

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

KELLEY JESSOP, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

DALLIN LARSEN, an individual, HENRY
MARSH, an individual, RANDY LARSEN, an
individual, MACHIEL KENNEDY, an
individual, RALPH CARSON, an individual,
AMY COWLEY, an individual, MARK
RAWLINS, an individual, PORTER HALL, an
individual, STEPHEN J. HALL, an individual,
DOES 1-10, and BANKERS TRUST
COMPANY, a Delaware corporation,

Defendants.

**DEFENDANT BANKERS TRUST
COMPANY'S THIRD-PARTY
COMPLAINT AGAINST
MONA VIE, INC.**

Civil No. 2:14-cv-00916

Honorable Bruce S. Jenkins

BANKERS TRUST COMPANY OF SOUTH
DAKOTA, a South Dakota corporation,

Third-Party Plaintiff,

v.

MONA VIE, INC., a Utah corporation,

Third-Party Defendant.

Pursuant to Federal Rule of Civil Procedure 14(a), Defendant and Third-Party Plaintiff Bankers Trust Company of South Dakota, improperly named in the Complaint as “Bankers Trust Company, a Delaware Corporation,” (“BTC”), by and through its counsel, hereby complains and alleges against Third-Party Defendant Mona Vie, Inc. (“Mona Vie”) as follows:

PARTIES

1. BTC is a South Dakota corporation with its principal place of business in Sioux Falls, South Dakota and serves as trustee of the Mona Vie, Inc. Employee Stock Ownership Plan (the “MV ESOP”).

2. Mona Vie is a Utah corporation with its principal place of business in Salt Lake County, Utah.

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1367. Plaintiff Kelly Jessop (“Jessop”) filed this lawsuit under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), and BTC’s claim for indemnification and reimbursement is brought pursuant to Rule 14(a) of the Federal Rules of Civil Procedure on the

basis that Mona Vie is or may be liable to BTC for legal fees and expenses as they are incurred associated with defending against the claims brought by Jessop and for any damages that may result from Jessop's claims against BTC.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e) as some or all of the events or omissions giving rise to the claims occurred in this District, the MV ESOP is administered in this District, and Mona Vie has its principal place of business in this District.

GENERAL ALLEGATIONS

5. Mona Vie is a privately held company that manufactures and distributes products made from blended fruit and vegetable juice concentrates, powders, and purees through multilevel marketing.

6. Mona Vie established for the benefit of certain eligible employees the MV ESOP, an employee stock ownership plan, which was effective as of January 2, 2010. Mona Vie is the MV ESOP plan sponsor.

7. The MV ESOP is an employee stock ownership plan described in sections 4975(e)(7) and 407(d)(6) of ERISA.

8. The MV ESOP is an employer-provided retirement benefit provided at no cost to Mona Vie's employees.

9. Mona Vie engaged BTC to act as trustee of the MV ESOP.

10. On September 12, 2010, Mona Vie and BTC entered into an Engagement Agreement by which Mona Vie "appoint[ed BTC] to serve as the discretionary trustee for the" proposed purchase by the MV ESOP of newly-issued Mona Vie common stock. (Engagement

Agreement, dated Sept. 12, 2010, Ex. “A,” ¶ 1.) A copy of the Engagement Agreement is attached hereto as Exhibit “A.”

11. Certain provisions of the Engagement Agreement were amended and replaced by a First Amendment on November 17, 2010 (the “First Amendment”) and a Second Amendment to Engagement Agreement Between Mona Vie, Inc. and Bankers Trust Company (the “Second Amendment”) on May 23, 2013 (collectively, the Engagement Agreement, the First Amendment, and the Second Amendment are the “Amended Engagement Agreement”). A copy of the First Amendment is attached hereto as Exhibit “B.” A copy of the Second Amendment is attached hereto as Exhibit “C.”

12. The Second Amendment was made effective as of September 12, 2010.

13. By the Second Amendment, Mona Vie and BTC agreed to revise the indemnification provision of the Engagement Agreement as follows:

(a) For purposes of this Section 15, the term “Indemnitees” shall mean [BTC] and its officers, directors, employees, representatives, agents, successors and assigns. Subject to the applicable provisions of ERISA, [Mona Vie] shall indemnify, save and keep harmless the Indemnitees for, from and against any loss, cost, expense, or other damage, including attorneys’ fees, suffered by any of the Indemnitees resulting from or incurred with respect to

- (i) any breach of [Mona Vie’s] representations, warranties or covenants contained in this Agreement,
- (ii) any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations, warranties, or covenants by [Mona Vie] or
- (iii) any legal proceedings related in any way to the performance of services by any one or more of the Indemnitees pursuant to this Agreement.

(b) The indemnification provided for in this paragraph 15 shall extend to:

- (i) any action taken or not taken in good faith by any of the Indemnitees;
 - (ii) any action taken or not taken by any of the Indemnitees at the direction or request of [Mona Vie], the Plan Administrator or of any agent of [Mona Vie] or Plan Administrator, or any named fiduciary of the Plan; and
 - (iii) all reasonable costs and expenses incurred by the Indemnitees in enforcing the indemnification provisions of this paragraph [15] [sic], including reasonable attorney's fees and court costs.
- (c) The indemnification provisions of this Section [15] [sic] shall not apply to the extent that any loss, cost, expense, or damage with respect to which any of the Indemnitees shall seek indemnification is determined by a court of competent jurisdiction in a final judgment from which no appeal can be taken (or which [Mona Vie] and the Indemnitees jointly determine in good faith not to appeal) to have resulted directly and primarily from (i) the gross negligence of one or more of the Indemnitees, (ii) the willful misconduct of one or more of the Indemnitees, or (iii) the Trustee's breach of its fiduciary duty under Section 404(a) of ERISA with respect to its actions as trustee of the Trust. The indemnification provided for in this paragraph [15] [sic] shall survive even if [BTC] for any reason fails to sign the Trust Agreement, if [BTC] resigns or is removed as Trustee.

(Second Amendment, § 1 (replacing ¶ 15), Ex. "C.")

14. Mona Vie and BTC also agreed to amend paragraph 16(b) of the Engagement Agreement as follows:

Except as set forth in paragraph 15(c)[, Mona Vie] shall reimburse the Indemnitees for all reasonable costs that they incur in connection with any Proceeding, including costs of investigation, of testifying at any hearing, of responding to discovery proceedings, and of consulting with [Mona Vie] or the attorneys for [Mona Vie]. The Indemnitees shall have the right to employ their own counsel in any Proceeding, and the reasonable fees and expenses of the Indemnitees' counsel shall be paid by [Mona Vie] as they are incurred. The payment of all or some of such fees and expenses may be recovered by [Mona Vie] in the event that any of the Indemnitees is determined by a court of competent jurisdiction in a final judgment from which no appeal can be taken (or which [Mona Vie] and the Indemnitees jointly determine in good faith not to appeal) to have engaged in gross negligence or willful misconduct or that the Trustee breached its fiduciary duty under Section 404(a) of ERISA with respect to

its actions as trustee of the Trust such that such Indemnitee(s) shall not be entitled to indemnification under paragraph 15 hereof). The Indemnitees' right to employ their own counsel as set forth in this paragraph 16(b) shall apply if any one or more of the following conditions are satisfied:

- (i) the employment by one or more of the Indemnitees of their own counsel was authorized by [Mona Vie];
- (ii) one or more of the Indemnitees are advised by their counsel that there may be one or more legal defenses available to them which are different from or additional to defenses available to [Mona Vie] (in which case [Mona Vie] shall not have the right to assume the defense of the Proceeding on behalf of the Indemnitees);
- (iii) [Mona Vie] fails to assume the defense of the proceeding and to employ counsel satisfactory to the Indemnitees within 14 days after being notified of the commencement of the Proceeding; or
- (iv) one or more of the Indemnitees shall be informed by their counsel that a conflict exists with the counsel selected by [Mona Vie].

(Second Amendment, § 1 (replacing paragraph 16(b), Ex. "C.")

15. In addition, Mona Vie and BTC agreed to amend paragraph 17 of the Engagement Agreement relating to governmental investigations as follows:

The provisions of this paragraph 17 shall apply if any governmental or private commission or regulatory authority shall investigate any of the Indemnitees, or shall require any of the Indemnitees to testify at any hearing or in connection with any investigation, regarding the performance of services by the Indemnitees pursuant to this Agreement. Investigations covered by this paragraph 17 shall include, but shall not be limited to, investigations conducted by any agency of the United States or of any state, by any committee of the Congress of the United States or of the legislature of any state, or by a stock exchange or other entity having authority to investigate or regulate similar to that of a stock exchange. In the case of any investigation, the Indemnitees shall have the right to employ separate counsel to represent them, and [Mona Vie] shall pay the reasonable fees and expenses of the Indemnitees' counsel as they are incurred. The payment of all or some of such fees and expenses may be recovered by [Mona Vie] in the event that any of the Indemnitees is determined by a court of competent jurisdiction in a final judgment from which no appeal can be taken (or which [Mona Vie] and the Indemnitees jointly determine in good faith not to appeal) to have engaged in gross negligence or willful misconduct or that the Trustee

breached its fiduciary duty under Section 404(a) of ERISA such that such Indemnitee(s) shall not be entitled to indemnification under paragraph 15(c) hereof. [BTC] agrees that it shall reasonably cooperate with [Mona Vie] in connection with any investigation.

(Second Amendment, § 1 (replacing paragraph 17, Ex. “C.”))

16. Mona Vie and BTC also entered into the Mona Vie, Inc. Employee Stock Ownership Plan Trust Agreement (the “Trust Agreement”), dated November 17, 2010. A copy of the Trust Agreement is attached hereto as Exhibit “D.”

17. Except with regard to BTC’s fees, expenses, and reimbursement and indemnification for fees and expenses in connection with the performance of its duties and services under the Trust Agreement and as otherwise provided in Section 4.11 of the Trust Agreement, Mona Vie and BTC understood and anticipated that the Trust Agreement would supersede and supplant the Engagement Agreement.

18. BTC has incurred administrative costs and other legal fees and costs relating to a routine governmental investigation by the Department of Labor (the “DOL”) of the MV ESOP and other actions that BTC had counsel perform.

19. Mona Vie initially reimbursed BTC for such legal fees and expenses relating to the governmental investigation under its indemnity obligations through approximately the end of 2014 as such fees and expenses were incurred, but Mona Vie has failed and/or refused to continue its reimbursement of such fees.

20. BTC has continued to submit its invoices relating to administrative costs and governmental investigations for reimbursement, but Mona Vie has failed to pay such amounts.

21. On December 18, 2014, Jessop filed a complaint (the “Complaint”) initiating this putative class-action lawsuit against multiple defendants, including BTC, complaining that

Jessop and others in the putative class were “cheated out of their hard-earned retirement benefits” as a result of ERISA violations and prohibited transactions under ERISA by BTC (the “Lawsuit”). (Compl., Doc. 2, ¶ 1.)

22. After Jessop filed this Lawsuit, BTC requested that Mona Vie reimburse its attorney fees and costs incurred in connection with this Lawsuit, and BTC submitted attorney invoices for the Lawsuit.

