

1 JAMES D. BOYLE, ESQ.  
Nevada Bar No. 08384  
2 KIMBERLY J. COOPER, ESQ.  
Nevada Bar No. 09533  
3 SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
4 400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
5 Telephone: 702/791-0308  
Facsimile: 702/791-1912

6 *Attorneys for Plaintiff*

7  
8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 CANNERY CASINO RESORTS, LLC, a  
Nevada limited liability company,

11 Plaintiff,

12 v.

13 DOE INDIVIDUALS I – X; and ROE  
14 CORPORATE ENTITIES I – X,

15 Defendants.

CASE NO.:

**COMPLAINT**

16  
17 Plaintiff Cannery Casino Resorts, LLC (“Cannery”), by and through its undersigned  
18 counsel, James D. Boyle, Esq. and Kimberly J. Cooper, Esq. and the law firm of Santoro, Driggs,  
19 Walch, Kearney, Holley & Thompson, for its claims against Defendants Doe Individuals I – X  
20 and Roe Corporate Entities I – X (together, the “DOE Defendants”), hereby alleges as follows:

21 **I. SUMMARY OF THE COMPLAINT**

22 1. This is an action for mark infringement and unfair competition under the Lanham  
23 Act (15 U.S.C. §§ 1114(1) and 1125(a)) and violation of the Anti-Cybersquatting Consumer  
24 Protection Act (15 U.S.C. § 1125(d)), arising from DOE Defendants’ unauthorized registration  
25 and use of the Internet domain name www.cannerycasino.com (the “Infringing Domain Name”),  
26 and unauthorized use of the mark CANNERY (the “Infringing Mark”).

27 2. As a result of DOE Defendants’ willful and unauthorized registration and/or use  
28 of the Infringing Mark and the Infringing Domain Name, DOE Defendants have infringed, and

1 continue to infringe, Cannery's marks CANNERY and similar marks (collectively, the "Cannery  
2 Mark"). Cannery therefore seeks: injunctive relief; the recovery of actual and treble damages;  
3 the recovery of DOE Defendants' profits derived from registration and use of the Infringing  
4 Domain Name and Infringing Mark; the recovery of Cannery's costs and attorney fees; and such  
5 other relief as more fully set forth herein.

6 **II. THE PARTIES**

7 3. Cannery is a Nevada limited liability company with a principal place of business  
8 in Las Vegas, Clark County, Nevada.

9 4. The true names, identities or capacities, whether individual, corporate, political,  
10 associate or otherwise of any Doe and Roe Defendants are unknown to Cannery. Cannery  
11 therefore sues said DOE Defendants by fictitious names. Cannery is informed and does believe,  
12 and thereupon alleges, that: each of the DOE Defendants is responsible in some manner for the  
13 acts, actions and omissions herein referred to; Cannery will seek expedited discovery to identify  
14 each of the DOE Defendants; Cannery will ask leave of this Court to amend this Complaint to  
15 insert the true names and capacities of any said DOE Defendants when the same have been  
16 ascertained by Cannery, together with appropriate charging allegations; and Cannery will seek  
17 leave to join said DOE Defendants to this action.

18 **III. JURISDICTION AND VENUE**

19 5. Jurisdiction in this Court is proper pursuant to 15 U.S.C. §§ 1116 and 1121 and 28  
20 U.S.C. §§ 1331 and 1338, as this action arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.*

21 6. Personal jurisdiction over DOE Defendants is proper as DOE Defendants have  
22 purposefully directed their activities to residents of the state of Nevada, which activities have  
23 resulted in the injuries to Cannery as alleged herein. DOE Defendants have engaged in  
24 intentional actions directed at residents of Nevada by and through DOE Defendants' active  
25 operation of the Infringing Domain Name, and the infringement of the Cannery Mark resultant  
26 therefrom, which forum-related actions DOE Defendants knew or should have known would  
27 cause harm to Cannery as alleged herein.

28 7. Personal jurisdiction over DOE Defendants is moreover proper and reasonable

1 because DOE Defendants' intentional actions in infringing the Cannery Mark through DOE  
2 Defendants' active operation of the Infringing Domain Name have specifically targeted  
3 consumers in Nevada, including, but not limited to, through direct solicitations of such  
4 consumers to purchase goods and services through the Infringing Domain Name.

5 8. This Court has in-personam jurisdiction over DOE Defendants pursuant to Nev.  
6 Rev. Stat. 14.065.

7 9. DOE Defendants' activities as set forth herein have resulted in the injuries to  
8 Cannery as alleged herein.

