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THE UPPER DECK COMPANY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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IN AND FOR THE COUNTY OF SAN DIEGO

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THE UPPER DECK COMPANY, a Nevada
corporation,

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Plaintiff,

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vs.

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RYAN MILLER, an individual;
15 RAVENSBURGER NORTH AMERICA,
INC., a Washington corporation; and DOES 1
16 through 100, inclusive,

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Defendants.

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Case No.

COMPLAINT FOR:

(1) **BREACH OF CONTRACT;**

(2) **BREACH OF FIDUCIARY DUTY;**

(3) **FRAUD [CAL. CIV. CODE § 1710(3)];**

(4) **INDUCING BREACH OF A WRITTEN
CONTRACT;**

(5) **NEGLIGENT INTERFERENCE WITH
PROSPECTIVE ECONOMIC
RELATIONS;**

(6) **CONSTRUCTIVE TRUST [CAL. CIV.
CODE § 2224]; AND**

(7) **CONVERSION; AND**

(8) **UNFAIR BUSINESS PRACTICES
[BUS. & PROF. CODE, § 17200 ET
SEQ.].**

DEMAND FOR JURY TRIAL

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1 Plaintiff, The Upper Deck Company (“Upper Deck”), complains and alleges against
2 Defendants Ryan Miller (“Miller”), Ravensburger North America, Inc. (“Ravensburger”), and
3 DOES 1 through 100, inclusive (collectively referenced henceforth as “Defendants”), and alleges on
4 information and belief as follows:

5 **INTRODUCTION**

6 1. Upper Deck seeks to protect its intellectual property from premeditated theft by
7 Miller. On a work for hire basis, Upper Deck engaged Miller as lead game designer to develop a
8 major proprietary trading card game for Upper Deck called “Rush of Ikorr.” After over a year of
9 developing Rush of Ikorr alongside Upper Deck, Miller terminated his contract with Upper Deck
10 and, either before termination or just after, began working for Defendant Ravensburger, a direct
11 competitor. At Ravensburger, Miller transported his work product on Rush of Ikorr, knowing such
12 work product was owned solely by Upper Deck, into a trading card game called “Disney Lorcana”
13 (“Lorcana”). This trading card has remarkable, uncanny similarities to Upper Deck’s Rush of Ikorr.

14 2. Miller’s acts in pilfering the game design Upper Deck paid him to create and using
15 those designs to develop a competing trading card game for a competitor were aided and encouraged
16 by Ravensburger, who now seeks to profit from the stolen intellectual property. These acts give
17 rise to a host of causes of action under California and federal law.

18 **JURISDICTION & VENUE**

19 3. The amount in controversy arising from the actions and statutory violations as further
20 described below is sufficient to implicate the general unlimited jurisdiction of the Superior Court in
21 and for San Diego County.

22 4. This Court has personal jurisdiction over Miller. Miller performed services for Upper
23 Deck, a San Diego-based company. He signed and breached two contracts with Upper Deck, both
24 of which contained California choice-of-law and San Diego dispute resolution venue provisions. In
25 performance of the services under the contracts, Miller traveled to San Diego County, including to
26 the 2018 Gaming Summit at Upper Deck’s office where Miller and other contracted game designers,
27 in addition to Upper Deck personnel and senior management, brainstormed, conceived, and invented
28 the game concept that became Rush of Ikorr. Miller’s actions establish sufficient minimum contacts

1 with the state of California, making it fair and reasonable for Miller to be held accountable in a
2 California court.

3 5. This Court also has personal jurisdiction over Defendant Ravensburger. On
4 information and belief, Ravensburger has acted in concert with Miller during much of the time
5 relevant to this Complaint, resulting in a breach of Miller's California contracts. Ravensburger's
6 trading card game at the center of this Complaint, "Disney Lorcana," is a Disney-licensed product,
7 who is a California headquartered company. On information and belief, Ravensburger has made pre-
8 sales of Lorcana and will soon make deliveries on its pre-sales, to individuals residing in the state of
9 California, County of San Diego. As such, Ravensburger has sufficient minimum contacts to make
10 it fair and reasonable for Ravensburger to be held accountable in a California court.

11 6. Venue is proper in this judicial district, pursuant to California Code of Civil
12 Procedure section 395, as Upper Deck's principal place of business is in San Diego County, and
13 Defendants conduct and/or have conducted business within San Diego County relevant to this action
14 as explained above.

15 **PARTIES**

16 7. Plaintiff The Upper Deck Company is, and at all relevant times was, a corporation
17 organized and existing under and by virtue the laws of the State of Nevada. Upper Deck is authorized
18 to conduct business in California and has its principal place of business at 5830 El Camino Real,
19 Carlsbad, California 92008. Upper Deck is a worldwide sports and entertainment company that, for
20 decades, has created valuable and innovative entertainment products.