23. Notwithstanding its clear obligation to do so under the Amended Engagement Agreement, Mona Vie has failed and refused to indemnify and hold BTC harmless.

24. Mona Vie has also flatly refused in writing to reimburse BTC for attorney fees, costs, and damages already incurred and that BTC anticipates that it will incur in relation to this Lawsuit, stating in an email dated March 3, 2015:

I know that since we created the MonaVie ESOP that MonaVie has paid Krieg DeVault’s invoices related to the ESOP. We see this class action case, and the unfortunately fact that we both have to deal with it, a bit differently. This invoice and the ones that will follow we see as the responsibility of Bankers Trust. We have our own set of bills to pay lawyers for defense of this case. We value our relationship with you and trust that you understand our position.

(Email from D. Hawes of Mona Vie to Scot Storjohann of BTC, dated March 3, 2015, attached hereto as Exhibit “E.”)

25. BTC has responded and challenged in writing Mona Vie’s March 3, 2015 email both directly to Mona Vie and to Mona Vie’s counsel, insisting that Mona Vie honor its contractual obligations to indemnify and reimburse BTC pursuant to the Amended Engagement Agreement. Neither Mona Vie nor its counsel has responded to BTC’s demand.

26. Mona Vie is a “Party in Interest” as such term is defined under ERISA Section 3(14) with respect to the MV ESOP (“Party in Interest”).

27. Mona Vie issued a note in the amount of \$186,496,985 by which Mona Vie extended credit to the MV ESOP in the amount of \$186,496,985 (the “ESOP Loan”) purchase price for the MV ESOP’s acquisition of the Mona Vie stock on November 17, 2010 (the “2010 Stock Transaction”) pursuant to that certain “ESOP Loan Agreement” dated November 17, 2010.

28. Further, Mona Vie knowingly participated in the 2010 Stock Transaction.

29. If BTC is determined in this Lawsuit to be liable to Jessop and the putative class for breach of fiduciary duty with respect to the MV ESOP’s acquisition of Mona Vie Stock on November 17, 2010, then Mona Vie’s extension of credit constitutes a separate violation of ERISA, and Mona Vie would therefore also be liable to the MV ESOP for damages relating to the 2010 Stock Transaction.

FIRST CLAIM FOR RELIEF
(Breach of Contract and Indemnification)

30. BTC incorporates by this reference all other allegations contained in this Complaint as if fully set forth herein.

31. Mona Vie and BTC entered into valid and enforceable contracts, including but not limited to the Amended Engagement Agreement, by which BTC was engaged to act as trustee of the MV ESOP.

32. BTC has performed all of its obligations under the Amended Engagement Agreement.

33. Mona Vie agreed to indemnify BTC under the Amended Engagement Agreement for administrative fees and expenses, fees and expenses associated with governmental investigations, and certain fees and expenses in legal proceedings for BTC’s actions as trustee as they are incurred.

34. BTC has incurred administrative costs and other legal fees and costs relating to the governmental investigation by the DOL and other actions that BTC had counsel perform.

35. Mona Vie initially reimbursed BTC for such legal fees and expenses under its indemnity obligations through approximately the end of 2014 as such fees and expenses were incurred, but Mona Vie has failed and/or refused to continue its reimbursement of such fees.

36. BTC has continued to submit its invoices relating to administrative costs and the DOL governmental investigation for reimbursement, but Mona Vie has failed to pay such amounts.

37. Jessop has filed this Lawsuit against and seeks damages from BTC for the alleged actions or inactions set forth in the Complaint.

38. BTC has demanded that Mona Vie indemnify it and reimburse it for expenses and costs as they are incurred in connection with this Lawsuit.

39. BTC has incurred damages, costs, and expenses, including attorneys' fees and costs, in connection with this Lawsuit and Jessop's claims against BTC.

40. BTC anticipates that it will continue to incur damages, costs, and expenses, including attorneys' fees and costs, in connection with this Lawsuit and Jessop's claims against BTC, in connection with continued administrative actions and ongoing governmental investigations.

41. After Jessop filed this Lawsuit, BTC requested that Mona Vie indemnify, reimburse, and hold BTC harmless from and against any and all claims, demands, damages, costs and expenses incurred, including but not limited to, BTC's reasonable attorneys' fees and litigation costs, relating to or arising out of Jessop's claims and this Lawsuit.

42. Notwithstanding its clear obligation to do so under the agreements between BTC and Mona Vie, including the Amended Engagement Agreement, Mona Vie has failed and refused to indemnify and hold BTC harmless.

43. Specifically, Mona Vie has refused to reimburse BTC for attorneys' fees and costs incurred in defending against the Complaint and Jessop's claims.

44. BTC is entitled to recover damages, costs, and expenses, including attorneys' fees and any damages awarded in this Lawsuit against BTC, from Mona Vie that it incurs in connection with this Lawsuit as they are incurred and the allegations in Jessop's Complaint, including attorneys' fees, costs, and interest.

45. BTC is also entitled to recover ongoing fees and expenses as they are incurred relating to administrative actions and governmental investigations.

46. Further, BTC is entitled to recover fees, expenses, and costs associated with the administration, including amounts due to be paid to Chartwell Capital Solutions, LLC, of the MV ESOP and winding up its trust, which have not been paid, and unpaid costs and expenses incurred in connection with governmental investigations.

47. By reason of the foregoing, BTC has been damaged and has incurred costs and expenses, including attorneys' fees and litigation costs incurred in this matter, in an amount to be proven at trial, together with pre and post judgment interest, attorneys' fees, and court costs.

SECOND CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)

48. BTC incorporates by this reference all other allegations contained in this Complaint as if fully set forth herein.

49. An implied covenant of good faith and fair dealing is generally inherent in all

contractual relationships.

50. Under the covenant, each party implicitly promises that it will not do anything that will destroy or injure the other party's rights to receive the fruits of the contract.

51. BTC has performed all of its obligations under the Amended Engagement Agreement.

52. In this case, BTC reasonably expected and had rights to receive indemnification and to be held harmless by Mona Vie under the Amended Engagement Agreement.

53. Mona Vie has denied BTC the anticipated fruits under the Amended Engagement Agreement by failing and refusing to indemnify and reimburse BTC its reasonable attorneys' fees and costs incurred in connection with the allegations in Jessop's Complaint, thereby breaching the covenant of good faith and fair dealing.

54. Mona Vie has denied BTC its anticipated fruits under the Amended Engagement Agreement by failing and refusing to hold BTC harmless from any and all damages and expenses incurred or suffered as a result of the Complaint and/or in connection with this lawsuit, thereby breaching the covenant of good faith and fair dealing.

55. As a result, BTC has been damaged by Mona Vie's breach of the implied covenant of good faith and fair dealing in an amount to be determined at trial, plus all other consequential damages, interest at the applicable legal or contract rate, court costs, and attorneys' fees as allowed by law and/or equity.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment)

56. BTC incorporates by this reference all other allegations contained in this Complaint as if fully set forth herein.

57. Mona Vie and BTC entered into valid and enforceable contracts, including the Amended Engagement Agreement and the Trust Agreement, by which BTC was engaged to act as trustee of the MV ESOP.

58. BTC has performed all of its obligations under the Amended Engagement Agreement.

59. Under the Amended Engagement Agreement, Mona Vie agreed to indemnify, reimburse, and hold BTC harmless from and against any and all claims, demands, damages, costs and expenses incurred, including reasonable attorney fees and costs as they are incurred, and to reimburse BTC for fees and expenses associated with governmental investigations and administrative fees and expenses as they are incurred. (Second Amendment, § 1 (replacing ¶¶ 15, 16, & 17), Ex. “B.”)

60. Jessop has filed this Lawsuit against and seeks damages from BTC for the alleged actions or inactions set forth in the Complaint.

61. BTC has incurred damages, costs, and expenses, including attorneys’ fees and costs, in connection with this Lawsuit and Jessop’s claims against BTC.

62. BTC anticipates that it will continue to incur damages, costs, and expenses, including attorneys’ fees and costs, in connection with this lawsuit and Jessop’s claims against BTC.

63. In addition, BTC may yet be subject to a judgment against it based on the claims of the Plaintiff under the facts alleged in the Complaint.

64. As a result, BTC is entitled to a declaratory judgment that it is entitled to indemnification and reimbursement pursuant to the Amended Engagement Agreement for its

reasonable attorneys' fees, costs, other litigation expenses as they are incurred arising out of this lawsuit, and for reimbursement and indemnification for any judgment that may be entered against it in this action and for other fees and expenses as they are incurred relating to administration of the MV ESOP and related governmental investigations, as allowed by the Amended Engagement Agreement.

FOURTH CLAIM FOR RELIEF
(Equitable Contribution)

65. BTC incorporates by this reference all other allegations contained in this Complaint as if fully set forth herein.

66. BTC is facing potential liability in this Lawsuit brought by Jessop based, *inter alia*, on allegations that the MV ESOP acquired Mona Vie stock at an inflated and excessive price, including for allegations of breach of fiduciary duty.

67. Mona Vie knowingly participated in the 2010 Stock Transaction by, among other things, extending credit to the MV ESOP and loaning the MV ESOP \$186,496,985 as the purchase money for the MV ESOP to acquire the Mona Vie stock.

68. Mona Vie is a Party in Interest by loaning the MV ESOP the purchase money for the stock, by virtue of its participation in the 2010 Stock Transaction, and as plan sponsor.

69. If Jessop proves in this Lawsuit that BTC did not meet its fiduciary duty with respect to the 2010 Stock Transaction, or if the original acquisition price of \$186,496,985 is determined to be excessive or otherwise overvalued, then Mona Vie is liable under ERISA § 406(a) (the "ERISA Violation") by virtue of its extension of credit and loan pursuant to the ESOP Loan. Such constitutes a separate and independent violation of ERISA by Mona Vie.

70. If BTC is found liable to Jessop and the putative class for breach of fiduciary

duty, then in fairness and equity, BTC is entitled to contribution from Mona Vie for any damages arising as a result of Mona Vie's separate ERISA Violation.

71. Further, Mona Vie knowingly participated in the 2010 acquisition of Mona Vie stock by the ESOP. Indeed, Mona Vie was the sponsor of the MV ESOP.

72. If BTC is found liable to Jessop and the putative class for breach of fiduciary duty, then in fairness and equity, BTC is entitled to contribution from Mona Vie for any such damages because of Mona Vie's knowing participation in the 2010 acquisition of Mona Vie stock by the MV ESOP, its own separate ERISA Violation, and knowing participation in BTC's alleged breach of fiduciary duty.

73. As a result of Mona Vie's own ERISA Violation and Mona Vie's knowing participation in the 2010 Mona Vie stock acquisition by the MV ESOP, BTC is entitled to equitable contribution from Mona Vie in an amount to be determined at trial, plus all other consequential damages, interest at the applicable legal or contract rate, court costs, and attorneys' fees as allowed by law and/or equity.

