

IN THE SUPREME COURT OF THE STATE OF NEVADA

JDD, LLC; TCS PARTNERS, LLC; JOHN
SAUNDERS; and TREVOR SCHMIDT,

Petitioners,

vs.

THE HONORABLE TIMOTHY C.
WILLIAMS, EIGHTH JUDICIAL DISTRICT
COURT IN AND FOR THE COUNTY OF
CLARK,

Respondent,

-and-

ITEM 9 LABS CORP. f/k/a Airware Labs
Corp. and Crown Dynamics Corp.; ITEM 9
PROPERTIES, LLC; STRIVE
MANAGEMENT, LLC f/k/a Strive Life;
VIRIDIS GROUP I9 CAPITAL, LLC;
VIRIDIS GROUP HOLDINGS, LLC;
SNOWELL HOLDINGS, LLC; ANDREW
BOWDEN; DOUGLAS BOWDEN; BRYCE
SKALLA; and CHASE HERSCHMAN,

Real Parties in Interest.

Case No.:

District Court Electronically Filed
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APPENDIX TO PETITIONER'S WRIT OF MANDAMUS

Volume 1 (Part 1) of 4 – Pages PA_0001-0092

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APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS

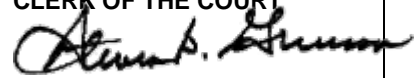
DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
First Amended Complaint	09.09.2020	1	PA_0001-0063
Snowell Holdings, LLC's Motion to Dismiss	12.01.2020	1	PA_0064-0077
Item 9 Labs Corp.'s et al. Motion to Dismiss	12.18.2020	1	PA_0078-0123
Plaintiff's Opposition to Snowell Holdings, LLC's Motion to Dismiss	01.18.2021	1	PA_0124-0127
Snowell Holdings, LLC's Reply In Support of Motion to Dismiss	01.20.2021	1	PA_0128-0133
Plaintiff's Opposition to Item 9 Labs Corp.'s et al. Motion to Dismiss	01.26.2021	1	PA_0134-0151
Item 9 Labs Corp.'s et al. Reply in Support of Motion to Dismiss	02.17.2021	1	PA_0152-0166
Transcript – Motion to Dismiss	02.24.2021	1	PA_0167-0247
Snowell Holdings, LLC Motion for Attorneys' Fees	03.24.2021	2	PA_0248-0264
Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0265-0278
Notice of Entry of Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0279-0295
Plaintiff's Opposition to Snowell Holdings, LLC Motion for Fees	04.07.2021	2	PA_0296-0367
Order Granting Item 9 Labs Corp.'s et al. Motion to Dismiss	04.12.2021	2	PA_0368-0383
Notice of Entry of Order Granting Item 9 Labs Corp.'s et al. Motion to Dismiss	04.13.2021	2	PA_0384-0404
Snowell Holdings, LLC Reply in Support of Motion for Attorneys' Fees	04.22.2021	2	PA_0405-0409

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
Item 9 Labs Corp.'s et al. Motion for Attorneys' Fees and Costs	05.04.2021	2	PA_0410-0494
Minute Order Granting Snowell Holdings, LLC's Motion for Attorneys' Fees	05.12.2021	2	PA_0495
Plaintiff's Opposition to Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	05.19.2021	3	PA_0496-0882
Minute Order regarding Snowell Holdings, LLC's Motion for Attorneys' Fees (Issue of Work Performed)	05.26.2021	4	PA_0883
Item 9 Lab Corp.'s Reply in Support of Motion for Attorneys' Fees and Costs	06.01.2021	4	PA_0884-0895
Minute Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	06.08.2021	4	PA_0896
Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	07.07.2021	4	PA_0897-0911
Notice of Entry of Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	07.07.2021	4	PA_0912-0930

APPENDIX – ALPHABETICAL TABLE OF CONTENTS

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
First Amended Complaint	09.09.2020	1	PA_0001-0063
Item 9 Lab Corp.’s Reply in Support of Motion for Attorneys’ Fees and Costs	06.01.2021	4	PA_0884-0895
Item 9 Labs Corp.’s et al. Motion for Attorneys’ Fees and Costs	05.04.2021	2	PA_0410-0494
Item 9 Labs Corp.’s et al. Motion to Dismiss	12.18.2020	1	PA_0078-0123
Item 9 Labs Corp.’s et al. Reply in Support of Motion to Dismiss	02.17.2021	1	PA_0152-0166
Minute Order Granting Item 9 Labs Corp.’s Motion for Attorneys’ Fees and Costs	06.08.2021	4	PA_0896
Minute Order Granting Snowell Holdings, LLC’s Motion for Attorneys’ Fees	05.12.2021	2	PA_0495
Minute Order regarding Snowell Holdings, LLC’s Motion for Attorneys’ Fees (Issue of Work Performed)	05.26.2021	4	PA_0883
Notice of Entry of Order Granting Item 9 Labs Corp.’s et al. Motion to Dismiss	04.13.2021	2	PA_0384-0404
Notice of Entry of Order Granting Item 9 Labs Corp.’s Motion for Attorneys’ Fees and Costs	07.07.2021	4	PA_0912-0930
Notice of Entry of Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0279-0295
Order Granting Item 9 Labs Corp.’s et al. Motion to Dismiss	04.12.2021	2	PA_0368-0383
Order Granting Item 9 Labs Corp.’s Motion for Attorneys’ Fees and Costs	07.07.2021	4	PA_0897-0911

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Plaintiff's Opposition to Item 9 Labs Corp.'s et al. Motion to Dismiss	01.26.2021	1	PA_0134-0151
Plaintiff's Opposition to Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	05.19.2021	3	PA_0496-0882
Plaintiff's Opposition to Snowell Holdings, LLC Motion for Fees	04.07.2021	2	PA_0296-0367
Plaintiff's Opposition to Snowell Holdings, LLC's Motion to Dismiss	01.18.2021	1	PA_0124-0127
Snowell Holdings, LLC Motion for Attorneys' Fees	03.24.2021	2	PA_0248-0264
Snowell Holdings, LLC Reply in Support of Motion for Attorneys' Fees	04.22.2021	2	PA_0405-0409
Snowell Holdings, LLC's Motion to Dismiss	12.01.2020	1	PA_0064-0077
Snowell Holdings, LLC's Reply In Support of Motion to Dismiss	01.20.2021	1	PA_0128-0133
Transcript – Motion to Dismiss	02.24.2021	1	PA_0167-0247



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JDD, LLC, a Nevada limited liability company;
TCS Partners, LLC, a Nevada limited liability
company; JOHN SAUNDERS, an individual; and
TREVOR SCHMIDT, an individual,

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES
LLC, a Nevada limited liability company; THE
HARVEST FOUNDATION LLC f/k/a, a Nevada
limited liability company a/k/a THE HARVEST
FOUNDATION, LLC; STRIVE MANAGEMENT
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA,
LLC d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA 2
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; VIRIDIS GROUP I9 CAPITAL, LLC,
an Arizona limited liability company; VIRIDIS
GROUP HOLDINGS, LLC, an Arizona limited
liability company; SNOWELL HOLDINGS, LLC,
an Ohio limited liability company; ROBERT
FIREMAN, an individual; JON LEVINE, an
individual; ANDREW BOWDEN, an individual;
DOUGLAS BOWDEN, an individual; BRYCE
SKALLA, an individual; JEFFREY RASSAS, an
individual; DONALD BURTON, an individual;
LARRY LEMONS, an individual; JEFFREY
YOKIEL, an individual; JEROME YOKIEL, an
individual; SARA GULLICKSON, an individual;
CHASE HERSCHMAN, an individual; DOE
INDIVIDUALS I through X, and ROE
BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

CASE NO.: A-20-811232-C

DEPT. NO.: 26

FIRST AMENDED COMPLAINT

JURY DEMAND

**EXEMPT FROM ARBITRATION
(INJUNCTIVE, DECLARATORY, AND
OTHER EXTRAORDINARY
EQUITABLE RELIEF REQUESTED)**

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A PROFESSIONAL CORPORATION
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LAS VEGAS, NEVADA 89106

PA_0001

**FIRST AMENDED COMPLAINT (JURY DEMANDED) EXEMPT FROM
ARBITRATION (INJUNCTIVE, DECLARATORY,
AND OTHER EXTRAORDINARY EQUITABLE RELIEF REQUESTED)**