21 8. Defendant Ryan Miller is an individual formerly contracted by Upper Deck to
22 collaborate and further develop its Rush of Ikorr trading card game. He is a current employee of
23 Ravensburger. Upon information and belief, Miller resides in Seattle, Washington.

24 9. Defendant Ravensburger North America, Inc. is a Washington corporation with a
25 principal business address at 915 E. Pine Street, Suite 400, Seattle, Washington 98122. Ravensburger
26 is a game and toy company and is a direct competitor to Upper Deck.

27 10. Upper Deck does not know the true names and/or capacities, whether individual,
28 partners, or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that

1 reason sues said Defendants under fictitious names. Plaintiff will seek leave to amend this Complaint
2 when the true names and capacities of these Defendants have been ascertained. Plaintiff is informed
3 and believes and thereon allege that these Defendants are responsible in whole or in part for
4 Plaintiff's alleged damages.

5 **GENERAL ALLEGATIONS**

6 **A. The Parties' Relevant Experience with Trading Card Games**

7 11. Upper Deck is a leading manufacturer of, among other products, sports and
8 entertainment trading cards and trading card games. Upper Deck has developed and successfully
9 sold a multitude of novel and innovative trading card games (sometimes called "TCG"), which
10 include, but are not limited to: Vs. System® 2PCG®; World of Warcraft Trading Card Game; Yu-
11 Gi-Oh!; Super Hero Squad; QuickStrike; and Winx Club.

12 12. Rush of Ikorr is Upper Deck's latest, still-in-progress creation in this long line of
13 successful and popular products.

14 13. For decades, Miller has worked in the entertainment and gaming industries, mostly
15 serving as a freelance, work made-for-hire game designer. Prior to Rush of Ikorr, he helped design
16 several of Upper Deck's games. On information and belief, Miller has worked for other companies
17 to design various other types of strategy games like Magic: The Gathering; Duel Masters and
18 Kaijudo; and Digimon.

19 14. Ravensburger is an entertainment company that focuses on toys, including games.
20 While Ravensburger has made many strategy games over the years, on information and belief,
21 trading card games are not something it normally makes or has made in the past.

22 **B. The 2018 Upper Deck Gaming Summit Leading to Rush of Ikorr**

23 15. Looking to make its next hit TCG, Upper Deck held a Gaming Summit from
24 December 15 through December 16, 2018. Upper Deck invited and paid expenses for several game
25 designers, including Miller, to visit Upper Deck's Carlsbad office with the specific purpose of aiding
26 Upper Deck in the creation, brainstorm, and collaboration of a new and novel TCG.

27 16. Like the other game designers who accepted their invitation to the Gaming Summit,
28 Miller entered into a 2018 Upper Deck Gaming Summit Agreement ("Summit Agreement"). In

1 exchange for the compensation he would receive, the Summit Agreement called for Miller to
2 contribute ideas and feedback relating to the design and creation of new games and game mechanics
3 that Upper Deck would own and hold all rights to use. The Summit Agreement also contained
4 confidentiality and work for hire clauses requiring Miller to keep private anything shared at the
5 Summit and acknowledge that works and concepts created as a result of or in connection with the
6 Summit belonged exclusively to Upper Deck.

7 17. Upper Deck invested substantial resources, monetary and otherwise, in its Gaming
8 Summit to best incubate the seeds of a highly innovative and marketable TCG.

9 18. At the Gaming Summit, Miller, among other game designers, and Upper Deck
10 personnel and senior management discussed, conceived, and created what would become the trading
11 card game currently called “Rush of Ikorr.” Upper Deck subsequently offered Miller the role as lead
12 game designer in 2019.

13 **C. Upper Deck and Miller’s Development of Rush of Ikorr**

14 19. Miller’s role as lead game designer was memorialized via a Work For Hire
15 Agreement dated June 24, 2019 (“Work For Hire Agreement”). Per the Work For Hire Agreement,
16 Upper Deck agreed to pay Miller to create and design a TCG that could be played both in physical
17 and digital form. Miller was responsible to create the initial theme of Rush of Ikorr, develop basic
18 game mechanics, provide a single player demonstration deck with between 20-30 cards to convey
19 the game’s design, and to “use his best efforts to contribute ideas, concepts, designs, and feedback
20 related to the design, mechanics, and creation of the [Rush of Ikorr TCG] commensurate with UDC’s
21 brand.”

22 20. The Work For Hire Agreement set out a timeline running from June 2019 through
23 March 2021 under which Miller would complete various milestones and expansions of Rush of Ikorr.