PRAYER FOR RELIEF

WHEREFORE, Defendant and Third-Party Plaintiff Bankers Trust Company of South Dakota prays for judgment against Third-Party Defendant Mona Vie, Inc. as follows:

A. On the First Claim for Relief, for a judgment in favor of BTC and against Mona Vie, in an amount to be determined at trial, plus any and all accruing prejudgment interest as allowed by law;

B. On the Second Claim for Relief, for a judgment in favor of BTC and against Mona Vie, in an amount to be determined at trial, plus any and all accruing prejudgment interest as allowed by law;

C. On the Third Claim for Relief, for a declaration and order that BTC is entitled to indemnification and reimbursement from Mona Vie under the Amended Engagement Agreement, for its reasonable attorneys' fees, costs, and other litigation expenses arising out of this lawsuit, including an order of indemnification for any judgment that may be ordered against it in favor of the Plaintiff;

D. On the Fourth Claim for Relief, for a judgment in favor of BTC and against Mona Vie for equitable contribution, in an amount to be determined at trial, plus any and all accruing prejudgment interest as allowed by law;

E. For an award of attorneys' fees and costs as provided by contract or law; and

F. For such other and further relief as to this Court seems just and equitable.

DATED this 21st day of April, 2015.

By /s/ Ryan B. Frazier

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*Attorneys for Defendant and Third Party Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's ECF system.

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EXHIBIT A

ENGAGEMENT AGREEMENT

BETWEEN

MONA VIE, INC.

AND

BANKERS TRUST COMPANY

ENGAGEMENT AGREEMENT

This Trustee Agreement is made and entered into this 12th day of September, 2010 by and between Bankers Trust Company (the "Trustee"), and Mona Vie, Inc., a Utah corporation (the "Company").

RECITALS

The Company wishes to establish an employee stock ownership plan (the "Plan") for the benefit of its employees. All contributions made by the Company to the Plan will be held in a trust (the "Trust"), which has been or will be established pursuant to a written agreement (the "Trust Agreement") between the Company and the trustee of the Trust.

The Company intends to offer for sale a number of new-issue, common shares of the Company to the Plan (the "Offer"). If the Plan trustee for the transaction accepts the Offer, the Company will contribute or lend to the Plan the funds needed to finance the purchase. The Company desires to close the sale of the shares of the Company to the Plan (the "Closing") on or before November 14, 2010, but in no event later than December 31, 2010.

The Company desires to retain the Trustee to act as the discretionary trustee for the ESOP transaction, and the Company further desires to retain the Trustee to act as the ongoing directed trustee of the ESOP in the event that the ESOP transaction is completed or the ESOP is otherwise funded. The Trustee is willing to serve as trustee, on the terms and subject to the conditions set forth in this Engagement Agreement and the ESOP Trust Agreement.

AGREEMENT

In consideration of the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

APPOINTMENT AND DUTIES

1. Appointment of Trustee. The Company hereby appoints the Trustee to serve as the discretionary trustee for the ESOP transaction, and the Trustee hereby accepts this appointment. The Trustee's initial engagement shall consist of pre-ESOP transaction planning, and then an evaluation of the Offer and a determination whether or not to accept the Offer on behalf of the Plan.

2. Continuing Service. Company, hereby appoints the Trustee to serve as the ongoing directed trustee of the Plan after it has completed its evaluation of the Offer. The Trustee will serve as the trustee of the Trust until it resigns or is removed by the Company. The Trustee may resign at any time by providing 30 days' advance written notice to the

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Company. The Company may remove the Trustee by providing the Trustee with thirty days' advance written notice, subject to providing the Trustee with satisfactory written evidence of the appointment of a successor trustee and of the acceptance of the appointment by the successor trustee.

3. Duties of Trustee. The Trustee shall hold and manage all contributions made by the Company to the Plan in accordance with the terms of the Plan and of the Trust Agreement, to the extent that they are consistent with the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"). The Trustee will exercise its independent discretionary judgment in connection with the acquisition and custody of Trust assets in accordance with the requirements of part 4 of Title I of ERISA. The Trustee will maintain accurate records regarding the acquisition and holding of Company stock and of any other Trust investments and regarding distributions to Plan participants.

4. Due Diligence Investigation. In order to enable the Trustee to properly evaluate the Offer, the Company shall deliver to the Trustee all information regarding the finances and operations of the Company that the Trustee shall reasonably request. In addition, the Company shall grant to the Trustee and its advisors reasonable access to the officers and directors of the Company and shall provide to the Trustee all information requested by the Trustee relating to actions of the Company's Board of Directors and relating to past, present, and projected business affairs of the Company.

5. Retention of Financial Advisor. The Trustee will engage the services of a qualified independent financial advisor, who will report directly to the Trustee and not to the Company. The Trustee or the financial advisor will be entitled to timely periodic payment by the Company of all reasonable fees and expenses of the financial advisor. All fees and expenses of the financial advisor which are incurred by the Trustee up to and including the Closing shall be paid by the Company at or before the Closing.

6. Retention of Legal Counsel. The Trustee will engage its own independent legal counsel. The Trustee or its legal counsel shall be entitled to timely periodic payment by the Company for all reasonable fees and expenses of the Trustee's legal counsel. All reasonable legal fees and expenses which are incurred by the Trustee up to and including the Closing shall be paid by the Company at or before the Closing. Invoices from the Trustee's legal counsel shall be sent to the Trustee and then forwarded by the Trustee to the Company for payment.

7. Confidentiality. The Trustee shall use the information disclosed to it by the Company only for the purpose of evaluating the Offer. The Trustee shall restrict disclosure of the information that it obtains from the Company to those persons who require knowledge of the information in order to help the Trustee to evaluate the Offer (including, but not limited to, officers, directors, employees, and professional advisors of the Trustee). Neither the Trustee nor any of its agents or advisors shall disclose any confidential information regarding the Company to any third parties, except as may be required under ERISA or other laws or as may be requested by the Department of Labor, the Internal Revenue Service, the Securities and Exchange Commission, or other federal or state agencies. Neither the Trustee nor any of its agents or employees shall be obligated to

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maintain the confidentiality of any information that is publicly available or that becomes publicly available without violation by the Trustee or any of its agents or employees of the terms of this Section 7. If the Trustee for any reason fails to sign the Trust Agreement, or if the Trustee resigns or is removed after signing the Trust Agreement without completing the proposed purchase of Company stock, the Trustee shall remain subject to the confidentiality provisions of this Agreement and shall return to the Company all documents delivered to it by the Company upon request.

COMPENSATION

8. Transaction Responsibility Fee. The Company shall pay to the Trustee the sum of \$40,000 as compensation for the exercise by the Trustee of its fiduciary responsibility in connection with the evaluation of the Offer. The fees shall be paid in two installments. The first installment of \$20,000 shall be due and payable upon the signing of this Agreement. The balance due shall be payable at the Closing or, if earlier, November 14, 2010. The fee shall be payable in full regardless of whether the Trustee accepts the Offer and regardless of whether the Plan purchases shares of the Company.

9. Annual Fees. In consideration for the Trustee's ongoing service, if requested by the Company, as trustee of the Trust and as custodian of the assets of the Plan pursuant to the terms of this Agreement, the Company shall pay to the Trustee an annual fee in the amount determined in accordance with the schedule that is attached to this Agreement, which shall be subject to change on January 1, 2012 and from time to time thereafter.

10. Fees for Extraordinary Services. In addition to the fees due and payable to the Trustee under Sections 8 and 9, the Company agrees to pay additional reasonable fees to the Trustee for any services performed by the Trustee in addition to those provided for in this Agreement. Examples of additional services that may be provided by the Trustee from time to time include: providing counsel or testimony in connection with, or other involvement in, litigation relating to the Plan; responding to hostile, contested, or unsolicited tender offers for shares of the Company's stock held by the Trustee; and exercising fiduciary responsibilities in connection with proposed mergers, acquisitions, divestitures, public offerings, reorganizations, or similar transactions involving the Company. The Trustee will charge for its extraordinary services based on the time spent on a particular matter by officers or employees of the Trustee, charged at their normal hourly rates then in effect.

11. Reimbursement of Expenses. The Company shall reimburse the Trustee for all expenses incurred by the Trustee in connection with the performance of its services pursuant to this Agreement. Expenses for which the Trustee shall be entitled to reimbursement shall include charges for fees and expenses of the Trustee's financial advisors and reasonable expenses for legal counsel and out-of-pocket expenses incurred by officers or employees of the Trustee, such as charges for copying, postage, facsimile transmissions, private express mail deliveries, travel (airfare and mileage), lodging, and meals.

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12. Reimbursement from Trust. To the extent that the Company shall fail to pay the fees due to the Trustee or to reimburse the Trustee for its expenses on a timely basis, the Company agrees that the Trustee shall be paid the amounts due to it from the Trust. If there is not sufficient cash in the Trust to pay the amounts due to the Trustee, then the Trustee shall have the right to offset the amounts due to it against the assets of the Trust, and the Trustee shall be authorized to sell assets of the Trust to the extent necessary to obtain sufficient cash to pay the amounts due to the Trustee.

TAX QUALIFICATION OF PLAN

13. Representations and Warranties of the Company. The Company hereby represents and warrants to the Trustee as follows:

(a) The Plan will be qualified under Section 401(a) of the Internal Revenue Code of 1986 (the "Code") and shall qualify as an "employee stock ownership plan" within the meaning of Section 4975(e)(7) of the Code and Section 407(d)(6) of ERISA; and

(b) The Trust will be exempt from taxation under Section 501(a) of the Code.

14. Tax Ruling. The Company shall apply to the Internal Revenue Service within the remedial amendment period prescribed by Section 401(b) of the Code and the regulations interpreting that section of the Code for a letter of determination that: (a) the Plan constitutes an "employee stock ownership plan" within the meaning of Section 4975(e)(7) of the Code; (b) the Plan is qualified under Section 401(a) of the Code; and (c) the Trust is exempt from taxation under Section 501(a) of the Code. The Company will adopt any amendment required by the Internal Revenue Service as a condition for the letter of determination on a timely basis.

INDEMNIFICATION

15. Indemnification. For purposes of this Section 15, the term "Indemnitees" shall mean the Trustee and its officers, directors, employees, and agents. Subject to the applicable provisions of ERISA, the Company shall indemnify the Indemnitees for any loss, cost, expense, or other damage, including attorney's fees, suffered by any of the Indemnitees resulting from or incurred with respect to any legal proceedings related in any way to the performance of services by any one or more of the Indemnitees pursuant to this Agreement. The indemnification provided for in this Section 15 shall extend to: (a) any action taken or not taken by any of the Indemnitees at the direction or request of the Plan Administrator or of any agent of the Plan Administrator; and (b) all reasonable costs and expenses incurred by the Indemnitees in enforcing the indemnification provisions of this Section 15, including reasonable attorney's fees and court costs. However, these indemnification provisions shall not apply to the extent that any loss, cost, expense, or

[Type text]

damage with respect to which any of the Indemnitees shall seek indemnification is held by a court of competent jurisdiction, in a final judgment from which no appeal can be taken, to have resulted either from the negligence of one or more of the Indemnitees or from the willful misconduct of one or more of the Indemnitees.