COMES NOW, Plaintiffs, JDD, LLC, a Nevada limited liability company (“JDD”); TCS PARTNERS L.L.C., a Nevada limited liability company (“TCS”); JOHN SAUNDERS, an individual (“Saunders”); and TREVOR SCHMIDT, an individual (“Schmidt”) (collectively “Plaintiffs”); and hereby allege against MARIMED INC. f/k/a Worlds Online, Inc., a Delaware corporation (“MariMed”); ITEM 9 LABS CORP. f/k/a Airware Labs Corp. and Crown Dynamics Corp., a Delaware corporation (“Item 9 Labs”); ITEM 9 PROPERTIES LLC, a Nevada limited liability company (“Item 9 Properties”); THE HARVEST FOUNDATION LLC, a/k/a THE HARVEST FOUNDATION, LLC, a Nevada limited liability company (“Harvest”); STRIVE MANAGEMENT L.L.C. d/b/a Strive Life, a Nevada limited liability company (“Strive Management”); STRIVE WELLNESS OF NEVADA, LLC d/b/a Strive Life, a Nevada limited liability company (“Strive Wellness”); STRIVE WELLNESS OF NEVADA 2 L.L.C. d/b/a Strive Life, a Nevada limited liability company (“Strive Wellness 2”); VIRIDIS GROUP I9 CAPITAL, LLC, an Arizona limited liability company (“Viridis Capital”); VIRIDIS GROUP HOLDINGS, LLC, an Arizona limited liability company (“Viridis Holdings”); SNOWELL HOLDINGS, LLC, an Ohio limited liability company (“Snowell Holdings”); ROBERT FIREMAN, an individual (“Fireman”); JON LEVINE, an individual (“Levine”); ANDREW BOWDEN, an individual (“Andrew”); DOUGLAS BOWDEN, an individual (“Douglas”); BRYCE SKALLA, an individual (“Skalla”); JEFFREY RASSAS, an individual (“Rassas”); DONALD BURTON, an individual (“Burton”); LARRY LEMONS, an individual (“Lemons”); JEFFREY YOKIEL, an individual (“Jeffrey”); JEROME YOKIEL, an individual (“Jerome”); SARA GULLICKSON, an individual (“Gullickson”); CHASE HERSCHMAN, an individual (“Hershman”) (collectively “Defendants”), as follows:

PARTIES

1. Plaintiff JDD is a Nevada limited liability company with its principal place of business in Clark County, Nevada.

2. Plaintiff TCS is a Nevada limited liability company, with its principal place of business in Clark County, Nevada.

3. Plaintiff Saunders is an individual residing in Los Angeles, California, and is the managing member of JDD.

4. Plaintiff Schmidt is an individual residing in Clark County, Nevada, and is the managing member of TCS.

5. Upon information and belief, Defendant MariMed is Delaware limited liability company, and is an owner, officer, director, manager, member, and/or is otherwise affiliated with Harvest, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in Clark County, Nevada.

6. Upon information and belief, Defendant Item 9 Labs, is Delaware corporation, and is an owner, officer, director, manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in Clark County, Nevada.

7. Upon information and belief, Defendant Item 9 Properties is a Nevada limited liability company, and is an owner, officer, director, manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in Clark County, Nevada.

8. Upon information and belief, Defendant Harvest is a Nevada limited liability company conducting business in Clark County, Nevada. Upon information and belief, Harvest is the holder of a special use permit and two (2) licenses for recreational and medical cannabis cultivation, with establishment identification numbers, RC086 and C086 ("Harvest Licenses"), and, upon information and belief, is an owner, officer, director, member, and/or manager of Defendants

9. Upon information and belief, Defendant Strive Management is a Nevada limited liability company, and is an owner, officer, director, manager, member, and/or is otherwise affiliated

1 with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive
2 Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing
3 business on behalf of such entities in Clark County, Nevada.

4 10. Upon information and belief, Defendant Strive Wellness is the holder of two (2)
5 licenses for the production and cultivation of medical cannabis, with establishment identification
6 numbers P131 and C206d ("Strive Wellness Licenses"), and is an owner, officer, director, manager,
7 member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive
8 Management, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is
9 regularly doing business on behalf of such entities in Clark County, Nevada.

10 11. Upon information and belief, Strive Wellness 2 is a Nevada limited liability
11 company, and is an owner, officer, director, manager, member, and/or is otherwise affiliated with
12 Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Viridis
13 Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of
14 such entities in Clark County, Nevada.

15 12. Upon information and belief, Defendant Viridis Capital is an Arizona limited liability
16 company, and is an owner, officer, director, manager, member, and/or is otherwise affiliated with
17 Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive
18 Wellness 2, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf
19 of such entities in Clark County, Nevada.

20 13. Upon information and belief, Defendant Viridis Holdings is an Arizona limited
21 liability company, is an owner, officer, director, manager, member, and/or is otherwise affiliated
22 with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive
23 Wellness 2, Viridis Capital, and/or Snowell Holdings, and is regularly doing business on behalf of
24 such entities in Clark County, Nevada.

25 14. Upon information and belief, Defendant Snowell Holdings is an Ohio limited
26 liability company, is an owner, officer, director, manager, member, and/or is otherwise affiliated
27 with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive
28

Wellness 2, and/or Viridis Capital, and is regularly doing business on behalf of such entities in Clark County, Nevada.

15. Upon information and belief, Defendant Burton is an owner, officer, director, manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in Clark County, Nevada.

16. Upon information and belief, Defendant Lemons is an owner, officer, director, manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in Clark County, Nevada.

17. Upon information and belief, Defendant Jerome is an owner, officer, director, manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in Clark County, Nevada.

18. Upon information and belief, Defendant Jeffrey is an owner, officer, director, manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in Clark County, Nevada.

19. Upon information and belief, Defendant Fireman is an owner, officer, director, manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in Clark County, Nevada.

1 20. Upon information and belief, Defendant Levine is an owner, officer, director,
2 manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9
3 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis
4 Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in
5 Clark County, Nevada.

6 21. Upon information and belief, Defendant Andrew is an owner, officer, director,
7 manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9
8 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis
9 Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in
10 Clark County, Nevada.

11 22. Upon information and belief, Defendant Douglas is an owner, officer, director,
12 manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9
13 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis
14 Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in
15 Clark County, Nevada.

16 23. Upon information and belief, Defendant Skalla is an owner, officer, director,
17 manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9
18 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis
19 Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in
20 Clark County, Nevada.

21 24. Upon information and belief, Defendant Rassas is an owner, officer, director,
22 manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9
23 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis
24 Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in
25 Clark County, Nevada.

26 25. Upon information and belief, Defendant Gullickson is an owner, officer, director,
27 manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9
28 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis

1 Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in
2 Clark County, Nevada.

3 26. Upon information and belief, Defendant Herschman is an owner, officer, director,
4 manager, member, and/or is otherwise affiliated with Harvest, MariMed, Item 9 Labs, Item 9
5 Properties, Strive Management, Strive Wellness, Strive Wellness 2, Viridis Capital, Viridis
6 Holdings, and/or Snowell Holdings, and is regularly doing business on behalf of such entities in
7 Clark County, Nevada.

8 27. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of Defendants Doe Individuals I through X and Roe Business Entities XI through XX, including,
10 without limitation, for example, any involved business entity owned by or affiliated with the named
11 Defendants or any other party whose acts are involved in this matter, are unknown to Plaintiff, who
12 therefore sues said Defendants by such fictitious names. Plaintiffs are informed and believe, and
13 therefore allege, that each of the Defendants designated as Doe Individuals I through X or Roe
14 Business Entities XI through XX is responsible in some manner for the events and occurrences
15 referred to in this First Amended Complaint, and/or owes money to Plaintiffs and/or may be
16 affiliated with one of the other Defendants. Plaintiffs will ask leave of the Court to amend this First
17 Amended Complaint in order to insert the true names and capacities of Doe Individuals I through X
18 and Roe Business Entities XI through XX when the same have been ascertained, and to join said
19 Defendants in this action.

20 28. At all relevant times, Defendants, and each of them, were the agents, ostensible
21 agents, employees, employers, partners, co-owners and/or joint venturers of each other and of their
22 co-defendants, and were acting within the color, purpose and scope of their employment, agency,
23 ownership and/or joint venture and by reasons of such relationships, the Defendants, and each of
24 them, are vicariously and jointly and severally responsible for the acts of omissions of their co-
25 defendants. Furthermore, at all relevant times, Defendants, and each of them expressly, implicitly
26 and/or tacitly authorized, approved, consented to and/or ratified the acts of its agents, servants,
27 employees, co-owners and each other and, as a result thereof, are liable for compensatory and
28 punitive damages.