24 21. As with the Summit Agreement, the Work For Hire Agreement provided that all of
25 the products, works, concepts, trade secrets, and intellectual property developed by Upper Deck and
26 Miller to create Rush of Ikorr belonged solely to Upper Deck. As such, the parties agreed that Rush
27 of Ikorr and related and underlying materials were works made for hire belonging to Upper Deck
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1 and were irrevocably assigned by Miller to Upper Deck including all modifications and derivatives
2 thereof.

3 22. Under the Work For Hire Agreement, Miller also agreed to keep confidential any
4 information he received in carrying out and performing work on Rush of Ikorr. This obligation
5 continued even after termination or satisfaction of the contract.

6 23. Following the parties' execution of the Work For Hire Agreement, the detailed
7 development of Rush of Ikorr commenced. As lead game designer, Miller was tasked with creating
8 Rush of Ikorr's rules, card designs, game mechanics, and win conditions. Pursuant to the Work For
9 Hire Agreement, Miller received feedback from Upper Deck at the completion of each Milestone
10 and then implemented that feedback.

11 24. Ultimately, Miller completed Milestones 1 through 5, per the Work For Hire
12 Agreement for Rush of Ikorr, and Upper Deck paid him tens of thousands of dollars for his services.

13 25. On or about October 21, 2020, Miller informed Upper Deck that he was terminating
14 the Work For Hire Agreement.

15 26. Throughout Miller's time as lead game designer of Rush of Ikorr, Miller had direct
16 access to Upper Deck's confidential, proprietary information, including, without limitation, Rush of
17 Ikorr draft rules, concepts, components, designs, marketing strategies, and plans for implementation.
18 On information and belief, Miller maintained access to these things even after terminating his
19 relationship with Upper Deck and used, referenced, and/or otherwise relied on them to create
20 Lorcana for Ravensburger.

21 **D. Miller Goes to Work for a Competitor, Ravensburger**

22 27. Either before or just after Miller terminated the Work for Hire Agreement, he began
23 to work with Ravensburger. After Miller began consulting with Upper Deck on Rush of Ikorr
24 pursuant to his agreements with Upper Deck, upon information and belief, Miller began discussing
25 potential work for and/or employment by Ravensburger, although he concealed this fact from Upper
26 Deck.

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1 **E. Upper Deck Continues to Develop Rush of Ikorr**

2 28. Despite Miller’s departure, Upper Deck continued to invest in the Rush of Ikorr game
3 design by dedicating substantial time and resources to further develop Rush of Ikorr; Miller’s exit
4 directly resulted in a significant time delay and interruption in the game development process, as
5 well as increased costs incurred by Upper Deck. For example, Upper Deck hired two additional
6 work-for-hire game designers to finish Rush of Ikorr under Upper Deck’s direction and guidance.

7 29. Upper Deck has not publicly announced or launched Rush of Ikorr.

8 30. In April 2023, Upper Deck filed a patent application for Rush of Ikorr.

9 **F. Ravensburger Announces Lorcana**

10 31. Unbeknownst to Upper Deck, Ravensburger and Miller spent approximately 2.5
11 years developing Lorcana which Ravensburger first announced publicly in or around September of
12 2022. Ravensburger publicly named Miller the product manager and co-designer of the trading card
13 game. In an interview at the time of the announcement, Miller acknowledged that, in creating the
14 game, “[w]e’re not trying to reinvent the wheel.” [https://www.thegamer.com/disney-lorcana-tcg-](https://www.thegamer.com/disney-lorcana-tcg-ravensburger-ryan-miller-interview-d23-expo/)
15 [ravensburger-ryan-miller-interview-d23-expo/](https://www.thegamer.com/disney-lorcana-tcg-ravensburger-ryan-miller-interview-d23-expo/).

16 32. While the game did not provide many details when first announced in 2022, in or
17 around April 2023, Upper Deck was able to inspect Lorcana’s publicly posted rules, and determined
18 Lorcana and Rush of Ikorr were nearly identical, as discussed further below. The features in Lorcana
19 were in fact novel and proprietary to Rush of Ikorr and their replication into Lorcana can only be the
20 product of Miller’s theft of Upper Deck’s intellectual property and other proprietary concepts.

21 33. Ravensburger has already sold packs of cards for Locana. Ravensburger has also
22 allowed people to test play the game at conventions and other promotional events.

23 **G. An Overview of Rush of Ikorr**

24 1. *The basics*

25 34. Rush of Ikorr is a TCG designed to last approximately an hour. It can be played one-
26 on-one or with multiple players per team without major changes to gameplay mechanics.

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1 2. *Building your deck*

2 35. To play, each player needs cards which are purchased from Upper Deck. The player
3 uses purchased cards (or ones he/she has acquired through trading, etc.) to strategically build a deck
4 consisting of 40 cards. There can be no more than three identical cards in a deck and the deck can
5 only contain two colors of cards. There are four colors to select from: yellow, green, blue, and red.