16. Defense of Actions. (a) Notice and Assumption of Defense. If one or more of the Indemnitees receives notice of any legal proceeding with respect to which indemnification may be sought against the Company pursuant to Section 15 (a "Proceeding"), the Indemnitees shall notify the Company of the Proceeding in writing within ten days of the commencement of the Proceeding. However, the failure by the Indemnitees to so notify the Company shall not relieve the Company from any liability, except to the extent that the failure to notify the Company shall actually have prejudiced the defense of the Proceeding. The Company will be entitled to assume the defense of the Proceeding with counsel reasonably satisfactory to the Indemnitees or to otherwise participate in the Proceeding. If the Company elects to assume the defense of the Proceeding, it then shall pay all costs of defense.

(b) Reimbursement of Expenses. The Company shall reimburse the Indemnitees for all reasonable costs that they incur in connection with any Proceeding, including costs of investigation, of testifying at any hearing, of responding to discovery proceedings, and of consulting with the Company or the attorneys for the Company. The Indemnitees shall have the right to employ their own counsel in any Proceeding, and the reasonable fees and expenses of the Indemnitees' counsel shall be paid by the Company as they are incurred, if any one or more of the following conditions are satisfied:

(i) the employment by the Indemnitees of their own counsel shall be authorized by the Company;

(ii) the Indemnitees are advised by their counsel that there may be one or more legal defenses available to them which are different from or additional to defenses available to the Company, which defenses create, would give rise to, or would constitute, a conflict of interests between the Company and the Indemnitees in the Proceeding, under the Utah Rules of Professional Conduct, or which would otherwise materially prejudice the defense of the Indemnitees in the Proceeding absent separate counsel for them (in which case the Company shall not have the right to assume the defense of the Proceeding on behalf of the Indemnitees);

(iii) the Company fails to assume the defense of the proceeding and to employ counsel satisfactory to the Indemnitees within 14 days after being notified of the commencement of the Proceeding; or

(iv) the Indemnitees shall be informed by their counsel that a conflict exists with the counsel selected by the Company.

17. Governmental Investigations. The provisions of this Section 17 shall apply if any governmental or private commission or regulatory authority shall investigate any of the

[Type text]

Indemnitees, or shall require any of the Indemnitees to testify at any hearing or in connection with any investigation, regarding the performance of services by the Indemnitees pursuant to this Agreement. Investigations covered by this Section 17 shall include, but shall not be limited to, investigations conducted by any agency of the United States or of any state, by any committee of the Congress of the United States or of the legislature of any state, or by a stock exchange or other entity having authority to investigate or regulate similar to that of a stock exchange. In the case of any investigation, the Company will be entitled to assume the defense of the investigation with counsel reasonably satisfactory to the Indemnitees or to otherwise participate in the investigation. If the Company elects to assume the defense of the investigation, it then shall pay all costs of defense.

The Indemnitees shall have the right to employ separate counsel to represent them, and the Company shall pay the reasonable fees and expenses of the Indemnitees' counsel as they are incurred, if the same criteria set forth in Section 16(b) (i) through (iv) above are met. The Trustee agrees that it shall reasonably cooperate with the Company in connection with any investigation.

18. Limitation. If a court of competent jurisdiction shall hold that any payment or award of indemnification pursuant to the terms of this Agreement shall be unavailable to any one or more of the Indemnitees from the Company for any reason other than their gross negligence or willful misconduct, the Company then shall reimburse the affected Indemnitees, as required by Section 15, but taking into account the basis for the denial of full indemnification by the court.

MISCELLANEOUS

19. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors, assigns, and legal representatives of the Company and of the Trustee. Neither termination nor completion of the engagement of the Trustee or of any of the Indemnitees shall affect the indemnification provisions of this Agreement, which shall remain operative and in full force and effect after the termination or completion of the engagement. The Company shall not merge or consolidate with any other corporation or entity in a transaction after which the Company is not the surviving entity, and the Company shall not sell all or substantially all of its assets to any other person, corporation, or entity, unless the other person, corporation, or entity expressly assumes the duties and obligations of the Company as set forth in this Agreement.

20. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be delivered in person or sent by certified or by private express mail, postage prepaid, and properly addressed as follows:

To the Company: Dallin Larsen, Chairman
MonaVie, Inc.
10855 S. River Front Pkwy
Salt Lake City, UT 84095

[Type text]

With a copy to: Company Legal Counsel

Kevin Long
Chang, Ruthenberg & Long, PC
620 Coolige Dr., Suite 350
Folsom, CA 95630-3184

With a copy to: Company General Counsel

Graden P. Jackson
Strong & Hanni
3 Triad Center, Suite 500
Salt Lake City, UT 84180

To the Trustee: Scot Storjohann
VP and Manager
Bankers Trust Company
453 7th St.
Des Moines, Iowa 50304-0897

With a copy to: Trustee's Legal Counsel

Sharon Hearn
Krieg DeVault
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2079

21. Partial Invalidity. If any portion of this Agreement shall be determined to be unenforceable, the remaining provisions shall remain in full force and effect.

22. Waivers. Either the Company or the Trustee may, by written notice to the other party: (a) extend the time for the performance of any of the obligations or other actions of the other party under this Agreement; or (b) waive or modify performance of any of the obligations of the other party under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement shall be deemed to constitute a waiver by that party of compliance with any of the obligations contained in this Agreement. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

23. Governing Law. This Agreement shall be interpreted and enforced in accordance with, and governed by, the laws of the State of Iowa.

24. Entire Agreement. This Agreement supersedes all prior agreements and understandings between the parties and may not be changed or terminated orally. No attempted change, termination, or waiver of any of the provisions of this Agreement shall

[Type text]

be binding, unless in writing and signed by the party against whom the change, termination, or waiver is sought to be enforced. This Agreement may be executed in counterparts, all of which together shall comprise one contract. Signatures sent via facsimile or email shall be considered the same as original signatures.


25. E&O Coverage. At all times during the term of this Agreement, the Trustee shall maintain in force E&O liability insurance coverage, with policy limits of at least \$10 million per occurrence and \$10 million in the aggregate. Upon request from the Company, the Trustee shall provide proof of such insurance to the Company.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Agreement to be signed as of the day and year first written above.


[Signatures are on the following page.]

[Type text]

BANKERS TRUST COMPANY

By: 
Its: VP and Manager

MONA VIE, INC.


By: DEVIN D. THORSE
Its: CHIEF FINANCIAL OFFICER

MONA VIE, INC. EMPLOYEE STOCK OWNERSHIP PLAN

FEE SCHEDULE

<u>Services</u>	<u>Fee Schedule</u>
Transactional Trustee Services (One-time charge when ESOP is established.)	\$40,000 plus travel expenses
<u>Trust, Administration & Custodial</u> Directed Trustee (Ongoing annual fee)	.10% of asset market value up to \$25,000,000 (\$12,500 minimum per year) .075% of asset value \$25,000,001 to \$50,000,000 .05% of asset value over \$50,000,001 to \$100,000,000 .03% of asset value \$100,000,001 - \$200,000,000 .01% of asset value over \$200,000,000
Custody Services	Included
<u>Documents & Valuations</u>	
Investment Policy	Included
Annual Stock Valuation Review	Included
Distribution Fee	\$40 per participant distribution

Fees for ongoing trust services will be billed to MonaVie, Inc. on a quarterly basis.

[Type text]

EXHIBIT B

FIRST AMENDMENT TO ENGAGEMENT AGREEMENT
BETWEEN MONA VIE, INC. AND BANKERS TRUST COMPANY

This First Amendment to the Original Engagement Agreement, as defined below (this "Amendment") is made and entered into this 17th day of November, 2010, by and between Bankers Trust Company, an Iowa corporation, as trustee of the Mona Vie, Inc. Employee Stock Ownership Plan (the "Trustee"), and Mona Vie, Inc., a Utah corporation (the "Company"). This Amendment amends that certain Original Engagement Agreement (defined below).

RECITALS

The Company and the Trustee entered into an engagement agreement, dated September 12, 2010 (the "Original Engagement Agreement"), pursuant to which the Company engaged the Trustee to act as trustee of the Company's employee stock ownership plan (the "Plan") and related trust, which forms a part of the Plan, designated to hold employer stock and other contributions made to the Plan (the "Trust").

Under the Original Engagement Agreement the Trustee was engaged to serve as a discretionary trustee for the transaction in which the ESOP would purchase shares from the Company and as an ongoing directed trustee thereafter. The Company has proposed to revise the terms of the engagement such that the Trustee will continue to serve as a discretionary trustee after the Closing of the ESOP transaction.

The company and the Trustee desire to enter into this First Amendment to the Original Engagement Agreement to set forth terms and conditions related to the Trustee's role as an ongoing discretionary trustee, effective as of the date immediately following the Closing.

AGREEMENT

In consideration of the mutual covenants and agreements set forth herein, the parties agree to amend the Original Engagement Agreement, effective as of the date immediately following the Closing, as follows:

1. By replacing the third Recital of the Original Engagement Agreement in its entirety with the following:

The Company desires to retain the Trustee to act as the discretionary trustee for the ESOP transaction, and the Company further desires to retain the Trustee to act as the ongoing discretionary trustee of the ESOP in the event that the ESOP transaction is completed or the ESOP is otherwise funded. The Trustee is willing to serve as trustee, on the terms and subject to the conditions set forth in this Engagement Agreement as amended by any amendments hereto and the ESOP Trust Agreement.

2. By replacing Section 2 of the Original Engagement Agreement in its entirety with the following:

"2. Continuing Service. Company hereby appoints the Trustee to serve as the ongoing discretionary trustee of the Plan, effective on the date immediately following the date of the Closing. The Trustee may resign at any time by providing 30 days' advance written notice to the Company, which notice shall be subject to the provisions generally under ERISA regarding a fiduciary's duty concerning resignation of fiduciaries. The Company may remove the Trustee by providing the Trustee with 30 days' advance written notice, subject to providing the Trustee with satisfactory written evidence of the appointment of a successor trustee and of the acceptance of the appointment by the successor trustee."

3. By replacing the fee schedule attached to the Original Engagement Agreement with the fee schedule attached to this Amendment as Exhibit A.

Except as set forth herein, the provisions of the Original Engagement Agreement shall survive in full force and effect in accordance with their terms.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Agreement to be signed as of the day and year first written above.

BANKERS TRUST COMPANY

MONA VIE, INC.

By: [Signature]
Its: VP and Manager

By: [Signature]
Its: PRESIDENT

KD_3092639_2.DOCX

EXHIBIT C

Mona Vie
M15750

Amendment done
5-22-13

**SECOND AMENDMENT TO ENGAGEMENT AGREEMENT
BETWEEN MONA VIE, INC. AND BANKERS TRUST COMPANY**

This Second Amendment to the Original Engagement Agreement, as defined below (the "Amendment") is made and entered into this 22nd day of May, 2013 by and between Bankers Trust Company of South Dakota, wholly owned subsidiary of and successor to Bankers Trust Company, as trustee of the Mona Vie, Inc. Employee Stock Ownership Plan (the "Trustee"), and Mona Vie, Inc., a Utah corporation (the "Company"). This Amendment amends that certain Original Engagement Agreement (defined below).