JURISDICTION AND VENUE

29. This Court has subject matter jurisdiction over the action pursuant to Article VI of the Nevada Constitution.

30. The Court has personal jurisdiction over the Defendants in accordance with NRS 14.060 and 14.065.

31. Venue is proper in the Eight Judicial District Court in accordance with NRS 13.010 and 13.040.

GENERAL ALLEGATIONS

A. TCS Agreement

32. In or about the beginning of 2015, Schmidt learned of Harvest, and came in contact with Burton and Lemons.

33. Thereafter, Schmidt toured the Harvest facility and expressed interest in investing in Harvest's operations and becoming part of the company.

34. On or about January 22, 2015, after negotiations with Burton and Lemon, Schmidt, as the managing member of TCS, entered into a Membership Interest Sales Agreement ("TCS Agreement") with Burton and Lemons, acting as officers of Harvest.

35. Under Section 1 of the TCS Agreement, Burton and Lemons agreed to transfer 9.9% of the total membership interests in Harvest to Schmidt in exchange for Schmidt's payment of \$371,250.00.

36. Moreover, Section 1 of the TCS Agreement stated that upon the transfer of the 9.9% membership interest to TCS, the other members of Harvest would retain the following percentages of the total ownership interests:

- a. Burton would own 25.05%;
- b. Lemons would own 25.05%;
- c. Jeffrey Yokiell would own 30%; and
- d. Jerome Yokiell would own 10%.

A true and correct copy of the TCS Agreement is attached hereto as **Exhibit "1."**

37. Additionally, under Section 4 of the TCS Agreement, Burton and Lemons, as officers of Harvest, agreed that there would be no additional transfer of equity or membership interest in Harvest for a period of twelve (12) months, to prevent TCS's 9.9% membership interest from being diluted.

38. Furthermore, under Sections 5 and 6 of the TCS Agreement, TCS was entitled to a pro rata share of any distributions of profits and was given the right to vote as a member of Harvest pursuant to Harvest's operating agreement; in addition, Burton and Lemons reaffirmed that they would continue as CEO and COO of Harvest, respectively, and as managing members. *Id.* at 2.

39. Finally, under Section 8 of the TCS Agreement, the Operating Agreement and all other governing documents for Harvest were to be revised to reflect TCS's 9.9% membership interest in Harvest, with a copy of the TCS Agreement to be attached thereto. *Id.* at 2.

40. On or about January 22, 2015, TCS performed all of its obligations under the TCS Agreement by wiring the full \$371,250.00 to Harvest.

B. JDD Agreement

41. In or about 2016, Saunders learned of Harvest and expressed interest to Burton, Lemon, and Schmidt to become part of the company.

42. In or about 2016, as the managing member of JDD, Saunders entered into an agreement with Burton and Lemon (acting in their respective capacities as CEO and COO of Harvest), and TCS, as a member of Harvest (holding non-dilutable membership interests), to purchase 9.9% of the Harvest membership interests ("JDD Agreement").

43. While this deal was not memorialized in a fully integrated written contract like the TCS Agreement, *see Exhibit "1,"* Saunders engaged in a serious of negotiations with Burton, Lemons (acting in their respective capacities as CEO and COO of Harvest), and Schmidt (as the managing member of TCS) to purchase his 9.9% interest.

44. These negotiations were conducted through a series of phone calls, and memorialized in numerous text messages, emails, and other documents.

45. Upon information and belief, all members of Harvest approved, or otherwise ratified, the JDD Agreement.

1 46. Under the JDD Agreement, JDD agreed to pay \$370,000.00 to Harvest in exchange
2 for 9.9% of the total membership interests in Harvest, and, like TCS, JDD was expressly granted
3 voting rights and distributions.

4 47. Moreover, under the JDD Agreement, Saunders was appointed as Chief Financial
5 Officer of Harvest, was to be paid an annual salary of \$70,000.00, and was to be given an active
6 role in Harvest's operations.

7 48. As with the TCS Agreement, the JDD Agreement required the other members, except
8 for TCS, to transfer portions of their own respective membership interests to JDD.

9 49. Thus, the new distribution of membership interests was to be as follows:

- 10 a. Burton would own 24.1%;
- 11 b. Lemons (either individually and/or through Snowell Holdings) would own
12 24.1%;
- 13 c. Jeff Yokiell would own 22%; and
- 14 d. Jerome Yokiell would own 10%.
- 15 e. TCS would own 9.9%; and
- 16 f. JDD would own 9.9%.

17 50. Moreover, as part of the JDD Agreement, TCS and JDD's interests were to remain
18 undiluted by any future sale or transfer of interests by the other members.

19 51. In fact, TCS and JDD retained a right of first refusal to purchase any of the other
20 Harvest members' ownership interests, if any member proposed the sale or transfer of his or her
21 respective membership interests.

22 52. Moreover, as part of the JDD Agreement, Burton and Lemons (acting in their
23 respective capacities as CEO and COO of Harvest) agreed that Harvest would not sell any of
24 Harvest's assets, including its licenses, or make any additional Marijuana deal regarding Harvest's
25 operations in the state of Nevada, without the express prior written authorization of both JDD and
26 TCS ("Exclusive Authorization Rights").

53. Finally, TCS and JDD were to receive a pro rata share of any cash distributions made by Harvest to its Members, as the JDD Agreement closely mirrored the terms of the TCS Agreement, with regard to both JDD and TCS, and was approved by TCS's managing partner Plaintiff Schmidt.

54. Defendants Lemons, Burton, Harvest, Jeffrey agreed to all terms of the JDD Agreement and also agreed that the operating agreement of Harvest would be amended to reflect TCS and JDD's respective 9.9% (totaling 19.8%).

55. Upon information and belief, Defendant Jerome ratified or otherwise accepted the JDD Agreement.

56. On or about May 6, 2016, JDD made a partial payment of \$200,000.00 to Harvest, under the JDD Agreement.

57. On or about June 17, 2016, JDD paid the remaining \$170,000.00 to Harvest, as required by the JDD Agreement.

C. Plaintiffs' Exclusion from Harvest

58. Plaintiffs relied on the above representations made by Burton and Lemons in the TCS and JDD Agreements, as valid and binding contracts.

59. Moreover, in or about 2016, Plaintiffs discussed various revisions to the Harvest operating agreement, with Burton and Lemons, including the specific request to amend the Harvest operating agreement to reflect the new membership interests of TCS and JDD.

60. Initially, Burton and Lemons actively involved Plaintiffs in the drafting process of the amended operating agreement, and kept Plaintiffs apprised of Harvest's operations.

61. In fact, in or around 2016, Saunders even attended the Lemons at the Third Annual Marijuana Business and Conference Expo at the Rio Hotel and Casino in Las Vegas, Nevada ("2016 Conference").

62. At the 2016 Conference, Saunders met Defendants Fireman and Levine, who were the CEO and CFO, respectively, of Defendant MariMed, and informed them directly that Saunders and Schmidt owned nearly 20% of the membership interests in Harvest.

63. Saunders informed Fireman and Levine that he was the CFO and a member of Harvest.

1 64. In or about the middle of 2016, Burton and Lemons became less responsive, and
2 more confrontational with regard to the proposed amended Harvest operating agreement.

3 65. Thereafter, Burton and Lemons began to exclude Plaintiffs from Harvest's business
4 operations all together.

5 66. Specifically, Saunders attempted to participate in the operations of Harvest as CFO,
6 but Saunders was repeatedly excluded by Burton and Lemons.

7 67. Additionally, Burton and Lemons refused Plaintiffs' multiple requests to review
8 Harvest's books and records in violation of both the Harvest operating agreement and NRS 86.241,
9 claiming that the books and records were not "ready" for review

10 68. In or around 2017, after several unsuccessful attempts to reconcile with Burton and
11 Lemons and to participate in the operations of the business, Plaintiffs demanded that Harvest buy
12 out Plaintiffs' entire membership interest (which totaled 19.8% of Harvest's total membership
13 interests).

14 69. For several months thereafter, Burton and Lemons claimed to be working on a plan
15 to buyout TCS and JDD's membership interests, but failed to provide any concrete plan.

16 70. While Plaintiffs were frustrated with Burton and Lemons's unfulfilled promises,
17 Plaintiffs attempted to continue and amicably resolve the dispute without resorting to litigation.

18 71. In or about the beginning of 2018, Burton and Lemons became unresponsive to
19 Plaintiffs' requests.