6 36. There are also five card types: Champions (playable creatures that Attack enemies or
7 engage in Raids), Locations (effects put into play and remain until destroyed), Spells (one-time
8 actions a player can initiate), Avatars (this represents the player and helps to determine the two color
9 composition of a deck), and Overlays (Cards that can modify Champions).

10 37. The cards in Rush of Ikor contain “Abilities” (i.e., keywords) which add certain
11 effects to the cards. As example, a card with the Ability “Support” has the ability to provide a
12 friendly Champion with extra Strength. A card with the Ability “Elusive” can only be Attacked by
13 other Champions with the “Elusive” ability. A card with the Ability “Formidable” will destroy the
14 opponent it faces in battle, even if it would otherwise lose the fight based on its relative strength
15 rating.

16 3. *Beginning to play*

17 38. With a deck built and in hand, at the outset of the game, each player or team takes on
18 the role of an Avatar of a god from an ancient culture, such as Greece or Maya.

19 39. To start the game-play, players draw the top five cards from their shuffled deck into
20 to their hand.

21 40. When it is your turn, a player will draw an additional card to their hand, then may
22 draw a card face down to place directly to the “Influence Zone.”

23 41. The Influence Zone serves as the resource pool for the player. Cards are placed into
24 the Influence Zone face down and each card in the Influence Zone represents one “Influence” during
25 each turn of play. Influence is the resource that players consume in order to place the cards in their
26 hand into the field of play. Each card has a “Recruit Cost” dictating how much “Influence” the player
27 must spend to play the card. For example, a card with a Recruit Cost of four requires four face down
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1 cards (i.e. “Influence”) to be in the player’s Influence Zone in order to be summoned into the field
2 of play. Influence is consumed for only one round and is returned for the player’s next turn.

3 42. After drawing a card into the Influence Zone, the player enters the “Main Phase.”
4 During the Main Phase, players can exhaust their Influence to summon a card, activate a card’s
5 ability, or Attack an enemy Raider. One caveat is that players cannot Raid or Attack on the first turn
6 a Champion is summoned unless the Champion has an Ability granting it the means to do so.

7 43. Players can also send their Champions on Raids during the Main Phase. Raids last
8 one turn and is the mechanism by which players earn Gems—Rush of Ikorr’s win currency.
9 Champions are assigned a “Raid Value” which is the number of Gems the Champion will earn if the
10 Raid is successful.

11 44. Champions are vulnerable to enemy attacks while Raiding. If an attack is performed
12 on a Raider, the cards’ Strength values will be compared, where the card with the lowest Strength
13 value is destroyed. In the case where the cards have equal Strength, both cards are destroyed. At the
14 core of Rush of Ikorr is the mechanic that in order to acquire win currency, Gems, the player must
15 put their Champions in a vulnerable state.

16 45. Unique to Rush of Ikorr, the win conditions require players to build themselves up,
17 as opposed to the predominant TCG win condition of annihilating your opponent. As mentioned,
18 Rush of Ikorr utilizes a win currency called Gems. Gems are gained through Raiding and once
19 gained, cannot be lost. Players win Rush of Ikorr by being the first to gain the set number of Gems
20 which depends on the amount of individuals playing on each side.

21 46. In essence, the core gameplay loop of Rush of Ikorr is to: (1) summon Champions;
22 (2) engage in Raids; (3) mount Attacks to stifle enemy Raids; and (4) retrieve Gems.

23 **H. Lorcana Functions Just Like Rush of Ikorr**

24 *1. The basics*

25 47. Lorcana is a TCG which can be played within an hour. It can be played one-on-one
26 or with multiple players without major changes to gameplay mechanics.

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1 2. *Building your deck*

2 48. To play, each player needs cards which are purchased from Ravensburger or Disney.
3 The player uses purchased cards (or ones he/she has acquired through trading, etc.) to strategically
4 build a deck consisting of 60 cards. There can be no more than 4 identical cards in a deck and the
5 deck can only contain two colors of cards maximum out of 6 colors to choose from (yellow, green,
6 blue, purple, red, or grey).

7 49. There are four card types: Characters (playable creatures that Challenge enemies or
8 engage in Quests), Items (effects put into play and remain until destroyed), Actions (one-time
9 advantages a player can initiate), and Songs (a sub-type of Actions).