RECITALS

The Company and the Trustee entered into an engagement agreement, dated September 12, 2010 (the "Original Engagement Agreement"), pursuant to which the Company engaged the Trustee to act as trustee of the Company's employee stock ownership plan (the "Plan") and related trust, which forms a part of the Plan, designated to hold employer stock and other contributions made to the Plan (the "Trust").

The Company and the Trustee entered into an amendment to the Original Engagement Agreement, dated November 17th, 2010 (the "First Amendment").

The Company and the Trustee desire to further amend the Original Engagement Agreement to resolve potential inconsistencies with respect to certain provisions of the Original Engagement Agreement and corresponding provisions of the Trust.

AGREEMENT

In consideration of the mutual covenants and agreements as set forth herein, the parties agree to amend the Original Engagement Agreement, effective as of the date of the Original Engagement Agreement, as follows:

1. By replacing Sections 15, 16, 17 and 18 of the Original Engagement Agreement in their entirety with the following:

INDEMNIFICATION

15. Indemnification.

(a) For purposes of this Section 15, the term "Indemnitees" shall mean the Trustee and its officers, directors, employees, representatives, agents, successors and assigns. Subject to the applicable provisions of ERISA, the Company shall indemnify, save and keep harmless the Indemnitees for, from and against any loss, cost, expense, or other damage, including attorney's fees, suffered by any of the Indemnitees resulting from or incurred with respect to

(i) any breach of the Company's representations, warranties or covenants contained in this Agreement,

(ii) any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations, warranties, or covenants by the Company or

(iii) any legal proceedings related in any way to the performance of services by any one or more of the Indemnitees pursuant to this Agreement.

(b) The indemnification provided for in this paragraph 15 shall extend to:

(i) any action taken or not taken in good faith by any of the Indemnitees;

(ii) any action taken or not taken by any of the Indemnitees at the direction or request of the Company, the Plan Administrator or of any agent of the Company or Plan Administrator, or any named fiduciary of the Plan; and

(iii) all reasonable costs and expenses incurred by the Indemnitees in enforcing the indemnification provisions of this paragraph 15, including reasonable attorney's fees and court costs.

(c) The indemnification provisions of this Section 15 shall not apply to the extent that any loss, cost, expense, or damage with respect to which any of the Indemnitees shall seek indemnification is determined by a court of competent jurisdiction in a final judgment from which no appeal can be taken (or which the Company and the Indemnitees jointly determine in good faith not to appeal) to have resulted directly and primarily from (i) the gross negligence of one or more of the Indemnitees, (ii) the willful misconduct of one or more of the Indemnitees, or (iii) the Trustee's breach of its fiduciary duty under Section 404(a) of ERISA with respect to its actions as trustee of the Trust. The indemnification provided for in this paragraph 15 shall survive even if the Trustee for any reason fails to sign the Trust Agreement, if the Trustee resigns or is removed as Trustee.

16. Defense of Actions. (a) Notice and Assumption of Defense. If one or more of the Indemnitees receives notice of any legal proceeding with respect to which indemnification may be sought against the Company pursuant to Section 15 (a "Proceeding"), the Indemnitees shall notify the Company of the Proceeding in writing within thirty days of the commencement of the

Proceeding. However, the failure by the Indemnitees to so notify the Company shall not relieve the Company from any liability, except to the extent that the failure to notify the Company shall actually have prejudiced the defense of the Proceeding. The Company will be entitled to assume the defense of the Proceeding with counsel reasonably satisfactory to the Indemnitees or to otherwise participate in the Proceeding. If the Company elects to assume the defense of the Proceeding, it then shall pay all costs of defense.

(b) Reimbursement of Expenses. Except as set forth in paragraph 15(c) the Company shall reimburse the Indemnitees for all reasonable costs that they incur in connection with any Proceeding, including costs of investigation, of testifying at any hearing, of responding to discovery proceedings, and of consulting with the Company or the attorneys for the Company. The Indemnitees shall have the right to employ their own counsel in any Proceeding, and the reasonable fees and expenses of the Indemnitees' counsel shall be paid by the Company as they are incurred. The payment of all or some of such fees and expenses may be recovered by the Company in the event that any of the Indemnitees is determined by a court of competent jurisdiction in a final judgment from which no appeal can be taken (or which the Company and the Indemnitees jointly determine in good faith not to appeal) to have engaged in gross negligence or willful misconduct or that the Trustee breached its fiduciary duty under Section 404(a) of ERISA with respect to its actions as trustee of the Trust such that such Indemnitee(s) shall not be entitled to indemnification under paragraph 15 hereof), The indemnitees' right to employ their own counsel as set forth in this paragraph 16(b) shall apply if any one or more of the following conditions are satisfied:

(i) the employment by one or more of the Indemnitees of their own counsel was authorized by the Company;

(ii) one or more of the Indemnitees are advised by their counsel that there may be one or more legal defenses available to them which are different from or additional to defenses available to the Company (in which case the Company shall not have the right to assume the defense of the Proceeding on behalf of the Indemnitees);

(iii) the Company fails to assume the defense of the proceeding and to employ counsel satisfactory to the Indemnitees within 14 days after being notified of the commencement of the Proceeding; or

(iv) one or more of the Indemnitees shall be informed by their counsel that a conflict exists with the counsel selected by the Company.

17. Governmental Investigations. The provisions of this paragraph 17 shall apply if any governmental or private commission or regulatory authority shall investigate any of the Indemnitees, or shall require any of the Indemnitees to testify at any hearing or in connection with any investigation, regarding the performance of services by the Indemnitees pursuant to this Agreement. Investigations covered by this paragraph 17 shall include, but shall not be limited to, investigations conducted by any agency of the United States or of any state, by any committee of

the Congress of the United States or of the legislature of any state, or by a stock exchange or other entity having authority to investigate or regulate similar to that of a stock exchange. In the case of any investigation, the Indemnitees shall have the right to employ separate counsel to represent them, and the Company shall pay the reasonable fees and expenses of the Indemnitees' counsel as they are incurred. The payment of all or some of such fees and expenses may be recovered by the Company in the event that any of the Indemnitees is determined by a court of competent jurisdiction in a final judgment from which no appeal can be taken (or which the Company and the Indemnitees jointly determine in good faith not to appeal) to have engaged in gross negligence or willful misconduct or the Trustee has breached its fiduciary duty under Section 404(a) of ERISA such that such Indemnitee(s) shall not be entitled to indemnification under Section 15(c) hereof. The Trustee agrees that it shall reasonably cooperate with the Company in connection with any investigation.

18. Reserved

Except as set forth herein, the provisions of the Original Engagement Agreement and the First Amendment shall survive in full force and effect in accordance with their terms.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Second Amendment to be signed as of the day and year first written above.

BANKERS TRUST COMPANY OF SOUTH DAKOTA

MONA VIE, INC.

By: *[Signature]*

By: *[Signature]*

Its: VP and Manager

Its: General Counsel

EXHIBIT D

EXECUTION VERSION.

MONA VIE, INC.
EMPLOYEE STOCK OWNERSHIP PLAN
TRUST AGREEMENT

Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2079
www.kriegdevault.com

EXECUTION VERSION

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE I TITLE, ANNUAL ACCOUNTING PERIOD AND DEFINED TERMS	2
Title	2
Accounting Period	2
Defined Terms	2
ARTICLE II MANAGEMENT AND CONTROL OF TRUST ASSETS	2
The Trust	2
Limitation of Responsibilities of Trustee	2
General Powers	2
Compensation and Expenses	7
Procedures for Payment of Fees and Expenses	9
Exercise of Trustee’s Duties	9
Plan Administration	10
Continuation of Powers Upon Trust Termination	10
ARTICLE III CONTRIBUTIONS AND PROVISIONS RELATED TO INVESTMENT IN COMPANY STOCK	10
Contributions and Dividends	10
Investment of Cash	10
Stock Dividends, Splits and Other Capital Reorganizations	11
Voting of Shares	11
ARTICLE IV MISCELLANEOUS	11
Disagreement as to Acts	11
Persons Dealing with Trustee	11
Nonalienation of Benefits	11
Evidence	11
Waiver of Notice	11
Counterparts	11
Governing Laws and Severability	12
Successors, Etc	12
Action	12
Conformance With Plan	12
Indemnity of Trustee	12
Headings	13
ARTICLE V NO REVERSION TO COMPANY	13
ARTICLE VI CHANGE OF TRUSTEE	13
Resignation	13
Removal	14

EXECUTION VERSION

Duties of Resigning or Removed Trustee and of Successor Trustee.....14
Filling Trustee Vacancy14

ARTICLE VII AMENDMENT, TERMINATION AND MERGER.....14
Amendment.....14
Termination.....14
Merger.....15

EXECUTION VERSION

MONA VIE, INC.
EMPLOYEE STOCK OWNERSHIP PLAN TRUST AGREEMENT

THIS TRUST AGREEMENT is made and entered into as of the 17th day of November, 2010, by and between Mona Vie, Inc. (the "Company"), with its principal place of business in Salt Lake City, Utah, and Bankers Trust Company, with its principal place of business in Des Moines, Iowa, acting in its fiduciary capacity as Trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Company has established, for the benefit of its Eligible Employees, the Mona Vie, Inc. Employee Stock Ownership Plan, effective as of January 2, 2010 (the "Plan"); and

WHEREAS, the Plan is an employee stock ownership plan as described in Code Section 4975(e)(7) and Section 407(d)(6) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") which is intended to be a stock bonus plan qualified under Section 401(a) of the Code; and

WHEREAS, the Plan is maintained for the exclusive benefit of Eligible Employees of the Company and those of any Affiliated Employer which adopts the Plan (the Company and the Affiliated Employers are sometimes referred to collectively as the "Employers" and individually as an "Employer"); and

WHEREAS, effective on September 12, 2010, the Company and the Trustee entered into a Trustee Engagement Agreement which Trustee Engagement Agreement was amended effective as of November 17, 2010 (together, the "Engagement Agreement"); and

WHEREAS, the Company has determined to adopt this Trust Agreement and to appoint the Trustee as trustee hereunder with the effect that, except with regard to the fees and expenses of the Trustee in connection with the performance of its duties and services hereunder as provided in Section 2.3, and as otherwise provided in Section 4.11, the Engagement Agreement will be superseded by this Trust Agreement;

NOW, THEREFORE, pursuant to the authority delegated to the undersigned officers of the Company by resolution of its Board, it is agreed, by and between the parties hereto, that the trust provisions contained herein shall constitute the Trust Agreement between the Company and the Trustee in connection with the Plan; and

IT IS FURTHER AGREED, by and between the parties hereto as follows:

EXECUTION VERSION

ARTICLE I

TITLE, ANNUAL ACCOUNTING PERIOD AND DEFINED TERMS

1.1. Title. The Trust established pursuant hereto will be known as the Mona Vie, Inc. Employee Stock Ownership Plan Trust Agreement (the "Trust Agreement").

1.2. Accounting Period. The annual accounting period for the Trust established by this Trust Agreement will be the 52-53 week period commencing on the Saturday following the Friday nearest to December 31st each year and ending on the Friday nearest to December 31st each year (the Plan Year and Limitation Year under the Plan). The initial accounting period for the Trust will be the period beginning on January 2, 2010 and ending on December 31, 2010.