20 72. In or about 2018, Plaintiffs began to suspect that Defendants were deliberately
21 concealing Harvest's financial situation from Plaintiffs, and that Harvest may not have the means
22 to buy out Plaintiffs' membership interests.

23 73. In or about 2018, Plaintiffs renewed their demand of Burton and Lemons to provide
24 Harvest's books and records, and to follow through with the promised buyout of Plaintiffs'
25 membership interests.

26 74. In or about August 2018, Burton finally began communicating with Plaintiffs, and
27 claimed that the books and records were "ready" for review, and that their requested buyout had
28

1 been “submitted” (though he never clarified who the request had been submitted to, as Burton was
2 purportedly acting as CEO and would have been the one to approve a buyout).

3 75. Nevertheless, for nearly two more months, Burton provided no helpful information
4 beyond a few cryptic responses stating that Saunders could go to inspect the books and records
5 “anytime.”

6 76. After several fruitless attempts by Saunders to schedule a time to visit Harvest’s
7 facility in Las Vegas, Nevada to inspect Harvest’s books and records, Burton finally directed
8 Saunders to speak with the Harvest’s office manager to schedule a time to visit Harvest’s
9 headquarters.

10 77. Thereafter, Saunders scheduled a time to August 2018, Saunders was finally given
11 access to Harvest’s books and records, and travelled to Harvest’s headquarters in Las Vegas,
12 Nevada.

13 78. Upon his arrival, Saunders finally learned why Burton and Lemons had refused his
14 previous requests to inspect the books, as Saunders discovered that Harvest had failed to keep and
15 books or records whatsoever, since its inception.

16 79. Saunders also learned from Harvest’s book keeper that all financial transactions,
17 including paying bills and payroll, were done using cash, and involved Burton and Lemons
18 personally removing and depositing cash into a safe box in the office.

19 80. Thereafter, Saunders worked with Harvest’s office manager to effectively to begin
20 implementing proper financial records, including preparing a cash flow projection template for her
21 to use.

22 81. For the next several months, Saunders continued to attempt to fulfill his role as CFO
23 and to assist in the operations of the business while he awaited his buyout, but Burton and Lemons
24 refused to respond to his calls and emails.

25 82. Finally, in or around September 2019, and in response to Saunders’s request for his
26 2018 K-1 and a demand for the buyout to be finalized, Lemons asked to set up a phone call.

27 83. But, true to form, Lemons failed to answer his phone and continued to evade
28 Saunders’s calls and emails thereafter.

84. Defendants further breached their fiduciary obligations as officers and managing members of Harvest by refusing to provide Plaintiff's with all requisite Schedule K-1 forms, denying their request for copies of Harvest's yearly federal, state and local income tax returns, denying their request to review the books and records of Harvest and/or failing to prepare and maintain adequate books and records for Harvest, in direct violation of NRS 86.241.

D. Conspiracy with MariMed.

85. In or about December 2019, Plaintiffs received a copy of Membership Interest Purchase Agreement entered into between Burton, Lemons, Jeffrey, and MariMed ("MariMed Purchase Agreement"), which had been executed on August 8, 2019. The MariMed Purchase Agreement is attached hereto as **Exhibit "2."**

86. The MariMed Purchase Agreement misrepresented that Burton, Lemons, and Jeffrey were the only members of Harvest and that these three individuals owned 100% of the membership interests in Harvest, and MariMed agreed to pay \$1,200,000 in MariMed's common stock to purportedly purchase 100% of the membership interests of Harvest. *See Exhibit "2"* at 1.

87. In fact, the "Allocation Schedule" of the MariMed Purchase Agreement blatantly misrepresent the true allocation of Harvest membership interests as follows (*see Exhibit B of Exhibit "2"*):

- a. Donald Burton 34.5%
- b. Larry Lemon[sic] 34.5%
- c. Jeffrey Yokiell 31%

88. The MariMed Purchase Agreement is even more egregious due to the fact that Fireman and Levine (respectively, MariMed's CEO and CFO) had actual knowledge of Plaintiffs' interests (as explained *supra*).

89. Specifically, in or around 2016, Levine, Fireman's partner and Chief Financial Officer ("CFO") of MariMed, met with Saunders, Burton, and Lemons at the 2016 Conference and was informed of Plaintiffs' ownership interests.

90. On or about August 8, 2019, unbeknownst to Plaintiff's, Defendants MariMed and Fireman conspired with, and aided and abetted, Defendants Harvest, Burton, and Lemons who

1 breached their fiduciary duties, by covertly entering into a purchase agreement with MariMed (the
2 “MariMed Purchase Agreement”). Such agreement purported to sell MariMed 100% of the
3 ownership interests in Harvest and its valuable Harvest Licenses.

4 91. Not only was the MariMed Purchase Agreement fraudulent and an attempt to convert
5 the membership interests from JDD and TCS, but the MariMed Purchase Agreement was also a
6 clear breach of the TCS and JDD Agreements the Exclusive Authorization Rights granted to TCS
7 and JDD, respectively, in the TCS Agreement and JDD Agreement (as explained *supra*).

8 92. Moreover, according to MariMed’s most recent 10K filing with the SEC, MariMed
9 paid Harvest over \$1,000,000.00 and invested another \$2,200,000 into Harvest which, upon
10 information and belief, was solely used to line the pockets of Burton, Lemons, Jeffrey, and Jerome.

11 **E. Conspiracy with Item 9 Labs and Associated Entities.**

12 93. Upon information and belief, in or about 2019, Burton and Lemons also began
13 conspiring to commit fraud with the other named Defendants.

14 94. Gullickson, Burton, and Lemons are all listed as managing-members of Strive
15 Management and Strive Wellness 2.

16 95. Gullickson and Burton are listed as managing-members of Strive Wellness.

17 96. Only recently, did Plaintiffs learn that Gullickson began appearing as a member, let
18 alone a managing member of Harvest, beginning with the March 2019 annual list filled with the
19 Nevada Secretary of State.

20 97. Such unilateral addition of not only a member, but a managing member, was in clear
21 breach of the Exclusive Authorization Rights granted to TCS and JDD, respectively, in the TCS
22 Agreement and JDD Agreement (as explained *supra*).

23 98. Moreover, all named Defendants had actual or constructive knowledge of Plaintiffs
24 membership interests in Harvest and the associated Exclusive Authorization Rights.

25 99. Moreover, in or about September 12, 2018, and unbeknownst to Plaintiffs and in
26 clear breach of the Exclusive Authorization Rights granted to TCS and JDD, respectively, in the
27
28

1 TCS Agreement and JDD Agreement (as explained *supra*), and upon information and belief, all
2 named Defendants Item 9 Labs, Item 9 Properties, Viridis Capital, Viridis Holdings, Andrew,
3 Douglas, Skalla, and Rassas, Herschman, made a capital contribution of \$1,500,000.00 into Strive
4 Management, LLC, a Nevada limited liability company, the management arm of Defendant Strive
5 Wellness (“Item 9 Agreements”) which owns two (2) other valuable Cannabis licenses in Nye,
6 County.
7

8 100. The Item 9 Agreements were in direct violation of Plaintiffs’ Exclusive
9 Authorization Rights.

10 101. Upon information, this capital was based on a total investment of \$2,700,000.00 from
11 Viridis Capital and Viridis Holdings under a revenue participation agreement.

12 102. Upon information and belief, in exchange for this capital contribution secured by
13 Viridis Capital, Viridis Holdings, Andrew, Douglas, Skalla, Rassas, Item 9 Labs and/or Item 9
14 Properties purchased 20% of the membership interests in Strive Management with the remaining
15 ownership held by Burton, Lemons, and Gullickson.
16

17 103. The Item 9 Agreements also include Item 9 Labs acquiring an additional 31%
18 ownership of Strive Management and Strive Wellness. The Item 9 Agreements also include Item 9
19 Labs investing \$5,500,000.00 in order to construct a facility in Nevada which will be wholly owned
20 by Item 9 Labs and leased to Strive Management.
21

22 104. Upon information and belief, in exchange for the investments contemplated under
23 the Item 9 Agreements, Defendants Viridis Capital, Viridis Holdings, Andrew, and Douglas will
24 receive waterfall revenue participation including 5% of Item 9 Lab’s gross revenue from Nevada
25 operations and scaling down to a lower percentage in perpetuity and that Defendants would own an
26 aggregate of 51% of the Nevada operations which represent tens of millions of dollars. Item 9 Lab’s
27 most recent 10K filing with the SEC, dated January 14, 2020 brazenly represented the breach by
28 describing an Item 9 Lab and Harvest Joint Venture in Nevada.