10 50. The cards in Lorcana contain “Abilities and Effects” (i.e., keywords) which add
11 effects to the card. The Abilities and Effects in Lorcana in many cases are copied and pasted from
12 that of Rush of Ikorr. For example, some cards in Lorcana contain a “Support” Ability which allows
13 the Character to provide friendly Characters with Strength. Some cards contain an Ability called
14 “Evasive” which has the same exact effect as the “Elusive” Ability in Rush of Ikorr. Further, some
15 cards in Lorcana also contain an Ability that has the same effect as the “Formidable” Ability in Rush
16 of Ikorr. Because all the Lorcana cards are not yet publicly available, Upper Deck cannot know the
17 full extent of the overlap between the cards in each game, but believes and is informed there are
18 others.

19 3. *Beginning to play*

20 51. With a deck built and in hand, at the outset of the game, each player takes on the role
21 of an Avatar or “Illumineer” Disney characters.

22 52. To start the game-play, players begin by drawing seven shuffled cards to their hand.

23 53. During the player’s turn, he/she will draw an additional card to their hand and may
24 put a card face down into the “Inkwell” at any time. Ink is the resource players consume in order to
25 place the cards in their hand into the field of play. For example, a card with a “Cost” of four requires
26 four “Inks” or face down cards in the player’s Inkwell. Ink is consumed for only one round and is
27 returned for the player’s next turn. The Inkwell functions near-identically to Rush of Ikorr’s
28 Influence Zone.

1 54. After drawing a card to their hand, the player enters the “Main Phase.” During the
2 Main Phase, players can exhaust their Ink to summon a card, activate a card’s ability, or Challenge
3 a Questing enemy. Just like Rush of Ikor, players cannot Quest or Challenge on the first turn a
4 Character is summoned unless the Character has an Ability allowing it to do so.

5 55. Once in the field of play, players can send their Characters on Quests during the Main
6 Phase. Quests last one turn and is the mechanism by which players earn Lore—Lorcana’s win
7 currency. Characters are assigned a “Lore Value” which is the number of Lore the Character will
8 earn if the Quest is successful. Lore and Lore Value function identically to Rush of Ikor's Gems and
9 Raid value.

10 56. Characters are vulnerable to enemy Challenges while Questing. If a Challenge is
11 performed on a Questing enemy, the cards’ Strength (damage dealt) and Willpower (damage
12 received before banishment) are compared, where a card is banished if its Willpower is of less value
13 than its opponent’s Strength. Like Rush of Ikor, at the foundation of Lorcana’s gameplay is that to
14 acquire its win currency, Lore, the player must put their Characters in a vulnerable state.

15 57. Also like Rush of Ikor, the win conditions in Lorcana require players to build
16 themselves up, as opposed to the predominant TCG win conditions of annihilating your opponent.
17 This is through the use of the win currency “Lore,” which are gained through Questing and cannot
18 be lost once gained. Players win Lorcana by being the first to gain twenty Lore.

19 58. Thus, the core gameplay loop of Lorcana is to: (1) summon Characters; (2) engage
20 in Quests; (3) mount Challenges to stifle enemy Quests; and (4) retrieve Lore.

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**
23 **Breach of Contract**
(Against Defendant Miller)

24 59. Upper Deck re-alleges and incorporates by reference each and every allegation in this
25 Complaint as though fully set forth herein.

26 60. As a condition of his provision of services to Upper Deck, Miller signed and agreed
27 to abide by (1) the terms of the Summit Agreement between himself and Upper Deck and (2) the
28 terms of the Work For Hire Agreement between Miller and Upper Deck (collectively, the

1 “Agreements”). Both Agreements prohibited Miller from, among other things, using or disclosing
2 Upper Deck’s intellectual property and confidential information. Each Agreement also makes clear
3 that any concepts developed by Miller while working under the Agreements belong exclusively to
4 Upper Deck and not Miller. Miller is not to disclose, use, or otherwise benefit from the work he
5 performed for Upper Deck outside of that relationship.

6 61. Upper Deck fully complied with and fulfilled its obligations under the Summit
7 Agreement and Work For Hire Agreement by, among other things, compensating Miller in
8 accordance with the Agreements for the services he rendered.

9 62. Miller breached his Summit and/or Work For Hire Agreements by, without
10 authorization, copying Upper Deck’s proprietary and novel TCG game and disclosing the central,
11 proprietary components and expressions within the game to Upper Deck’s direct competitor,
12 Ravensburger, to develop the Lorcana trading card game.

13 63. Upper Deck has sustained and will sustain damages as a direct and proximate result
14 of Miller’s breach of the Agreements. This includes but is not limited to lost sales, loss of goodwill
15 and popularity of the game, and loss of related revenue streams.

16 **SECOND CAUSE OF ACTION**
17 **Breach of Fiduciary Duty**
18 **(Against Defendant Miller)**

19 64. Upper Deck re-alleges and incorporates by reference each and every allegation in this
20 Complaint as though fully set forth herein.