9 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2), as a  
10 substantial part of the events giving rise to the claims at issue in this action occurred in this  
11 judicial district.

#### 12 IV. FACTS

13 11. Cannery is a diversified hotel, entertainment and gaming company that presently  
14 owns and operates hotels and casinos (the "Cannery Hotels and Casinos") in Clark County,  
15 Nevada.

16 12. In association with its ownership and operation of the Cannery Hotels and  
17 Casinos, Cannery has to date filed some forty-four federal mark applications with the United  
18 States Patent and Trademark Office (the "USPTO") for the Cannery Mark and related marks.  
19 Furthermore, to date Cannery has obtained Certificates of Registration for twenty-one of its mark  
20 applications.

21 13. In association with the Cannery Hotels and Casinos and the offering of goods and  
22 services in association therewith (the "Cannery Goods and Services"), Cannery has and  
23 continues to market, promote and advertise the Cannery Hotels and Casinos and the Cannery  
24 Goods and Services through use of the Cannery Mark. Cannery's efforts in this regard date from  
25 at least December 20, 2002.

26 14. Through Cannery's operations of the Cannery Hotels and Casinos, its significant  
27 corporate growth and considerable market and commercial successes, its extensive marketing  
28 and advertising, and its multiple channels of trade in which the Cannery Mark is and will

1 continue to be utilized, the Cannery Mark has obtained famousness and/or the Cannery Mark has  
2 acquired distinctiveness.

3 15. Cannery has acquired substantial goodwill associated with the Cannery Mark, and  
4 the Cannery Mark has become the mark associated in the marketplace with the Cannery Hotels  
5 and Casinos and the Cannery Goods and Services.

6 16. Cannery has the priority right to use the Cannery Mark in commerce for the  
7 Cannery Goods and Services and in association with the Cannery Hotels and Casinos.

8 17. Upon information and belief, on or about December 21, 2004, DOE Defendants  
9 registered the Infringing Domain Name with the on-line domain name registrar NameCheap, Inc.  
10 (“NameCheap”).

11 18. Upon information and belief, on or about December 7, 2008, DOE Defendants  
12 transferred the Infringing Domain Name to the on-line domain name registrar Enom, Inc.  
13 (“Enom”).

14 19. DOE Defendants have used and continue to use the Infringing Domain Name to  
15 market, promote and advertise the website and webpages accessible through the Infringing  
16 Domain Name (the “DOE Defendants Goods and Services”).

17 20. DOE Defendants’ first use date and first use in commerce date for the Infringing  
18 Mark occurred after Cannery commenced public use and use in commerce of the Cannery Mark.

19 21. Upon information and belief, DOE Defendants registered the Infringing Domain  
20 Name and commenced use of the Infringing Mark to capitalize on Cannery’s goodwill, business  
21 reputation and marketing efforts and the use by Cannery of the Cannery Mark.

22 22. DOE Defendants are not affiliated with Cannery and are not authorized by  
23 Cannery to use the Infringing Mark in any manner, including, but not limited to, in association  
24 with the Infringing Domain Name or to promote the DOE Defendants Goods and Services.

25 23. DOE Defendants’ unauthorized use of the Infringing Mark and unauthorized  
26 registration of the Infringing Domain Name is likely to deceive the public into believing that  
27 DOE Defendants are authorized by Cannery to use the Infringing Mark or the Infringing Domain  
28 Name, or that DOE Defendants maintain an affiliation with Cannery to use the Infringing Mark

1 or the Infringing Domain Name, when in fact DOE Defendants are not so authorized by Cannery  
2 and DOE Defendants are not affiliated with Cannery for use of the Infringing Mark or the  
3 Infringing Domain Name.

4 24. Prior to using the Infringing Mark and registering the Infringing Domain Name,  
5 DOE Defendants had either actual or constructive notice of Cannery's prior use in commerce and  
6 legal rights in and to the Cannery Mark, including, but not limited to, in association with the  
7 Cannery Goods and Services and in connection with the Cannery Hotels and Casinos.

8 25. DOE Defendants used and use the Infringing Mark and the Infringing Domain  
9 Name to profit from Cannery's goodwill, business reputation and marketing efforts through, in  
10 part, Cannery's prior use of the Cannery Mark and the public's recognition of the distinctiveness  
11 associated with the Cannery Mark, the Cannery Goods and Services, and the Cannery Hotels and  
12 Casinos.