1 (a) Entering into a Purchase Agreement with MariMed, which entirely neglected to
2 mention and account for Plaintiffs' membership interest in Harvest, as set forth under the TCS
3 Agreement and JDD Agreement;

4 (b) Covertly entering into a Purchase Agreement with MariMed, which falsely
5 represented that Burton, Lemons and Jeffrey collectively owned 100% of the issued and outstanding
6 membership interests in Harvest despite Plaintiffs' membership interests in Harvest, as set forth
7 under the TCS Agreement and JDD Agreement;

8 (c) Thereafter failing to reimburse Plaintiffs for their pro rata investment in Harvest;

9 113. Failing to amend the Purchase Agreement with MariMed to reflect Harvest's proper
10 ownership interest, including but not limited to Plaintiffs' membership interests;

11 114. Upon reasonable demand, NRS 86.241 affords each member of a limited liability
12 company the right to, among other things, (i) obtain complete records regarding the activities and
13 the status of the business and financial condition of the company; and (ii) obtain a copy of the
14 company's federal, state and local income tax returns for each year.

15 115. Despite Plaintiffs' membership interests in Harvest, Defendants refused to provide
16 Saunders and Schmidt with copies of Harvest's yearly federal, state and local income tax returns,
17 failed to prepare and maintain adequate books and records for Harvest, and refused to grant Saunders
18 and Schmidt access to review the books and records of Harvest, in direct violation of the statutory
19 obligations set forth under NRS 86.241.

20 116. Lemons and Burton explicitly breached their respective covenants not to compete
21 and to include Plaintiffs in all marijuana cultivation, distribution, retail, or other ventures in the State
22 of Nevada.

23 117. As a direct and foreseeable consequence of the unlawful, improper, unprivileged,
24 and unjustified conduct of the Defendants named herein Plaintiffs and the shareholders have been
25 damaged in excess of \$15,000.00.

26 118. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute
27 this action, and Defendants should be required to pay reasonable attorneys' fees as well as costs
28 incurred in accordance with the law, including, without limitation, as special damages.

SECOND CLAIM FOR RELIEF
ALTERNATIVELY, UNJUST ENRICHMENT
(Against All Defendants)

119. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in the foregoing Paragraphs of this First Amended Complaint as though set forth in full.

120. Upon information and belief, Defendants excluded Plaintiffs from the MariMed Purchase Agreement and/or the Item 9 Agreements, without paying Plaintiffs reasonably equivalent value of the same, to the benefit of Defendants.

121. This cause of action is pleaded only in the alternative, if the Court determines that Plaintiffs breach of contract claim fails.

122. As a direct and foreseeable consequence of the unlawful, improper, unprivileged, and unjustified conduct of the Defendants named herein Plaintiffs and the shareholders have been damaged in excess of \$15,000.00.

123. The actions of the Defendants named herein were deliberate, wanton, willful, and malicious, which justifies an award of punitive damages in favor of Plaintiffs and shareholders, pursuant to NRS 42.005.

124. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action, and Defendants should be required to pay reasonable attorneys' fees as well as costs incurred in accordance with the law, including, without limitation, as special damages.

THIRD CLAIM FOR RELIEF
FRAUD - INTENTIONAL MISREPRESENTATION AND INDUCEMENT
(Against Burton, Lemons, and Harvest)

125. Plaintiffs repeat and re-allege herein by reference each and every allegation set forth in the preceding paragraphs of the First Amended Complaint as though fully set forth herein.

126. Pursuant to the TCS Agreement and JDD Agreement, Burton, Lemons, and Harvest represented that Plaintiffs would (1) have a right of first refusal of regarding transfer of any of the membership interests, and (2) that Plaintiffs would be given Exclusive Authorization Rights to approve or deny the purchase, sale, or transfer of any cannabis cultivation, distribution, retail, or other license held by Harvest or any of its individual members, and would be included on any current or future licenses.

1 127. Defendants knew that these false representations were false when they made them
2 and/or made them recklessly and without regard for their truth because, in order to induce Plaintiffs
3 to invest nearly \$750,000.00 in Harvest.

4 128. Plaintiffs were unaware of Burton, Lemons, and Harvest's intention not to perform
5 the promises contained in the TCS Agreement and JDD Agreement, and justifiably relied and acted
6 in reliance upon the false representations.

7 129. As a direct and proximate result of the false representations described herein,
8 Plaintiffs have suffered damages in excess of \$15,000.00.

9 130. The aforementioned conduct of Defendants was willful and constitutes oppression,
10 fraud, and malice, and entitles Plaintiffs to an award of punitive damages, pursuant to NRS 42.005,
11 and to attorney's fees in the amount of NRS 41.600.

12 **FOURTH CLAIM FOR RELIEF**
13 **FRAUD - FRAUDULENT CONCEALMENT**
14 **(Against Burton, Lemons, and Harvest)**

15 131. Burton, Lemons, and Harvest concealed or suppressed one or more material facts
16 from Plaintiffs, regarding the sale of 100% of the membership interests of Harvest to MariMed, and
17 had a duty to disclose such facts to the Plaintiffs (as all the Defendants named herein had actual or
18 constructive knowledge of Plaintiffs' membership interests).

19 132. The Defendants named herein intentionally concealed or suppressed the facts of such
20 sale with the intent to defraud the Plaintiffs out of their membership interests in Harvest.

21 133. Plaintiffs were unaware of the execution of the MariMed Purchase Agreement until
22 after it had been completed, and would have intervened before the deal was consummated had
23 Plaintiffs had such prior knowledge of the impending deal.

24 134. As a direct and proximate result of the aforementioned Defendants' concealment, as
25 described herein, Plaintiffs have suffered damages in excess of \$15,000.00.

26 135. The aforementioned conduct of Defendants was willful and constitutes oppression,
27 fraud, and malice, and entitles Plaintiffs to an award of punitive damages, pursuant to NRS 42.005,
28 and to attorney's fees in the amount of NRS 41.600.

FIFTH CLAIM FOR RELIEF
CONSTRUCTIVE FRAUD
(Against Burton, Lemons, and Harvest)

136. Burton, Lemons, and Harvest, with full knowledge of the legal, equitable, and fiduciary obligations owed to Plaintiffs as managing members, officers, and majority shareholders (and as explained in greater detail herein, *infra* Twelfth Cause of Action).

137. The Defendants named herein breached their legal, equitable, and/or fiduciary duties owed to Plaintiffs, in such a way that Nevada law declares such behavior is fraudulent.

138. As a direct and proximate result of the aforementioned Defendants' concealment, as described herein, Plaintiffs have suffered damages in excess of \$15,000.00.

139. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action, and the aforementioned Defendants should be required to pay reasonable attorneys' fees as well as costs incurred in accordance with the law, including, without limitation, as special damages.

SIXTH CLAIM FOR RELIEF
ALTERNATIVELY, NEGLIGENT MISREPRESENTATION
(Against Burton, Lemons, and Harvest)

140. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in the foregoing Paragraphs of this First Amended Complaint as though set forth in full.

141. Burton, Lemons, and Harvest supplied false information to induce Plaintiffs to enter into the TCS Agreement and the JDD Agreement, as described in the foregoing paragraphs.

142. Specifically, the Defendants named herein represented that Plaintiffs would (1) have a right of first refusal of regarding transfer of any of the membership interests, and (2) that Plaintiffs would be given Exclusive Authorization Rights to approve or deny the purchase, sale, or transfer of any cannabis cultivation, distribution, retail, or other license held by Harvest or any of its individual members, and would be included on any current or future licenses.

143. Such above representations and associated information was supplied to induce Plaintiffs in making an investment in Harvest.

144. The Defendants named herein failed to exercise reasonable care or competence in obtaining or communicating such information.

1 155. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute
2 this action, and the aforementioned Defendants should be required to pay reasonable attorneys' fees
3 as well as costs incurred in accordance with the law, including, without limitation, as special
4 damages.

5 **EIGHTH CLAIM FOR RELIEF**
6 **BREACH OF FIDUCIARY DUTIES AND**
7 **USURPATION OF CORPORATE OPPORTUNITY**
8 **(Against Burton, Lemons, and Harvest)**

9 156. Plaintiffs repeat and re-allege herein by reference each and every allegation set forth
10 in the preceding paragraphs as though fully set forth herein.

