief for fraud, and the Fifth Claim for Relief for
19 constructive trust.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Counterdefendant Dwayne
21 Dahlberg is awarded judgment against Counterclaimant Frontier Pharmaceutical Distributors, Inc. with
22 respect to all causes of action and relief asserted by Counterclaimant in the Second Amended
23 Counterclaim, including the Third Claim for Relief for conversion and the Eighth Claim for Relief for
24 unjust enrichment.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Counterclaimant FENCO
26 Systems Trust through Jeanne Mullen, Trustee, is awarded judgment against Counterdefendants Gary
27 and Kelly Dahlberg on the First Claim for Relief for claim and delivery of the Motorhome or the Second
28 Claim for Relief for conversion of the Motorhome contained in its Second Amended Counterclaim in

1 the principle amount of FORTY-EIGHT THOUSAND DOLLARS AND NO CENTS (\$48,000.00),
2 plus interest on the judgment at the legal rate of 8.75% (N.R.S. 17.130) from June 28, 1999, through
3 December 21, 2001, in the amount of \$ 10,436.71. Interest shall continue to accrue at the legal daily
4 rate pursuant to NRS 17.130(2) until the judgment is satisfied.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Counterdefendants Gary and
6 Kelly Dahlberg are awarded judgment against Counterclaimant Frontier Pharmaceutical Distributors,
7 Inc. with respect to the following causes of action and relief asserted by these counterclaimants against
8 these counterdefendants in Counterclaimants' Second Amended Counterclaim, including the Third
9 Claim for Relief for conversion, the Fourth Claim for Relief for breach of fiduciary duty, the Fifth
10 Claim for Relief for intentional interference with contractual relations, the Sixth Claim for Relief for
11 unjust enrichment, the Seventh Claim for Relief for civil conspiracy, the Eighth Claim for Relief for
12 unjust enrichment, and the Ninth Claim for Relief for intentional interference with prospective
13 economic advantage.


14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are awarded
15 their costs of action in the amount of \$57,418.59 against Plaintiff's Gary Dahlberg and Kelly Dahlberg.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Counterdefendant Dwayne
17 Dahlberg is awarded to his costs of action in the amount of \$3,603.69 against Counterclaimant Frontier
18 Pharmaceutical Distributors, Inc.

19 DATED this 4 day of April, 2002.

20
21 
22 DISTRICT COURT JUDGE

22 Submitted by:
23 JONES VARGAS

24 
25 BRIAN P. CLARK, ESQ.
26 Nevada Bar No. 4236
27 KARL L. NIELSON, ESQ.
28 Nevada Bar No. 5082
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, NV 89109

Attorneys for Defendants/Counterclaimants

COPIES OF THIS DOCUMENT ARE BEING FURNISHED TO THE FOLLOWING:

- 1. THE COUNTY CLERK, DOUGLAS COUNTY, NEVADA
- 2. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 3. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 4. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 5. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 6. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 7. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 8. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 9. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 10. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 11. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 12. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 13. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 14. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 15. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 16. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 17. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 18. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 19. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 20. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 21. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 22. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 23. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 24. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 25. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 26. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 27. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 28. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 29. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 30. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 31. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 32. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 33. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 34. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 35. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 36. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 37. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 38. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 39. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 40. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 41. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 42. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 43. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 44. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 45. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 46. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 47. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 48. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 49. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 50. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 51. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 52. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 53. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 54. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 55. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 56. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 57. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 58. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 59. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 60. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 61. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 62. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 63. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 64. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 65. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 66. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 67. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 68. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 69. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 70. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 71. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 72. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 73. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 74. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 75. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 76. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 77. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 78. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 79. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 80. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 81. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 82. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 83. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 84. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 85. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 86. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 87. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 88. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 89. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 90. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 91. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 92. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 93. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 94. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 95. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 96. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 97. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 98. THE COUNTY CLERK, CLATSOP COUNTY, OREGON
- 99. THE COUNTY CLERK, WASHINGTON COUNTY, OREGON
- 100. THE COUNTY CLERK, CLATSOP COUNTY, OREGON

DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

SEAL

APR 30 '02

Shelley S. Pangione
CLERK

REQUESTED BY
Jones Vargas
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2002 MAY -7 AM 9:10

LINDA SLATER
RECORDER

\$19.00 PAID BC DEPUTY

0541553

BK0502PG01893