21 65. Miller was the lead game designer hired on a work-for-hire basis to develop Rush of
22 Ikorr. He possesses expert knowledge in a unique field that requires specialized expertise:
23 professional game design. He agreed to provide his professional advice, development expertise and
24 services to Upper Deck. Upper Deck reasonably expected Miller to abide by his professional duties
25 of care and loyalty owed to Upper Deck. The nature of Miller’s professional services entrusted him
26 with Upper Deck intellectual property and proprietary information, and required Miller to safeguard
27 Upper Deck’s interests in developing Rush of Ikorr. As a result, Miller has a continuing duty to not
28 take, use, or disclose the ideas, concepts, details, and other aspects of Rush of Ikorr for himself or
others.

1 66. Miller breached his fiduciary duty to Upper Deck by stealing core concepts and
2 proprietary, novel elements of Upper Deck's game and using it to develop Lorcana.

3 67. Miller's breach has proximately caused irreparable injuries to Upper Deck and is
4 substantially likely to continue causing irreparable injuries to Upper Deck unless enjoined.

5 68. The aforementioned acts of Miller were willful, wanton, malicious and oppressive
6 and were undertaken with the intent to defraud, which conduct justifies the awarding of exemplary
7 and punitive damages in an amount to be determined at trial. Upper Deck is further entitled to
8 attorney's fees.

9
10 **THIRD CAUSE OF ACTION**
Fraud (Concealment)—Cal. Civ. Code § 1710(3)
(Against Defendant Miller)

11 69. Upper Deck re-alleges and incorporates by reference each and every allegation in this
12 Complaint as though fully set forth herein.

13 70. Miller, as a work for hire contractor that specifically agreed and acknowledged that
14 he would keep in confidence the nature of his work for Upper Deck, had a special relationship and
15 owed a fiduciary duty.

16 71. During his engagement with Upper Deck for Rush of Ikorr, Miller, who lived in the
17 same city as Ravensburger's United States headquarters, concealed discussions with Ravensburger
18 relating to his possible employment or potential employment with Ravensburger. Miller also failed
19 to disclose, upon his departure from Upper Deck, that he would be going to work for a competitor
20 designing a competing, near-identical TCG based on and using Upper Deck's Rush of Ikorr property.
21 Upper Deck did not know or have reason to know of these facts.

22 72. Miller then intentionally concealed from Upper Deck his intent to seize its
23 confidential and proprietary game and transfer them to Ravensburger without Upper Deck's
24 knowledge.

25 73. Miller continued to have an on-going relationship with Upper Deck employees after
26 he terminated his work on Rush of Ikorr, without ever mentioning to Upper Deck or its employees
27 that he had stolen and continued to use Upper Deck's property. Miller did so to deceive Upper Deck
28 and avoid it finding out about his plans to design a competing, identical game.

1 74. During his engagement with Upper Deck, had Upper Deck known that Miller was
2 talking to and/or potentially working with Ravensburger, or alternatively, known Ravensburger was
3 later planning to begin the development of a TCG nearly identical to Rush of Ikorr, Upper Deck
4 would have responded differently. Such responses would have included, without limitation, seeking
5 to ensure Miller returned and destroyed any copies of any documents Miller had relating to Rush of
6 Ikorr, seeking to enjoin the competing, knock-off TCG, and/or preventing its current employees and
7 contractors from communicating with Miller about Rush of Ikorr.

8 75. Upper Deck was unaware of the material facts that were suppressed and concealed
9 by Miller. If Upper Deck had been aware, it would have taken affirmative action to protect its ideas,
10 concepts, details, and intellectual property from Miller's wrongful acts.

11 76. As a proximate result of Miller's intentional and fraudulent conduct, Upper Deck
12 suffered, and continues to suffer harm in having a competing TCG that copies the essence of Rush
13 of Ikorr released and sold as Upper Deck continues to try to bring its product to market. Miller's
14 concealment is a substantial factor in this harm as it would not have occurred but for the concealment
15 and related activities by Miller and Ravensburger.

16 77. The aforementioned acts of Miller were willful, wanton, malicious and oppressive
17 and were undertaken with the intent to defraud, which conduct justifies the awarding of exemplary
18 and punitive damages in an amount to be determined at trial.

19 **FOURTH CAUSE OF ACTION**
20 **Inducing Breach of a Written Contract**
 (Against Defendant Ravensburger)

21 78. Upper Deck re-alleges and incorporates by reference each and every allegation in this
22 Complaint as though fully set forth herein.

23 79. The Agreements are valid and enforceable contracts between Upper Deck and Miller.

24 80. Upper Deck is informed and believes that Ravensburger knew or reasonably should
25 have known Miller was subject to valid confidentiality contracts before it extended Miller an offer
26 to join Ravensburger.