11 157. Burton, Lemons, and Harvest owed fiduciary duties to Plaintiffs, by virtue of their
12 positions as officers, managing-members, and majority shareholders.

13 158. The Defendants named herein owed (and/or continue to owe) Plaintiffs and the
14 Company's shareholders fiduciary duties, which include, but are not limited to, duties of loyalty,
15 care, and the implied covenant of good faith and fair dealing.

16 159. The Defendants named herein were under a duty to act for or give advice for the
17 benefit of Plaintiffs, individually, and the shareholders generally, upon matters within the scope of
18 that relationship.

19 160. The Defendants named herein owed Plaintiffs the duty to use due care or diligence,
20 to act with utmost faith, to exercise ordinary skill, and/or to act with reasonable intelligence.

21 161. The Defendants named herein breached their fiduciary duties to Plaintiffs,
22 specifically, and to the shareholders generally, which caused Plaintiffs and the shareholders losses
23 or injuries.

24 162. Moreover, The Defendants named herein appropriated for their own use, an
25 opportunity that belonged to Harvest and its members, including Plaintiffs. At a minimum all
26 Defendants ratified Defendant Anderson and his co-conspirator's conduct.

27 163. Upon information and belief, the Defendants named herein, used the investments of
28 Plaintiffs to acquire additional cannabis cultivation, distribution, and/or retail licenses, for the use
and benefit of all other Harvest's members, other than Plaintiffs.

1 164. Moreover, the Defendants named herein have breached their agreements with
2 Plaintiffs, who were induced to remain as shareholders and investors as a result of such promises.

3 165. Furthermore, the Board that acted unilaterally by circumventing the requirements of
4 NRS 86.241, the Harvest operating agreement, the TCS Agreement, and the JDD Agreement.

5 166. As a direct and foreseeable consequence of Defendants' unlawful and improper
6 conduct, Plaintiffs have been damaged in excess of \$15,000.00.

7 167. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute
8 this action, and Defendants should be required to pay reasonable attorneys' fees as well as costs
9 incurred in accordance with the law, including, without limitation, as special damages.

10 **NINTH CLAIM FOR RELIEF**
11 **CONVERSION**

12 (Against Burton, Lemons, Jeffrey, Fireman, Levine, MariMed, and Harvest)

13 168. Plaintiffs repeat and re-allege herein by reference each and every allegation set forth
14 in the preceding paragraphs as though fully set forth herein.

15 169. The Defendants named herein, facilitated the sale of 100% of the membership
16 interests in Harvest to MariMed without the authorization of and without compensating Plaintiffs.

17 170. The Defendants named herein, specifically denied Plaintiffs the use and enjoyment
18 of their rights in ownership in Harvest.

19 171. Such acts were committed in derogation, exclusion, or defiance of Plaintiffs' rights.

20 172. As a direct and foreseeable consequence of Defendants' unlawful and improper
21 conduct, Plaintiffs has been damaged in excess of \$15,000.00.

22 173. The aforementioned Defendants' actions were deliberate, wanton, willful, and
23 malicious, which justifies an award of punitive damages in favor of Plaintiffs and shareholders,
24 pursuant to NRS 42.005.

25 174. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute
26 this action, and aforementioned Defendants should be required to pay reasonable attorneys' fees as
27 well as costs incurred in accordance with the law, including, without limitation, as special damages.
28

TENTH CLAIM FOR RELIEF
GROSS NEGLIGENCE

(Against Burton, Lemons, and Harvest)

175. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in the foregoing Paragraphs of this First Amended Complaint as though set forth in full.

176. The Defendants named herein, owed a legal or fiduciary duty to Plaintiffs (as described in the foregoing paragraphs) as majority shareholders, and/or as managing members and officers of Harvest.

177. The Defendants named herein, failed to exercise even the slightest degree of care with regard to the duties owed to Plaintiffs, and breach those duties.

178. The Defendants named herein, attempted to sell Plaintiffs interest to MariMed without giving them any valuable consideration.

179. The Defendants named herein, engaged in an act or omission respecting legal duty of an aggravated character, or with willful, wanton misconduct.

180. As a direct and proximate result of such actions, Plaintiffs have been damaged and continue to be damaged in a sum in excess of \$15,000.00.

181. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action, and aforementioned Defendants should be required to pay reasonable attorneys' fees as well as costs incurred in accordance with the law, including, without limitation, as special damages.

ELEVENTH CLAIM FOR RELIEF
CIVIL CONSPIRACY
(Against All Defendants)

182. Plaintiffs incorporate by reference all previous paragraphs above as though set forth herein.

183. Defendants intended to work together as part of a conspiracy to commit the unlawful and improper conduct described herein.

184. Defendants acted by a concert of action by agreement, understanding, or "meeting of the minds," whether explicit or by tacit agreement, to carry out the unlawful and improper conduct described herein.

1 185. As a direct and foreseeable consequence of Defendants' unlawful and improper
2 conduct, Plaintiffs and the shareholders have been damaged in excess of \$15,000.00.

3 186. The Defendants' conduct is wanton, willful, and malicious, justifying an award of
4 punitive damages in favor of Plaintiffs, pursuant to NRS 42.005.

5 187. The Defendant's conduct is wanton, willful, and malicious, justifying an award of
6 punitive damages in favor of Plaintiffs in excess of \$15,000.00.

7 188. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute
8 this action, and Defendants should be required to pay reasonable attorneys' fees as well as costs
9 incurred in accordance with the law, including, without limitation, as special damages.

10 **TWELFTH CLAIM FOR RELIEF**
11 **EQUITABLE RELIEF - ALTER EGO**
12 (Against All Defendants)

13 189. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
14 contained in the foregoing Paragraphs of this First Amended Complaint as though set forth in full.

15 190. Upon information and belief, there is a unity of interest and ownership between all
16 Defendants, such that the Defendant entities and the individual persons are inseparable from one
17 another.

18 191. Upon information and belief, the adherence to the corporate fiction of Harvest,
19 MariMed, Strive Management, Strive Wellness, Strive Wellness 2, Item 9 Labs, and Item 9
20 Properties ("Defendant Entities"), under the circumstances, would sanction a fraud or promote
21 injustice, as described herein.

22 192. Upon information and belief, all individual Defendants (1) undercapitalized each
23 Defendant Entity and comingled funds with the general funds of each Defendant entity, (2) failed
24 to observe corporate formalities, (3) took and gave loans to or from one or more of the Defendant
25 Entities without sufficient consideration, and (4) generally treated the assets of the Defendant
26 Entities as their own personal assets.

27 ///

28 ///

THIRTEENTH CLAIM FOR RELIEF
AIDING AND ABETTING BREACH OF FIDUCIARY DUTIES
(Against all Defendants)

193. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in the foregoing Paragraphs of this First Amended Complaint as though set forth in full.

194. As specified foregoing paragraphs, a fiduciary relationship exists between Plaintiffs as members of Harvest, on the one hand, and Burton and Lemons as officers and managing-members of Harvest, on the other hand.

195. As specified in the foregoing paragraphs, Burton and Lemons, as officers and managing-members of Harvest, breached their fiduciary duties to Plaintiffs.

196. Each Defendant, including Burton and Lemons as to each other's respective breaches, knowingly participated in or facilitated said breaches.

197. As a direct and foreseeable consequence of Defendants' unlawful and improper conduct, Plaintiffs and the shareholders have been damaged in excess of \$15,000.00.

198. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action, and Defendants should be required to pay reasonable attorneys' fees as well as costs incurred in accordance with the law, including, without limitation, as special damages.

199. Defendants' actions were deliberate, wanton, willful, and malicious, which justifies an award of punitive damages in favor of Plaintiffs and shareholders, pursuant to NRS 42.005.

FOURTEENTH CLAIM FOR RELIEF
INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS
(Against All Defendants)

200. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in the foregoing Paragraphs of this First Amended Complaint as though set forth in full.

201. Defendants had actual knowledge, or had reason to know, of Plaintiffs interests in Harvest, and Plaintiffs' Exclusive Authorization Rights and the right of first refusal, as outlined in the foregoing paragraphs.

1 202. Upon information and belief, Defendants intentional acts were intended or designed
2 to disrupt the contractual relationships between Plaintiffs and other cannabis entities, including, but
3 not limited to Defendants, and other Doe individuals and Roe entities.

4 203. Upon information and belief, Defendants new of the TCS Agreement and JDD
5 Agreement, and committed intentional acts to prevent Plaintiffs from appreciating rights thereunder.