1.3. Defined Terms. The definitions in the Plan are hereby incorporated by reference into this Trust Agreement.

ARTICLE II

MANAGEMENT AND CONTROL OF TRUST ASSETS

2.1. The Trust. The Trust, as of any date, means all property of every kind then held by the Trustee. The Trustee or its agents may hold, manage, invest and account for all contributions made by the Company under the Plan as one Trust. If, for any reason, it becomes necessary to determine the portion of the Plan allocable to each of the Participants and each of the Inactive Participants as of any date, the Administrative Committee will specify such date as a Valuation Date. After all adjustments required under the Plan as of that Valuation Date have been made, the portion attributable to each Participant and Inactive Participant will be determined by the Administrative Committee, and will consist of an amount equal to the aggregate of the Account balances of each Participant and Inactive Participant plus an amount equal to any allocable contributions made by the Company since the immediately preceding Valuation Date.

2.2. Limitation of Responsibilities of Trustee. The Trustee will not be responsible in any way for the adequacy of the Trust to meet and discharge any or all liabilities under the Plan or for the proper application of distributions made or other action taken upon the written direction of the Administrative Committee. The powers, duties and responsibilities of the Trustee will be limited to those set forth in this Trust Agreement and in the Plan.

2.3. General Powers. Subject to the provisions of Sections 2.88, 2.9 and 2.10 and Article III, with respect to the Trust, the Trustee will have the following powers, rights and duties in addition to those provided elsewhere in this Trust Agreement or by law:

EXECUTION VERSION

- (a) To receive and to hold all contributions paid to it under the Plan; provided, however, that the Trustee will have no right, duty or obligation to require or demand that any contributions or distributions be made to it by the Company or to determine that the contributions received by it comply with the provisions of the Plan or with any resolution of the Board providing therefor.
- (b) To retain in cash (pending investment or reinvestment) such reasonable amount as may be required for the proper administration of the Trust and to invest such cash as provided in Section 3.2.
- (c) To make distributions from the Trust to such persons, in such manner, at such times and in such forms (Company Stock, cash or property, or a combination of each) as directed by the Administrative Committee without inquiring as to whether a payee is entitled to the payment, or as to whether a payment is proper, and without liability for a payment made in good faith without actual notice or knowledge of the changed condition or status of the payee. If any payment of benefits made from the Trust by the Trustee is not claimed, the Trustee will notify the Administrative Committee of that fact promptly. The Administrative Committee will make a diligent effort to ascertain the whereabouts of the payee or distributee of benefits returned unclaimed. The Trustee will dispose of such payments as the Administrative Committee directs. The Trustee will have no obligation to search for or ascertain the whereabouts of any payee or distributee of benefits from the Trust.
- (d) To vote any stocks (including Company Stock, which will be voted as provided in the Plan, as it may be amended from time to time), bonds or other securities held in the Trust, or otherwise consent to or request any action on the part of the issuer in person, by proxy or power of attorney.
- (e) To contract or otherwise enter into transactions between itself, as Trustee, and the Company, any Company shareholder or any third-party, for the purpose of acquiring or selling Company Stock and, subject to the provisions of Section 2.8, to retain such Company Stock.
- (f) To compromise, contest, arbitrate, settle or abandon claims and demands by or against the Trust.
- (g) To begin, maintain or defend any litigation necessary in connection with the investment, reinvestment and administration of the Trust, and, to the extent not paid from the Trust, pursuant and subject to Section 4.11, the Company will indemnify the Trustee against all expenses and liabilities reasonably sustained or anticipated by it by reason thereof (including reasonable attorneys' fees).

EXECUTION VERSION

- (h) To retain any funds or property subject to any dispute without liability for the payment of interest, or to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- (i) To report to the Company as of the last day of each Plan Year, as of any other Valuation Date (or as soon thereafter as practicable) or at such other times as may be required under the Plan or reasonably required by the Administrative Committee, the then "Net Worth" of the Trust, which is defined as the fair market value of all property held in the Trust, reduced by any liabilities other than liabilities to Participants and Inactive Participants and their Beneficiaries, as determined by the Trustee.
- (j) To furnish to the Company and the Administrative Committee an annual written account and accounts for such other periods as may be required under the Plan, showing the Net Worth of the Trust at the end of the period, all investments, receipts, disbursements and other transactions made by the Trustee during the period, and such other information as the Trustee may possess which the Company requires in order to comply with ERISA Section 103. The Trustee will keep accurate accounts of all investments, earnings thereon and all accounts, books and records related to such investments will be open to inspection by any person designated by the Company or the Administrative Committee. If, during the term of this Trust Agreement, the Department of Labor issues regulations under ERISA regarding the valuation of securities or other assets for purposes of the reports required by ERISA, the Trustee will use such valuation methods for purposes of the accounts described by this subsection. If shares of Company Stock are not traded with sufficient volume or frequency, as determined by the Trustee, to be considered readily tradable on a national securities market or exchange, all valuations of shares of Company Stock will originally be made by an "Independent Appraiser" (as described in Code Section 401(a)(28)(C)) retained by the Trustee, and reviewed and finalized by the Trustee in accordance with ERISA Section 3(18)(B).

The Company or the Administrative Committee may approve such accounting by written notice of approval delivered to the Trustee or by failure to express objection to such accounting in writing delivered to the Trustee within 90 days from the date upon which the accounting was delivered to the Company. Upon the receipt of a written approval of the accounting, or upon the passage of the period of time within which objection may be filed without written objections having been delivered to the Trustee, such accounting will be deemed to be approved, and the Trustee will be released and discharged as to all items, matters and things set forth in such account, as fully as if such accounting had been settled and allowed by decree of a court of competent jurisdiction in an action or proceeding in which the Trustee, the Company and all persons having or claiming to have any interest in the Trust or under the Plan were parties.

EXECUTION VERSION

- (k) To pay any estate, inheritance, income or other tax, charge or assessment attributable to any benefit which it will or may be required to pay out of such benefit; and to require before making any payment such release or other document from any taxing authority and such indemnity from the intended payee as the Trustee will deem necessary for its protection.
- (l) To employ and to reasonably rely upon information and advice furnished by agents, attorneys, independent appraisers, accountants or other persons of its choice for such purposes as the Trustee considers desirable.
- (m) To assume, until advised in writing to the contrary, that the Trust evidenced by this Trust Agreement is qualified under Code Section 401(a) and is entitled to exemption from tax under Code Section 501(a).
- (n) The Trustee shall invest and reinvest the Accounts primarily in Company Stock, in accordance with the terms of the Plan and this Trust; provided, however, that all investments in Company Stock will be undertaken pursuant to the provisions of Article III. The Trustee shall invest Trust assets other than Company Stock in personal property of any kind, including, but not limited to, bonds, notes, debentures, mortgages, equipment trust certificates, investment trust certificates, guaranteed investment contracts, preferred or common stock, common or collective funds, and registered investment companies.
- (o) To exercise any options, subscription rights, calls and other privileges with respect to Trust assets (including Company Stock), or assign such rights, subject to the provisions of Article III.
- (p) To register ownership of any securities or other property held by it in its own name or in the name of a nominee, with or without the addition of words indicating that such securities are held in a fiduciary capacity, and may hold any securities in bearer form, but the books and records of the Trustee will at all times reflect that all such investments are part of the Trust.
- (q) To incur an Exempt Loan and to borrow such sum or sums from time to time as the Trustee considers necessary or desirable and in the best interest of the Participants and Inactive Participants, including to purchase Company Stock, and for that purpose to pledge the Company Stock so purchased (subject to the provisions of Code Section 4975(c) and the regulations issued thereunder).
- (r) To deposit securities with a clearing corporation. The certificates representing securities, including those in bearer form, may be held in bulk form with, and may be merged into, certificates of the same class of the same issuer which constitute assets of other accounts or owners, without certification as to the ownership attached. Utilization of a book-entry system may be made for the transfer or pledge of securities held by the Trustee or by a clearing corporation. The Trustee

EXECUTION VERSION

will at all times, however, maintain a separate and distinct record of the securities owned by the Trust.

- (s) To participate in and use the Federal Book-Entry Account System, a service provided by the Federal Reserve Bank for its member banks for deposit of Treasury securities.
- (t) To receive and hold in the Trust, earnings, dividends (including cash dividends and S Corporation distributions on Company Stock ("Cash Dividends")), distributions and other payments or adjustments to the assets in the Trust. In the case of Cash Dividends on Company Stock in the Trust, the Administrative Committee will direct the Trustee to use such dividends to (i) make payments on an Exempt Loan incurred by the Trustee, the proceeds of which were used to purchase the shares of Company Stock on which the Cash Dividends are paid; (ii) allocate such Cash Dividends to Participant Accounts; (iii) pay the expenses of administering the Plan; or (iv) any combination thereof, as provided in the Plan.
- (u) To perform any and all other acts which are necessary or appropriate for the proper management, investment and distribution of the Trust.
- (v) To engage in any transaction with (i) a common or collective trust fund or pooled or mutual investment fund maintained by a "party in interest" (as defined in ERISA Section 3(14)) which is a bank or trust company, including the Trustee or an affiliate of the Trustee, or a related entity thereto supervised by a state or federal agency; or (ii) a pooled investment fund of an insurance company authorized to do business in a state if the transaction is a sale or purchase of an interest in the fund and the bank, trust company, related entity or insurance company receives not more than reasonable compensation. The instrument creating such collective or common trust fund or pooled or mutual investment fund, together with any amendments, modifications or supplements herein and made a part hereof as fully, and for all intents and purposes, as if set forth herein in their entirety.

2.4. Investment Options. At the direction of the Administrative Committee, the Trustee or its custodian will establish one or more investment options in accordance with the provisions of the Plan to facilitate Participants' direction of the investment of the funds as provided in 2.5. The establishment of any investment option under this paragraph will not constitute the creation of a separate Trust. In the event the Administrative Committee directs the Trustee or custodian to establish investment options for purposes of the Participant direction of Accounts as provided in Section 2.5, the Administrative Committee will adopt an investment policy with respect to the Participant directed investments and will communicate such policy to the Trustee and to the investment manager, if any, appointed under Section 2.9.

2.5. Participant Direction. Notwithstanding any other provision of this Trust, the Administrative Committee may, in its sole and absolute discretion, permit each Inactive

EXECUTION VERSION

Participant or Beneficiary to direct the Trustee as to the investment of all or a portion of the Inactive Participant's Account in one or more of the investment options made available under the Plan by the Administrative Committee. If such authorization is given by the Administrative Committee, each Inactive Participant or Beneficiary may direct the Trustee in writing to invest all or any portion of the Inactive Participant's Account in one or more investment options made available by the Administrative Committee, and the following provisions will apply:

- (a) Each Inactive Participant and Beneficiary will direct the Trustee or its custodian regarding the investment of his Account, but if any Participant refuses or is unable to direct the investment of his Account, the Administrative Committee will be responsible for the investment thereof. The Administrative Committee will advise the Trustee as to the portion of the Trust to be subject to the direction of each Participant. Each Inactive Participant's Account will be charged or credited with the gains, losses or expenses relating to that Account.
- (b) The Administrative Committee may, upon proper notice to the Trustee, limit the available investments for Inactive Participants and Beneficiaries direction to certain specified investment options (including, but not limited to, certain mutual funds, investment contracts, deposit accounts and group trusts).
- (c) Upon 90 days' advance written notice, the Administrative Committee may request the Trustee to assume investment management of all or any portion of the Trust that had been subject to Participant direction. The Trustee will not be obligated to agree to such assumption, but if the Trustee agrees to do so, then the Trustee will not be liable for any losses to the Trust resulting from the disposition of any investment then in the Trust subject to Participant direction.
- (d) The Trustee will vote the shares of the mutual funds held in the Participant Directed Accounts.