27 81. Rather than allow Miller to honor the Agreements and their terms, Upper Deck is
28 informed and believes that Ravensburger induced and intended for Miller to breach his obligations

1 so that it could capitalize on Miller's knowledge of the elements of the Rush of Ikorr game so he
2 could make a near-identical game for it. This allowed Ravensburger to gain a competitive advantage,
3 an accelerated launch, and bring a nearly identical TCG to market under a different brand.

4 82. Upper Deck is informed and believes that Ravensburger's desire to leverage this
5 competitive advantage caused Miller to breach his Agreements with Upper Deck. Ravensburger
6 should not have allowed Miller to subsequently design and create the exact TCG that he previously
7 helped develop with Upper Deck pursuant to the Agreements. Ravensburger knew or should've
8 known Miller would utilize the details and proprietary work product Miller prepared for Upper Deck,
9 which was confidential and owned by Upper Deck.

10 83. Upper Deck has been harmed by Ravensburger's conduct, including, but not limited
11 to, lost sales, loss of goodwill and popularity of the game, thwarting the Rush of Ikorr launch, loss
12 of related revenue streams, loss of capital, costs and expenses paid to Miller and others to develop
13 Rush of Ikorr, time delay costs, and loss of further internal resources dedicated to Rush of Ikorr.
14 Ravensburger's actions in hiring away from Upper Deck and tasking Miller make the same product
15 for it was a substantial factor in this harm.

16 84. As a result of the breaches of the Agreements with Miller, Upper Deck has been
17 injured and faces irreparable injury. Upper Deck is threatened with losing investment in amounts
18 which may not be possible to determine, unless Ravensburger is enjoined and restrained by order of
19 this Court.

20 **FIFTH CAUSE OF ACTION**
21 **Negligent Interference with Prospective Economic Relations**
22 **(Against Defendant Ravensburger)**

23 85. Upper Deck re-alleges and incorporates by reference each and every allegation in this
24 Complaint as though fully set forth herein.

25 86. Upper Deck and Miller were in a contractual and economic relationship concerning
26 the development of Rush of Ikorr, which would have resulted in future economic benefit to Upper
27 Deck.

28 87. Ravensburger knew of, or should have known of, this relationship through any basic
due diligence and should have ensured that its employees are not using confidential and proprietary

1 information obtained from third parties to carry out their work. As part of its duty of care in hiring
2 a game designer, Ravensburger was required to vet the specifics of the prior work the game designer
3 had undertaken to avoid misuse of property belonging to others and determine what confidentiality
4 agreements a game designer remained obligated to adhere to before commencing work.

5 88. Ravensburger knew or should have known that Upper Deck and Miller's relationship
6 would be disrupted if it failed to act with reasonable care. Ravensburger utilized Miller to design a
7 game without engaging in reasonable efforts to determine, in advance, whether Miller had relied on
8 confidential and proprietary work product he had already developed and collaborated on for nearly
9 two years with a competitor, or knew full well that it was utilizing Miller as a conduit to steal Upper
10 Deck's property.

11 89. Ravensburger failed to act with reasonable care by failing to fulfill its duty to
12 investigate and perform due diligence on whether the work product of Miller was original or stolen
13 property.

14 90. Ravensburger engaged in wrongful conduct by applying game mechanics, details,
15 and designs stolen from Upper Deck to create Lorcana.

16 91. The relationship between Upper Deck and Miller was disrupted in that Miller
17 abruptly stopped working for Upper Deck and failed to comply with his contractual duties to Upper
18 Deck, namely not using or disclosing the confidential information he learned while working on Rush
19 of Ikorr for any other purpose.

20 92. As a proximate result of the above-mentioned acts of Ravensburger, Upper Deck has
21 been damaged in the ways described herein, in an amount to be proven at trial.

22 **SIXTH CAUSE OF ACTION**
23 **Constructive Trust**
(Against Defendant Miller and Ravensburger)

24 93. Upper Deck re-alleges and incorporates by reference each and every allegation in this
25 Complaint as though fully set forth herein.

26 94. A constructive trust exists where, as here, some property or interest in property that
27 the defendant has no right to is wrongly acquired or detained by another party not entitled to it.

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1 95. Upper Deck has an interest in its design and development of Rush of Ikorr that
2 belongs exclusively to it and not to Miller or Ravensburger.

3 96. Miller acquired this property by retaining and/or incorporating the design of the game
4 and using it in his work for Ravensburger to create Lorcana.

5 97. Upper Deck alleges on information and belief that Ravensburger, through hiring
6 Miller and having him design Lorcana, converted and misappropriated Upper Deck's confidential
7 information and applied it to Lorcana.