6 204. As a direct and foreseeable consequence of the unlawful, improper, unprivileged,
7 and unjustified conduct of the Defendants named herein, Plaintiffs and the shareholders have been
8 damaged in excess of \$15,000.00.

9 205. Defendants' actions were deliberate, wanton, willful, and malicious, which justifies
10 an award of punitive damages in favor of Plaintiffs and shareholders, pursuant to NRS 42.005.

11 206. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute
12 this action, and Defendants should be required to pay reasonable attorneys' fees as well as costs
13 incurred in accordance with the law, including, without limitation, as special damages.

14 **FIFTEENTH CLAIM FOR RELIEF**
15 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
16 **(Against All Defendants)**

17 207. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
18 contained in the foregoing Paragraphs of this First Amended Complaint as though set forth in full.

19 208. Upon information and belief, Defendants new of the TCS Agreement and JDD
20 Agreement, and committed intentional acts to prevent Plaintiffs from appreciating rights under the
21 MariMed Purchase Agreement or Item 9 Agreements.

22 209. Defendants' actions were intended or designed to disrupt the prospective contractual
23 relationships between Plaintiffs and other cannabis entities, including, but not limited to Defendants,
24 and other Doe individuals and Roe entities.

25 210. Upon information and belief, Defendants new of the TCS Agreement and JDD
26 Agreement, and committed intentional acts to prevent Plaintiffs from appreciating rights thereunder,
27 or under the MariMed Purchase Agreement or Item 9 Agreements.

1 211. As a direct and foreseeable consequence of the unlawful, improper, unprivileged,
2 and unjustified conduct of the Defendants named herein Plaintiffs and the shareholders have been
3 damaged in excess of \$15,000.00.

4 212. The actions of the Defendants named herein were deliberate, wanton, willful, and
5 malicious, which justifies an award of punitive damages in favor of Plaintiffs and shareholders,
6 pursuant to NRS 42.005.

7 213. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute
8 this action, and Defendants should be required to pay reasonable attorneys' fees as well as costs
9 incurred in accordance with the law, including, without limitation, as special damages.

10 **SIXTEENTH CLAIM FOR RELIEF**
11 **EQUITABLE RELIEF – PROMISSORY ESTOPPEL,**
12 **INJUNCTIVE RELIEF, AND ACCOUNTING**
 (Against All Defendants)

13 214. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
14 contained in the foregoing Paragraphs of this First Amended Complaint as though set forth in full.

15 215. Upon information and belief, the Defendants named herein were apprised of true
16 facts as alleged in the foregoing paragraphs.

17 216. Defendants intended to exclude Plaintiffs from the MariMed Purchase Agreement
18 and Item 9 Agreements, even though Defendants know of Plaintiffs were entitled to be a part of
19 those contracts.

20 217. Plaintiffs were ignorant of the true facts until after the MariMed Purchase Agreement
21 had been consummated.

22 218. Plaintiffs relied on the conduct of the Defendants named herein, to the Plaintiffs'
23 detriment, as described in the foregoing paragraphs.

24 219. As described in the foregoing paragraphs, a fiduciary relationship, based on trust and
25 confidence, exists between Plaintiffs on the one hand, and Burton, Lemons, and Harvest, on the
26 other hand.

27 220. Plaintiffs have demanded the information necessary, or an accounting from the
28 Defendants named herein, and payment for the amounts found due, but Defendants have failed and

1 refused, and continue to fail and refuse to render such an accounting and to pay said sums to
2 Plaintiffs.

3 221. As a result of the aforementioned Defendant's actions set forth herein, Plaintiffs are
4 entitled to an Order of this Court, enjoining and restraining the Defendants to provide access to the
5 Court, and an accounting to be made of the aforementioned Defendant's records, regarding their
6 various breaches of or interference with the TCS Agreement and JDD Agreement.

7 222. Plaintiffs are also entitled to an order from this Court enjoining the closing of the
8 MariMed Purchase Agreement and transfer of Plaintiffs' Harvest membership interests to MariMed.

9 **SEVENTEENTH CLAIM FOR RELIEF**
10 **(CIVIL RACKETERING INFLUENCED AND CORRUPT**
11 **ORGANIZATIONS ACT - RICO)**
12 **(Against Burton, Lemons, and Harvest)**

13 223. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
14 contained in the foregoing paragraphs of this First Amended Complaint as though set forth in full.

15 224. The Defendants named herein, engaged in racketeering activities as defined in NRS
16 207.390 and a racketeering enterprise as is defined in NRS 207.380.

17 225. Specifically, the Defendants named herein committed multiple violations of the acts
18 described in NRS 90.570 and NRS 205.377, based on the allegations in the foregoing paragraphs.

19 226. The Defendants named herein, acting directly, and in conspiracy with one another or
20 through their syndicate, participated directly in racketeering activity by engaging in at least two
21 crimes related to racketeering.

22 227. The activities of the Defendants named herein, have the same or a similar pattern,
23 intent, results, accomplices, victims, or methods of commission, or otherwise interrelated by
24 distinguishing characteristics and are not isolated events.

25 228. Specifically, Lemons and Burton have consistently excluded Plaintiffs from their
26 rights under the TCS Agreement and JDD Agreement, on multiple occasions.

27 229. The Defendants named herein, acquired or maintained directly or indirectly an
28 interest in, or control of, an enterprise, or otherwise employed by or associated with an enterprise,

1 to conduct or participate directly or indirectly in the affairs of the enterprise through a racketeering
2 activity.

3 230. Plaintiffs' injuries flow from Defendants' violation of a predicate act of Nevada's
4 RICO statute.

5 231. Plaintiffs' injury was proximately caused by the Defendant's violation of the
6 predicate act.

7 232. Plaintiffs did not participate in the commission of the predicate act.

8 233. Plaintiffs are entitled to institute a civil action for recovery of treble damages
9 proximately caused by the RICO violations listed in NRS 207.470(1), by Defendants named herein.

10 234. As a direct and foreseeable consequence of the unlawful, improper, unprivileged,
11 and unjustified conduct of the Defendants named herein Plaintiffs and the shareholders have been
12 damaged in excess of \$15,000.00.

13 235. The actions of the Defendants named herein were deliberate, wanton, willful, and
14 malicious, which justifies an award of punitive damages in favor of Plaintiffs and shareholders,
15 pursuant to NRS 42.005.

16 236. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute
17 this action, and Defendants should be required to pay reasonable attorneys' fees as well as costs
18 incurred in accordance with the law, including, without limitation, as special damages.

19 **EIGHTEENTH CLAIM FOR RELIEF**
20 **ATTORNEYS' FEES AS SPECIAL DAMAGES**
21 **(Against All Defendants)**

22 237. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
23 contained in the foregoing paragraphs of this First Amended Complaint as though set forth in full.

24 238. Plaintiffs are entitled to collect attorney fees as special damages pursuant to NRCP
25 9(g). *See Liu v. Christopher Homes, LLC*, 321 P.3d 875 (2014); *Sandy Valley Assoc. v. Sky Ranch*
Estates Owners Ass'n, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001).

26 239. Plaintiffs have incurred attorneys' fees as a "natural and proximate consequence of
27 the injurious conduct" of all named Defendants, with regard to Plaintiffs' Causes of Action as
28

1 pleaded *supra*. See *Liu v. Christopher Homes, LLC*, 321 P.3d 875 (2014); *Sandy Valley Assoc. v.*
2 *Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001).

3 **NINETEENTH CLAIM FOR RELIEF**
4 **(DECLARATORY RELIEF)**
(Against All Defendants)

5 240. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
6 contained in the foregoing paragraphs of this First Amended Complaint as though set forth in full.

7 241. A justifiable controversy exists between Plaintiffs each respective Defendants, as
8 named herein, with regard to Plaintiffs rights under the TCS Agreement, JDD Agreement, the
9 MariMed Purchase Agreement, and the Item 9 Membership Purchase Agreement.

10 242. Plaintiffs assert a claim of a legally protected right in contract, and such issue of
11 contractual rights is ripe for judicial determination at this time.

12 243. Plaintiffs assert of a legally protected right in all the personal and real property of
13 Harvest, including, but not limited to, the leasehold estate of Harvest's cultivation facility located
14 at: 3395 Pinks Place, Las Vegas, Nevada, 89102-8407 (APN: 162-17-110-013).