13 26. DOE Defendants' past, present and future infringement and misappropriation of  
14 the Cannery Mark, including, but not limited to, through use of the Infringing Mark and the  
15 Infringing Domain Name, has permitted and will permit DOE Defendants to benefit and profit  
16 from Cannery's goodwill, business reputation and marketing efforts associated with the Cannery  
17 Mark, the Cannery Goods and Services, and the Cannery Hotels and Casinos.

18 **V. CLAIMS FOR RELIEF**

19 **FIRST CLAIM FOR RELIEF**

20 **(Mark Infringement Under the Lanham Act (15 U.S.C. 1114(1)))**

21 27. Cannery hereby incorporates each and every allegation set forth in Paragraphs 1  
22 through 26 as if fully set forth herein.

23 28. DOE Defendants' use of the Infringing Mark and the Infringing Domain Name in  
24 interstate commerce in connection with advertising or promoting the DOE Defendants Goods  
25 and Services, is likely to cause confusion, or to cause mistake, or to deceive, as to the affiliation,  
26 connection, or association of such goods or services of DOE Defendants with Cannery, or as to  
27 the origin, sponsorship, or approval of such goods, services or commercial activities of DOE  
28 Defendants by Cannery.

1 29. DOE Defendants are further using a reproduction or colorable imitation of the  
2 registered Cannery Mark in interstate commerce, and such use was and continues to be made in  
3 connection with the sale, offering for sale, distribution and/or advertising of goods or services on  
4 or in connection with which such use is likely to cause confusion, or to cause mistake, and/or to  
5 deceive reasonable consumers as to the origin, sponsorship, and/or approval by Cannery of the  
6 Infringing Mark and the goods or services provided thereunder.

7 30. The actions of DOE Defendants as alleged herein constitute mark infringement in  
8 violation of 15 U.S.C. § 1114(1).

9 31. As a result of the acts of DOE Defendants as alleged herein, Cannery has suffered  
10 and will continue to suffer damages to its business, goodwill, reputation and profits, while Doe  
11 Defendants profit at Cannery's expense.

12 32. The actions of DOE Defendants as alleged herein, and the ongoing direct results  
13 of those actions, have caused and will continue to cause great and irreparable harm to Cannery in  
14 an amount that cannot be ascertained, thereby leaving Cannery with no adequate remedy at law.

15 33. Unless DOE Defendants are preliminarily and permanently enjoined from  
16 infringing the Cannery Mark, Cannery will continue to suffer irreparable harm.

17 34. By reason of the foregoing lack of an adequate remedy at law, Cannery is entitled  
18 to preliminary and permanent injunctive relief against DOE Defendants pursuant to 15 U.S.C. §  
19 1116.

20 35. Cannery is further entitled to recover statutory damages of not less than \$500.00  
21 or more than \$100,000.00 per counterfeit mark per type of services sold, offered for sale or  
22 distributed, as the Court considers just, in association with DOE Defendants' violation of 15  
23 U.S.C. § 1114(1), pursuant to 15 U.S.C. § 1117(c).

24 **SECOND CLAIM FOR RELIEF**

25 **(Unfair Competition (15 U.S.C. § 1125(a)))**

26 36. Cannery hereby incorporates by this reference each and every allegation set forth  
27 in Paragraphs 1 through 35 as if fully set forth herein.

28 37. DOE Defendants' use of the Infringing Mark and the Infringing Domain Name in

1 interstate commerce in connection with advertising or promoting the DOE Defendants Goods  
2 and Services, is likely to cause confusion, or to cause mistake, or to deceive, as to the affiliation,  
3 connection, or association of such goods or services of DOE Defendants with Cannery, or as to  
4 the origin, sponsorship, or approval of such goods, services or commercial activities of  
5 Defendants by Cannery.

6 38. DOE Defendants' use of the Infringing Mark and/or the Infringing Domain Name  
7 constitutes mark infringement and unfair competition in violation of 15 U.S.C. § 1125(a).

8 39. As a result of the acts of DOE Defendants as alleged herein, Cannery has suffered  
9 and will continue to suffer damages to its business, goodwill, reputation and profits, while DOE  
10 Defendants profit at Cannery's expense.

11 40. The actions of DOE Defendants as alleged herein, and the ongoing direct results  
12 of those actions, have caused and will continue to cause great and irreparable harm to Cannery in  
13 an amount that cannot be ascertained, thereby leaving Cannery with no adequate remedy at law.

14 41. Unless DOE Defendants are preliminarily and permanently enjoined from  
15 infringing the Cannery Mark, and from engaging in unfair competition, Cannery will continue to  
16 suffer irreparable harm.