2.6. Compensation and Expenses. The Trustee will be entitled to reasonable compensation for its services, as agreed to between the Company and the Trustee from time to time in writing. The Trustee will be entitled to reimbursement of all reasonable expenses incurred by the Trustee in the administration of the Trust. The Trustee is authorized to pay from the Trust all expenses of administering the Plan and Trust which are properly payable by the Plan and Trust, including, if applicable, its compensation and any accounting and legal expenses, to the extent they are not paid directly by the Company. The payment of Plan and Trust fees and expenses will include the reimbursement of the Company for fees and expenses paid by the Company on behalf of the Plan and Trust which are properly payable by the Plan and Trust. Such fees and expenses (or the portion thereof properly allocable to the Plan) will include without limitation, the following:

- (a) Trustee and custodial fees, if applicable.

EXECUTION VERSION

- (b) Investment management and advisory fees, including (i) asset allocation, (ii) preparation and review of investment policy statements, and (iii) review of investment performance.
- (c) Brokerage fees and commissions.
- (d) Plan administration and record-keeping fees, including (i) allocating contributions, forfeitures and earnings, and (ii) making distributions.
- (e) Discrimination and other testing required to be performed by the Code.
- (f) Telephone and on-line administration.
- (g) Preparation and distribution of Participant account statements.
- (h) Financial advisory and valuation services, including periodic valuation updates.
- (i) Employee communication services, including publications, materials and meetings.
- (j) Required forms and filings, including (i) Forms 5500 and all related schedules, and (ii) Forms 1099R.
- (k) Preparation of annual Plan audit (to the extent required).
- (l) ERISA bond premiums.
- (m) ERISA fiduciary liability insurance premiums (other than that portion of the premiums attributable to the policies' non-recourse provisions which will be paid by the Company).
- (n) Legal fees, including fees associated with (i) claims for benefits, (ii) interpretation of Plan and Trust provisions, (iii) amendments to the Plan and Trust necessary to retain the Plan's qualification under Code Section 401(a) and as an "employee stock ownership plan" as described in Code Section 4975(e)(7), (iv) the legal status of the Plan and Trust and (v) Internal Revenue Service determination letter filings.
- (o) Reimbursement of the Company for the (i) direct costs it incurs in connection with the administration of the Plan, and (ii) payment by the Company, in the first instance, of the fees and expenses described in subsections (a) through (n) and (p).
- (p) Such other fees and expenses associated with the administration of the Plan which the Company and the Trustee determine to be properly payable from the Trust.

EXECUTION VERSION

Notwithstanding the foregoing provisions of this Section or of any provision of this Trust Agreement, the Company may determine, in its sole discretion, to pay directly any of the fees and expenses described in subsections (a) through (n) and (p) above. The Trustee will be fully protected in making payments of administrative expenses pursuant to the written directions of the Administrative Committee.

2.7. Procedures for Payment of Fees and Expenses. The Administrative Committee and the Trustee may adopt written procedures for payment from the Trust of the fees and expenses associated with the administration of the Plan and the Trust.

2.8. Exercise of Trustee's Duties. The Trustee shall discharge its duties hereunder solely in the interest of the Plan's Participants and other persons entitled to benefits under the Plan, and:

- (a) For the exclusive purpose of:
 - (i) providing benefits to Participants and other persons entitled to benefits under the Plan; and
 - (ii) defraying reasonable expenses of administering the Plan;
- (b) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- (c) In accordance with the documents and instruments governing the Plan unless, in the good faith judgment of the Trustee, the documents and instruments are not consistent with the provisions of ERISA.

2.9. Investment Managers. The Trustee may appoint one or more investment managers, who may be any person, firm or corporation, to manage the investment of all or a portion of the Trust Fund as designated by the Trustee. Such appointment is subject to the approval of the Administrative Committee. An investment manager must (1) be registered as an investment advisor under the Investment Advisors Act of 1940, a bank (as defined under that Act) or an insurance company qualified to manage, acquire and dispose of the assets of the Plan under the laws of more than one state of the United States, and (2) acknowledge in writing to the Trustee that it is an independent fiduciary under Section 3(38) of ERISA with respect to the Plan and Trust. The Trustee will follow the directions of the investment manager in the latter's exercise of the investment powers granted to it under this Section 2.9. All directions given by an investment manager to the Trustee will be in writing, signed by an officer (or a partner) of the investment manager or by any other person or persons designated by an officer (or a partner) of the investment manager. An investment manager may directly place orders for the purchase or sale of securities, provided that the Trustee retains custody of the assets comprising the Trust Fund. The Trustee will be under no duty to question, or make inquiries as to, any action or written direction of an investment manager, or of an investment manager's failure to give

EXECUTION VERSION

directions, or to review the investments held pursuant to the direction of the investment manager. An investment manager may resign at any time upon 60 days' advance written notice to the Trustee. The Trustee may remove an investment manager by written notice to the investment manager, in which event the Trustee will either appoint another investment manager or will assume the control of the investment of the Trust Fund.

2.10. Plan Administration. The Plan will be administered by the Administrative Committee, as described in the Plan. The Administrative Committee may authorize one or more individuals to sign all communications between the Administrative Committee and Trustee and will at all times keep the Trustee advised of the identity of the individuals authorized to sign on behalf of the Administrative Committee, and provide specimen signatures thereof. The Trustee will be fully protected in relying on any communication sent by any authorized person and will not be required to verify the accuracy or validity of any signature unless the Trustee has reasonable grounds to doubt the authenticity of any signature. If the Trustee requests any directions hereunder and does not receive them, the Trustee will act or refrain from acting, as it may determine, and will be indemnified by the Company for such action or inaction pursuant to Section 4.11.

2.11. Continuation of Powers Upon Trust Termination. Notwithstanding anything to the contrary in this Trust Agreement, upon termination of the Trust, the powers, rights and duties of the Trustee hereunder will continue until all Trust Assets have been liquidated and distributed.

ARTICLE III**CONTRIBUTIONS AND PROVISIONS RELATED TO INVESTMENT IN COMPANY STOCK**

3.1. Contributions and Dividends. The Employer contributions made under the Plan will be paid to the Trustee from time to time in accordance with the terms of the Plan. The Company will make contributions or the Company will declare and pay Cash Dividends with respect to Company Stock that, in the aggregate, are adequate to enable the Trustee to satisfy its obligations under any Exempt Loan and to fund diversification elections and distributions to Participants, Inactive Participants and Beneficiaries.

3.2. Investment of Cash. If an Employers' contributions for any Plan Year are made in cash, such cash will be used by the Trustee first to make any scheduled payment on an Exempt Loan to the extent allowable. If any amounts remain thereafter, or if no Exempt Loan is outstanding, the Trustee as directed by the Administrative Committee may utilize such cash to purchase Company Stock, to make later-scheduled payments on an Exempt Loan on or before the date such payment becomes due, to pay compensation and expenses as provided for in Section 2.6 or to invest as provided in subsection 2.3(n). The Trustee may purchase Company Stock from the Company or from any shareholder, and to the extent allowable such stock may be outstanding, newly issued or reacquired stock. Pending investment of cash in Company Stock, such cash may be invested in savings accounts, certificates of deposit, high-grade short-term

EXECUTION VERSION

securities, common or preferred stocks, bonds or other investments as provided in subsection 2.3(n) or may be held in cash.

3.3. Stock Dividends, Splits and Other Capital Reorganizations. Any Company Stock received by the Trustee from a stock split or dividend or as a result of a reorganization or other recapitalization of the Company will be allocated by the Board as of each Valuation Date in proportion to the Company Stock to which it is attributable.

3.4. Voting of Shares. Company Stock held in the Trust will be voted by the Trustee in the manner set forth in the Plan.

ARTICLE IV

MISCELLANEOUS

4.1. Disagreement as to Acts. If there is a disagreement between the Trustee and anyone as to any act or transaction reported in any accounting, the Trustee will have the right to have its account settled by a court of competent jurisdiction.

4.2. Persons Dealing with Trustee. No person dealing with the Trustee will be required to see to the application of any money paid or property delivered to the Trustee, or to determine whether or not the Trustee is acting pursuant to any authority granted to it under this Trust Agreement or the Plan.

4.3. Nonalienation of Benefits. Except as may be required by the tax withholding provisions of a federal, state or municipal tax act or pursuant to a qualified domestic relations order (as that term is defined in Code Section 414(p)) or pursuant to a judgment or settlement described in Code Section 401(a)(13)(C), benefits payable from the Trust are not subject in any manner to sale, transfer, assignment, pledge, encumbrance, garnishment or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to sell, transfer, assign, pledge, encumber or otherwise dispose of any right to benefits payable hereunder will be void. The Trust fund will not be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.

4.4. Evidence. Evidence required of anyone under this Trust Agreement may be by certificate, affidavit, document or other instrument which the person acting in reliance thereon considers pertinent and reliable, and signed, made or presented by the proper party.

4.5. Waiver of Notice. Any notice required under this Trust Agreement may be waived in writing by the person entitled thereto.

4.6. Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which will be deemed an original and no other counterparts need be produced.

EXECUTION VERSION

4.7. Governing Laws and Severability. This Trust Agreement will be construed and administered according to the laws of the State of Iowa, without regard to the choice of law principles thereof, to the extent that such laws are not preempted by the laws of the United States of America. If any provision of this Trust Agreement is held illegal or invalid, the illegality or invalidity will not affect the remaining provisions of the Trust Agreement, but will be severable, and the Trust Agreement will be construed and enforced as if the illegal or invalid provision had never been inserted herein.

4.8. Successors, Etc. This Trust Agreement will be binding on the Company, and any successor thereto by virtue of any merger, sale, dissolution, consolidation or reorganization, on the Trustee and its successor and on all persons entitled to benefits under the Plan and their respective heirs and legal representatives.

4.9. Action. Any action required or permitted to be taken by the Company, the Employer or the Administrative Committee under this Trust Agreement will be by resolution of its board of directors or by a committee appointed by such board and authorized to act on such matters. The Trustee will not recognize or take notice of any appointment of any representative of the Company or the Administrative Committee unless and until the Company or the Administrative Committee will have notified the Trustee in writing of such appointment and the extent of such representative's authority. The Trustee may assume that such appointment and authority continue in effect until it receives written notice to the contrary from the Company or the Administrative Committee. Any action taken or omitted to be taken by the Trustee by authority of any representative of the Company within the scope of its authority will be as effective for all purposes hereof as if such action or nonaction had been authorized by the Company or the Administrative Committee.