8 98. Upper Deck alleges on information and belief that through Miller's conversion,
9 Ravensburger has obtained Upper Deck's confidential information by wrongful act.

10 99. Upper Deck alleges on information and belief that pursuant to California Civil Code,
11 section 2224, Miller and Ravensburger holds Upper Deck's confidential information and any money
12 and/or other property which they derive therefrom as an involuntary trustee for the benefit of Upper
13 Deck.

14 **SEVENTH CAUSE OF ACTION**
15 **Conversion**
16 **(Against Defendants Miller and Ravensburger)**

17 100. Upper Deck re-alleges and incorporates by reference each and every allegation in this
18 Complaint as though fully set forth herein.

19 101. Upper Deck owned the property at issue—Rush of Ikorr as a whole and the related
20 design, details, concepts, and mechanics upon which Rush of Ikorr is played—and Upper Deck was
21 entitled to immediate possession at the time of conversion.

22 102. Miller and Ravensburger knowingly took possession of and applied Upper Deck's
23 property to develop a TCG for its own account and benefit. Miller's and Ravensburger's wrongful
24 acts are substantial in that much of the Lorcana game is based on Rush of Ikorr. Furthermore,
25 Miller's and Ravensburger's theft of Upper Deck's property put Upper Deck's product in peril. For
26 example, if Upper Deck was to release Rush of Ikorr after the launch of Lorcana, the market may
27 incorrectly assume that Rush of Ikorr is an imitation of Lorcana, when in fact the opposite is true.
28 Alternatively, if Ravensburger ruins or mismanages the Lorcana game launch and/or play,
Ravensburger will negatively effect the anticipation and sales for Rush of Ikorr.

1 103. Accordingly, Upper Deck is the lawful owner of the game design and mechanics;
2 Upper Deck was in lawful possession of said property; Upper Deck did not authorize Miller or
3 Ravensburger to retain said property (rather, the Agreements expressly prohibit such retention); and
4 Miller and Ravensburger applied and continue to apply that property for their own use.

5 104. As a direct and proximate result of Miller's and Ravensburger's wrongful actions,
6 Upper Deck has been damaged in an amount according to proof.

7 105. The aforementioned acts of Miller and Ravensburger were willful, wanton, malicious
8 and oppressive and were undertaken with the intent to defraud, which conduct justifies the awarding
9 of exemplary and punitive damages in an amount to be determined at trial. Upper Deck is further
10 entitled to attorney's fees.

11 **EIGHTH CAUSE OF ACTION**
12 **Unfair Competition —Bus. & Prof. Code, § 17200 et seq.**
13 **(Against Defendants Miller and Ravensburger)**

14 106. Upper Deck re-alleges and incorporates by reference each and every allegation in this
15 Complaint as though fully set forth herein.

16 107. Since at least September 2022 through the present, Ravensburger unconscionably
17 and without authorization, used and disseminated Upper Deck's confidential and proprietary game
18 design to promote and market Ravensburger's newest TCG, Lorcana--a TCG with its entire
19 foundation resting on game details, designs, concepts, and mechanics that are and have always been
20 Upper Deck's sole property.

21 108. Ravensburger, unless restrained, will continue to use and disseminate Upper Deck's
22 intellectual property as described herein for purposes of their own enrichment and financial gain.

23 109. The conduct of Miller and Ravensburger, as described herein, constitutes unfair
24 competition in violation of California Business & Professions Code, Section 17200, *et seq.*

25 110. As a proximate result of Miller's and Ravensburger's conduct, Upper Deck is entitled
26 to injunctive relief, disgorgement of revenue and income earned by Ravensburger based on such
27 wrongful acts as ill-gotten gains, and restitution of sums paid to Miller.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Upper Deck prays for judgment in its favor and against Ryan Miller and
3 Ravensburger, inclusive as follows:

- 4 1. For general and special damages in an amount to be determined according to proof;
5 2. For injunctive relief enjoining Ravensburger from publicly releasing Lorcana;
6 3. For restitution;
7 4. For punitive damages in an amount appropriate to punish Miller and Ravensburger
8 and deter others from engaging in similar misconduct;
9 5. For attorneys' fees pursuant to California Civil Code § 3426.4 and otherwise where
10 awardable by law;
11 6. For costs of this suit;
12 7. For interest at the maximum legal rate;
13 8. For an order declaring that Ravensburger holds Upper Deck's intellectual property
14 in trust for Plaintiff;
15 9. For appointment of a receiver as an elisor to sign Upper Deck's provisional patent
16 application on Miller's behalf; and
17 10. For any other remedies at law or in equity that the court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Upper Deck demands a trial by jury on all issues so triable.

20 Respectfully submitted:

21 Dated: June 7, 2023

NICHOLAS & TOMASEVIC, LLP

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