17 42. By reason of the foregoing lack of an adequate remedy at law, Cannery is entitled  
18 to preliminary and permanent injunctive relief against DOE Defendants pursuant to 15 U.S.C. §  
19 1116.

20 43. Cannery is also entitled to recover DOE Defendants' profits derived from the use  
21 of the Infringing Mark, and any damages Cannery has suffered by reason thereof.

22 44. Pursuant to 15 U.S.C. §§ 1117(a) and 1117(b), Cannery is also entitled to an  
23 award of treble damages, attorneys' fees, and costs, as DOE Defendants' actions as alleged  
24 herein were willful, egregious and otherwise exceptional in association with DOE Defendants'  
25 violations of 15 U.S.C. § 1125(a).

26 **THIRD CLAIM FOR RELIEF**

27 **(Violation of the Anti-Cybersquatting Consumer Protection Act (15 U.S.C. § 1125(d)))**

28 45. Cannery hereby incorporates by this reference each and every allegation set forth

1 in Paragraphs 1 through 44 as if fully set forth herein.

2 46. DOE Defendants' actions as alleged herein were committed with a bad faith intent  
3 to profit from the Cannery Mark by registering, trafficking in or using the Infringing Mark by  
4 and through the Infringing Domain Name.

5 47. The Infringing Domain Name is confusingly similar to the Cannery Mark, and the  
6 Cannery Mark had acquired distinctiveness at the time DOE Defendants registered the Infringing  
7 Domain Name.

8 48. DOE Defendants' registration of and use of the Infringing Domain Name violates  
9 the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

10 49. As a result of DOE Defendants' actions as alleged herein, Cannery has suffered  
11 and will continue to suffer damage to its business, goodwill, reputation and profits, while DOE  
12 Defendants profit at Cannery's expense.

13 50. DOE Defendants' actions as alleged herein, and the ongoing direct results of  
14 those actions, have caused and will continue to cause great and irreparable injury to Cannery in  
15 an amount that cannot be ascertained, leaving Cannery with no adequate remedy at law.

16 51. Unless DOE Defendants are preliminarily and permanently enjoined from DOE  
17 Defendants' violations of the Anti-Cybersquatting Consumer Protection Act, as alleged herein,  
18 Cannery will continue to suffer irreparable harm.

19 52. By reason of the foregoing, Cannery is entitled to preliminary and permanent  
20 injunctive relief against DOE Defendants pursuant to 15 U.S.C. § 1116.

21 53. Pursuant to 15 U.S.C. § 1117(d), Cannery is also entitled to recover its attorneys'  
22 fees, and statutory damages in the amount of not less than \$1,000.00 and not more than  
23 \$100,000.00, as the Court considers just, for each infringing domain name registered, trafficked-  
24 in or used by DOE Defendants in violation of 15 U.S.C. § 1125(d).

25 **VI. PRAYER FOR RELIEF**

26 WHEREFORE, Cannery prays for entry of judgment and relief against DOE Defendants  
27 as follows:

28 1. That DOE Defendants, and any agents, servants, employees, attorneys, partners,



1 affiliates and all persons or entities acting for, with, by, through or under DOE Defendants, shall  
2 be preliminarily and thereafter permanently enjoined and restrained from:

- 3 a. directly or indirectly infringing the Cannery Mark by marketing, offering,  
4 selling, disposing of, licensing, leasing, transferring, displaying,  
5 advertising, reproducing, exhibiting, exploiting or causing the marketing,  
6 offering, selling, disposing, licensing, leasing, transferring, displaying,  
7 advertising, reproducing, exhibiting, exploiting, developing or  
8 manufacturing, or linking of, any goods or services derived from or  
9 bearing the Cannery Mark, or ordering, directing, participating or assisting  
10 in any such activities;
- 11 b. using in any manner the Cannery Mark, or any term or terms likely to  
12 cause confusion therewith, including, without limitation, in connection  
13 with the Infringing Mark and the Infringing Domain Name, and any and  
14 all variants thereof in the possession or control of DOE Defendants, as a  
15 domain name, directory name, or other such computer address, as the  
16 name of a website, in buried code or metatags on any of DOE Defendants'  
17 websites, or in connection with the retrieval of data or information with  
18 respect to DOE Defendants' other goods or services, or in connection with  
19 the advertising or promotion of DOE Defendants' goods, services or  
20 websites, or ordering, directing, participating or assisting in any such use,  
21 or linking to and from the Infringing Domain Name; and
- 22 c. registering any domain name embodying in any manner and to any extent  
23 the Cannery Mark, including, without limitation, the Infringing Domain  
24 Name, or facilitating the sale or registration of any such domain names, or  
25 offering for sale or registration any such domain names, or ordering,  
26 directing, participating or assisting in any such use;