4.10. Conformance With Plan. Unless otherwise indicated in this Trust Agreement, capitalized terms will have the meaning stated in the Plan. To the extent the provisions of the Plan and this Trust Agreement conflict, the provisions of the Plan will govern; provided however, that the Trustee's duties and obligations will be determined solely under this Trust Agreement.

4.11. Indemnity of Trustee. Notwithstanding any other provision of the Plan or the Trust Agreement, the Trustee will have no duty or authority to question or challenge any fact represented or any direction or advice given to the Trustee by the Company, the Administrative Committee, or their respective officers, employees, agents or representatives unless clearly erroneous on its face. The Company will indemnify and hold the Trustee harmless from and against any and all claims, demands, damages, costs and expenses incurred, but not limited to, the Trustee's reasonable attorneys' fees, relating to or arising out of: (i) any act or omission by the Trustee in reliance upon any such fact, direction or advice; or (ii) the acquisition, retention or disposition of Company Stock, including but not limited to, any liability arising under federal or state securities laws, it being understood and agreed that the Company will have complete and absolute responsibility to insure that the Company Stock and all transactions involving Company Stock comply with applicable federal and state securities laws. The indemnification provisions of this Section do not relieve the Trustee from any liability it may have under ERISA for breach

EXECUTION VERSION

of fiduciary duty. Furthermore, the Trustee and the Company may execute a letter agreement further delineating the indemnification of the Trustee by the Company, provided that the letter agreement is consistent with and does not violate ERISA. The right to indemnification under this Section is conditioned upon the Trustee's notifying the Company of the claim of liability within 30 days of the notice of that claim and offering the Company the right to participate in and control the settlement and defense of the claim.

4.12. Headings. The headings of sections of this Trust Agreement are for convenience of reference only and will have no substantive effect on the provisions of this Trust Agreement.

ARTICLE V

NO REVERSION TO COMPANY

No part of the corpus or income of the Trust will revert to the Company or be used for, or diverted to, purposes other than for the exclusive benefit of Participants and other persons entitled to benefits under the Plan, provided, however, that:

- (a) If, upon termination of the Plan, any amounts are held under the Plan and such amounts may not be credited to the Accounts due to the limitations of Code Section 415, such amounts, upon the written direction of the Administrative Committee, will be returned to the Company as soon as practicable after the termination of the Plan.
- (b) Company contributions under the Plan are conditioned upon the deductibility thereof under Code Section 404; and, to the extent any such deduction of the Company is disallowed, the Trustee will, upon the written direction of the Administrative Committee, return the amount of the contribution (to the extent disallowed), reduced by the amount of any losses thereon, to the Company within one year after the date the deduction is disallowed.
- (c) If a contribution or any portion thereof is made by the Company by a mistake of fact, the Trustee will, upon written direction of the Administrative Committee, return the amount of the contribution or such portion, reduced by the amount of any losses thereon, to the Company within one year after the date of payment to the Trustee. Notwithstanding the foregoing, the Trustee has no responsibility as to the sufficiency of the Trust to provide any distribution to the Company under this Article.

ARTICLE VI

CHANGE OF TRUSTEE

6.1. Resignation. The Trustee may resign at any time by giving not less than 30 days' prior written notice to the Company and the Administrative Committee.

EXECUTION VERSION

6.2. Removal. The Company, through action of the Board, may remove the Trustee by giving not less than 30 days' prior written notice to the Trustee, subject to providing the removed Trustee with satisfactory written evidence of the appointment of a successor Trustee and of the successor Trustee's acceptance of the trusteeship.

6.3. Duties of Resigning or Removed Trustee and of Successor Trustee. If the Trustee resigns or is removed, it will promptly transfer and deliver the Trust assets to the successor Trustee, and may reserve such amount to provide for the payment of all fees, expenses and taxes then or thereafter chargeable against the Trust, to the extent not previously paid by the Company. The Company will reimburse the Trust for any amount reserved by the Trustee. Within 90 days, the resigned or removed Trustee will furnish to the Company and the successor Trustee an account of its administration of the Trust and the date of its last account. Each successor Trustee will succeed to the title to the Trust vested in its predecessor without the signing or filing of any further instrument, but any resigning or removed Trustee will execute all documents and do all acts necessary to vest such title or record in any successor Trustee. Each successor will have all the powers, rights and duties conferred by this Trust Agreement as if originally named Trustee. No successor Trustee will be personally liable for any act or failure to act of a predecessor Trustee and no predecessor Trustee will be liable for any act of a successor trustee. With the approval of the Administrative Committee, a successor Trustee may accept the account rendered and the property delivered to it by its predecessor Trustee as a full and complete discharge to the predecessor Trustee without incurring any liability or responsibility for so doing.

6.4. Filling Trustee Vacancy. The Board may fill a vacancy in the office of Trustee as soon as practicable by a writing filed with the individual or entity appointed to fill the vacancy.

ARTICLE VII

AMENDMENT, TERMINATION AND MERGER

7.1. Amendment. While the Company expects and intends to continue the Trust, the Company reserves the right to amend the Trust Agreement at any time pursuant to action of the Board, except that no amendment can change the rights, duties or liabilities of the Trustee without its prior written agreement, or reduce the benefits of a Participant to less than the amount such Participant would be entitled to receive if he had resigned from the employ of the Company on the date of the amendment. Unless otherwise provided in an amendment, amendments to the Trust Agreement will be effective upon execution by the Company and the Trustee.

7.2. Termination. The Trust may be terminated on any date specified by the Company. The Trust will terminate on the first to occur of the following:

- (a) The date it is terminated by the Company;
- (b) The date the Company's contributions to the Trust are completely discontinued;
or

EXECUTION VERSION

- (c) The date the Company is judicially declared bankrupt under Chapter 7 of the U.S. Bankruptcy Code.

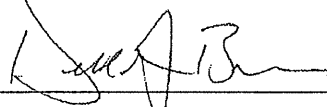
The Trustee's powers upon termination as described above will continue until liquidation and complete distribution of the Trust. Upon termination of this Trust, the Trustee will first reserve such reasonable amounts as it may deem necessary to provide for the payment of any expenses, fees or taxes then or thereafter chargeable to the Trust including any Exempt Loans taken by the Trust pursuant to subsection 2.3(q), which will be paid with the proceeds of the sale of assets of the Trust. Subject to such reserve, the balance of the Trust will be liquidated and distributed by the Trustee to or for the benefit of Participants, Inactive Participants and their Beneficiaries, as directed by the Administrative Committee after compliance with applicable requirements of the Code and ERISA, accompanied by a certification to the effect that the disposition is in accordance with the terms of the Plan and the Trustee need not question the propriety of such certification. The Company will have full responsibility to see that such distribution is proper and within the terms of the Plan and this Trust Agreement.

7.3. Merger. The Company may merge the Trust with the trust of another plan which meets the requirements of Code Sections 401(a) and 501(a) at any time with the prior written approval of the Trustee, which approval shall not be unreasonably withheld.

SIGNATURES


IN WITNESS WHEREOF, the Company has caused this Trust Agreement to be executed by its officers thereunder duly authorized as of the day and year first above written, and the Trustee has executed this Trust Agreement to evidence its acceptance of the Trust this 17th day of November, 2010, but effective as of January 2, 2010.

MONA VIE, INC.

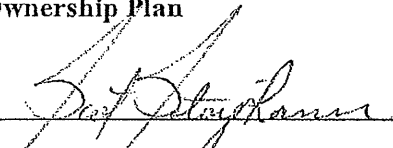
By: 

 PRESIDENT

ATTEST:

By: 

BANKERS TRUST COMPANY, solely in its capacity as Trustee of the Mona Vie, Inc. Employee Stock Ownership Plan

By: 

EXECUTION VERSION

ATTEST:

By: Paul Linderson

Its: Attorney

KD_3074130_3.DOCX

EXHIBIT E

Chuck,

Please see the attached message from MonaVie regarding the refusal to pay Krieg DeVault's invoices tied to the class action lawsuit. As we discussed, our engagement agreement dictates that they cover the fees. Let me know how you would like to handle the delivery of the message. Thanks.

Scot Storjohann
Managing Director - BTC ESOP Services
Bankers Trust Co. of South Dakota
453 7th St., PO Box 897
Des Moines, IA 50304-0897
Office: (515) 245-2431
Cell: (515) 314-2562
sstorjohann@bankerstrust.com

-----Original Message-----

From: Daren Haws [mailto:DarenH@Monavie.com]
Sent: Tuesday, March 03, 2015 9:44 AM
To: Scot Storjohann
Cc: Graden Jackson; James Marsh
Subject: RE: MonaVie-Krieg DeVault Invoice

Scot,

I know that since we created the MonaVie ESOP that MonaVie has paid Krieg DeVault's invoices related to the ESOP. We see this class action case, and the unfortunate fact that we both have to deal with it, a bit differently. This invoice and the ones that will follow we see as the responsibility of Bankers Trust. We have our own set of bills to pay lawyers for defense of this case. We value our relationship with you and trust that you understand our position.

Thanks,
Daren

N. Daren Haws, CPA, CGMA
Corporate Controller
p 801.748.3220 | c 801.746.9560
f 866.221.3806 | darenh@monavie.com

MONAVIE
A MORE MEANINGFUL LIFE
www.monavie.com

From: Scot Storjohann [SStorjohann@bankerstrust.com]
Sent: Monday, March 02, 2015 8:20 PM
To: Daren Haws
Cc: Scot Storjohann; Sue Ruffert
Subject: FW: MonaVie-Krieg DeVault Invoice

Daren,

Attached is an invoice for the Krieg DeVault covering their services for the class action lawsuit. Please pay the invoice at your convenience. Thanks.

Scot Storjohann
Managing Director - BTC ESOP Services
Bankers Trust Co. of South Dakota
453 7th St., PO Box 897
Des Moines, IA 50304-0897
Office: (515) 245-2431
Cell: (515) 314-2562
sstorjohann@bankerstrust.com

-----Original Message-----

From: Sue Ruffert
Sent: Monday, March 02, 2015 2:48 PM
To: Scot Storjohann
Subject: MonaVie-Krieg DeVault Invoice

This must replace the one prior to this one but that one was for over \$60,000 and I was holding it for a revised Invoice. The prior's invoice number is 401363 and this one is 403832 (plus the dates are different. So what do you think?

Sue Ruffert | ESOP Administration Officer Bankers Trust Company | 453 7th Street | Des Moines, IA 50304
(800) 362-1688 ext: 2482 | D: (515) 245-2482 | Fax: (515) 645-5351 sruffert@bankerstrust.com www.bankerstrust.com

-----Original Message-----

From: no_reply@bankerstrust.com [mailto:no_reply@bankerstrust.com] On Behalf Of no_reply@
Sent: Monday, March 02, 2015 9:34 AM
To: Sue Ruffert
Subject: Scanned image from Trust Color Printer - Bankers Trust

Reply to: no_reply@bankerstrust.com <no_reply@bankerstrust.com> Device Name: Trust Color Printer - Bankers Trust
Device Model: MX-6240N
Location: 23rd Flr

File Format: PDF (Medium)
Resolution: 100dpi x 100dpi

Attached file is scanned image in PDF format.
Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

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