27 2. That DOE Defendants be directed to preserve, retain and deliver to Cannery's  
28 counsel, in hard copies or electronic copies: (a) all evidence and documentation relating in any

1 way to DOE Defendants' use of the Infringing Mark, in any form, including, without limitation,  
2 all evidence and documentation relating to DOE Defendants' websites, including, but not limited  
3 to, the Infringing Domain Name, or any other webpages or services where DOE Defendants have  
4 used such names or marks; (b) all such evidence and documentation relating to the names and  
5 addresses (electronic mail or otherwise) of any person with whom DOE Defendants have  
6 communicated regarding DOE Defendants' use of the Infringing Mark, in any form, including,  
7 but not limited to, the Infringing Domain Name, or any other webpages or services where DOE  
8 Defendants have used such names or marks; and (c) all financial evidence and documentation  
9 relating to DOE Defendants' websites, services or products, or advertising, which appear or are  
10 offered on or through DOE Defendants' websites, including, but not limited to, the Infringing  
11 Domain Name which are related in any way to DOE Defendants' uses of the Infringing Mark;

12 3. That DOE Defendants be directed to file with this Court, and to serve upon  
13 Cannery's counsel, within thirty (30) days after entry against DOE Defendants of any injunctive  
14 relief set forth herein, a report in writing under oath setting forth in detail the manner and form in  
15 which DOE Defendants complied with said injunctive relief, pursuant to 15 U.S.C. § 1116(a);

16 4. That DOE Defendants be enjoined from engaging in any of the unlawful and/or  
17 wrongful actions as alleged herein, including, without limitation, mark infringement, unfair  
18 competition and/or cybersquatting in violation of the Lanham Act, 15 U.S.C. § 1051 *et seq.*;

19 5. That DOE Defendants be ordered to provide an accounting of DOE Defendants'  
20 profits or revenues derived through any of the actions as alleged herein, including, without  
21 limitation, mark infringement and unfair competition in violation of the Lanham Act, 15 U.S.C.  
22 § 1051 *et seq.*;

23 6. That Enom, or any other registrar or registry relevant to the registration of the  
24 Infringing Domain Name, be directed to cease and desist public access to the Infringing Domain  
25 Name during the pendency of this action;

26 7. That Enom, or any other registrar or registry relevant to the registration of the  
27 Infringing Domain Name, cancel the Infringing Domain Name or transfer the Infringing Domain  
28 Name to Cannery;

1 8. That Cannery be awarded statutory damages of not less than \$500.00 or more than  
2 \$100,000.00 per counterfeit mark per type of services sold, offered for sale or distributed, as the  
3 Court considers just, in association with DOE Defendants' violation of 15 U.S.C. § 1114(1);

4 9. That Cannery recover DOE Defendants' profits derived from the use of the  
5 Infringing Mark, and any damages suffered by reason thereof, resultant from DOE Defendants'  
6 wrongful actions complained of herein;

7 10. That Cannery be awarded statutory damages in the amount of not less than  
8 \$1,000.00 and not more than \$100,000.00, as the Court considers just, for each infringing  
9 domain name registered, trafficked-in or used by DOE Defendants in violation of 15 U.S.C. §  
10 1125(d);

11 11. That Cannery be awarded three times DOE Defendants' profits and three times  
12 Cannery's damages suffered by reason of DOE Defendants' willful and wrongful actions as  
13 complained of herein, pursuant to 15 U.S.C. §§ 1117(a) and 1117(b);

14 12. That Cannery be awarded its reasonable attorneys' fees based on DOE  
15 Defendants' willful, wrongful and exceptional actions as alleged herein pursuant to 15 U.S.C. §§  
16 1117(a) and 1117(b);

17 13. That Cannery be awarded its costs of this action; and

18 14. That Cannery be awarded such other and further relief as this Court deems just  
19 and equitable.

20 DATED this 10<sup>th</sup> day of June, 2009.

21 **SANTORO, DRIGGS, WALCH,**  
22 **KEARNEY, HOLLEY & THOMPSON**

23   
24 \_\_\_\_\_  
25 JAMES D. BOYLE, ESQ.  
26 Nevada Bar No. 08384  
27 KIMBERLY J. COOPER, ESQ.  
28 Nevada Bar No. 09533  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

Attorneys for Plaintiff