15 244. Plaintiffs ask the Court to determine the parties' relative rights under the contract,
16 and to find that all contractual agreements alleged in the foregoing paragraphs are subject to
17 Plaintiffs claims thereto.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE** Plaintiffs pray for judgment in their favor and against Defendants as
20 follows:

- 21 A. For damages and pre- and post-judgment interest in excess of \$15,000.00;
22 B. For all equitable, injunctive, and declaratory relief as pleaded herein;
23 C. For Plaintiffs' attorney's fees and costs incurred in bringing the action, including
24 attorney's fees as special damages;
25 D. For punitive, treble, and other special damages; and

26 ///

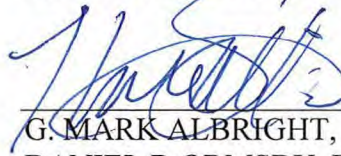
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1 E. For such other and further relief as this Court may deem appropriate.

2 DATED this 9th day of September, 2020

3 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

4 

5 G. MARK ALBRIGHT, ESQ., NBN 001394

6 DANIEL R ORMSBY, ESQ., NBN 014595

7 HAYDEN R.D.SMITH, ESQ. NBN 015328

8 801 South Rancho Drive, Suite D-4

9 Las Vegas, Nevada 89106

10 Tel: (702) 384-7111

11 Fax: (702) 384-0605

12 *Attorneys for Plaintiffs*

EXHIBIT “1”

MEMBERSHIP INTEREST SALES AGREEMENT

This Membership Interest Sales Agreement ("Agreement"), dated this 22 day of September, 2015, is by and between TCS Partners L.L.C. a Nevada Limited Liability company ("TCS" or "Buyer"), and Larry Lemons ("Lemons") and Donald Burton ("Burton").

Recitals

1. Harvest is a Nevada Limited Liability Company in the business of operating a medical marijuana cultivation facility in Nevada. The Members of Harvest are Donald Burton, Larry Lemons, Jeff Yokiel, and Jerome Yokiel.

2. TCS wishes to purchase a 9.9% (nine and 9/10th percent) Membership interest in Harvest and the Members and Managing Member of Harvest have approved the sale of a 9.9% (nine and 9/10th percent) interest in Harvest to TCS.

Membership Interest Purchase

1. Transfer of Interest. Lemons hereby transfers 4.95% (four and 95/100th percent) Membership interest in Harvest to TCS, Burton hereby transfers a 4.95% (four and 95/100th percent) Membership interest. With this transfer of Membership interests, TCS shall own 9.9% (nine and 9/10th percent) of the Membership interests in Harvest, Burton shall own 25.05% (twenty-five and 5/100th percent) of the Membership interests in Harvest, Lemons shall own 25.05% (twenty-five and 5/100th percent) of the Membership interest in Harvest, Jeff Yokiel shall own 30% (thirty percent) of the Membership interest in Harvest and Jerome Yokiel shall own 10% (ten percent) of the Membership interest in Harvest.

2. Authority to Transfer. Lemons and Burton warrant that they have not sold, conveyed, assigned, pledged or otherwise encumbered the Membership interests in Harvest that have been conveyed to TCS and are fully authorized to enter into this agreement.

3. Payment. TCS shall pay Harvest \$371,250.00 (three hundred seventy-one thousand two hundred fifty and no/100 dollars) for the transfer of 9.9% (nine and 9/10th percent) of Harvest's Membership interest to TCS. TCS shall pay this amount via wire transfer or in certified funds upon execution of this Agreement. The Parties agree that a member or members of TCS may make the payment on behalf of TCS.

4. Restriction on Transfers of Equity in Harvest. The Parties agree that there will not be any additional transfer of equity or membership interest in Harvest for a period of twelve (12) months after the execution of this document as doing so could affect Harvest's license to operate pursuant to Nevada law.

5. Ownership Interest in Company. TCS understands and agrees that the purchase of these Membership Interests provides it an equity interest in Harvest.

6. Management. TCS understands and agrees that its purchase of Membership Interests in Harvest will entitle it to a pro rata share of any distributions of profits made by the Company, and to the right to vote as a Member on matters as provided in the Company's Operating Agreement. TCS understands and agrees that Hutton is now and will continue to be a Managing Member and CEO of Harvest and that Lemons is now and will continue to be a Managing Member and COO of Harvest.

7. Additional Documents. The Parties agree to take any additional actions and to execute any additional documents that may be required by regulatory authorities to ensure compliance with any laws or regulations.

8. Revision of Governing Documents. The Parties agree that the Operating Agreement and all other governing documents for Harvest shall be revised to reflect TCS's purchase of the membership interest described herein and that this Agreement shall be attached as an exhibit thereto.

9. Notices. Any notice required to be given pursuant to this Agreement shall be given via certified mail to the addresses shown below, or to such other addresses as the Parties may hereafter designate in writing:

Donald E. Burton
3395 Pinks Place
Las Vegas, NV 89102

TCS Partners L.L.C.
c/o Trevor Schmidt
2359 Villandry Ct.
Henderson, NV 89074

7. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be altered, amended, expanded or otherwise changed except by a written agreement executed by both Parties.

8. Governing Law. This Agreement shall be construed as if drafted equally by both Parties and shall not be construed against either Party. This Agreement shall be governed by the substantive laws of the State of Nevada without regard to any choice of law rules that might otherwise apply.

9. Dispute Resolution. Any dispute arising out of or relating to this Agreement shall be resolved in a court of competent jurisdiction in the Nevada State Court system in Clark County, Nevada.


Donald E. Burton


Larry Lemons

By: TCS Partners L.L.C.

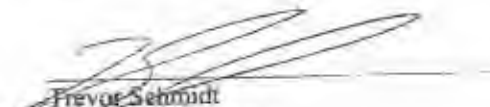

Trevor Schmidt
Managing Member

EXHIBIT “2”

MEMBERSHIP INTEREST PURCHASE AGREEMENT

This Membership Interest Purchase Agreement, dated as of August 7, 2019 (this "Agreement"), is entered into by and among (i) MariMed, Inc., a Delaware corporation ("Buyer"), (ii) The Harvest Foundation LLC, a Nevada limited liability company (the "Company") and (iii) Donald Burton, Larry Lemons and Jeffrey Yokiel (each, a "Seller," and collectively, the "Sellers"). The Sellers and the Company are sometimes referred to herein as the "Seller Parties," and the Buyer and the Seller Parties are sometimes referred to herein as the "Parties," and each, a "Party."

Recitals

WHEREAS, the Sellers collectively own 100% of the issued and outstanding membership interests of the Company (the "Membership Interests");

WHEREAS, the Company holds (i) a medical cannabis cultivation license, (ii) an adult use cannabis cultivation license and (iii) a cannabis distribution license, each from the State of Nevada, and operates a cannabis cultivation and distribution facility in Clark County, Nevada (the "Business"); and

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Sellers have determined to sell, and the Buyer desires to purchase from the Sellers, the Membership Interests, all as more specifically provided herein.

NOW, THEREFORE, intending to be legally bound, in consideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

Agreement

1. Definitions. For purposes of this Agreement, the capitalized terms not otherwise defined in the body of this Agreement shall have the meanings ascribed to such terms in Exhibit A attached hereto, which defined terms are incorporated herein by reference.

2. Sale and Purchase of Membership Interests.

2.1. Sale and Purchase. Subject to and upon the terms and conditions contained in this Agreement, the Sellers shall sell, transfer, convey, assign and deliver to the Buyer, and the Buyer shall purchase and acquire from the Sellers, good and marketable title to the Membership Interests at the Closing, free and clear of all Encumbrances.

2.2. Purchase Price. The aggregate consideration to be paid by the Buyer to the Sellers for the Membership Interests (the "Purchase Price") shall be a number of shares of common stock of the Buyer ("Buyer Common Stock") equal to \$1,200,000 *divided by* the closing stock price of Buyer Common Stock on the last trading day immediately preceding the Closing Date (the "Shares"). The Purchase Price shall be allocated to the Sellers in accordance with the allocation schedule attached hereto as Exhibit B (the "Allocation Schedule"). On the Closing Date, the Buyer shall issue to each Seller such Seller's pro rata portion of the Shares, as set forth on the Allocation

Schedule; *provided*, however, that no fractional shares of Buyer Common Stock shall be issued, and the Shares issuable to each Seller shall be rounded down to the nearest whole share.

2.3. Closing. The closing of the sale and purchase of the Membership Interests (the "Closing") shall take place via electronic exchange of signature pages, as promptly as practicable, but in no event later than the second (2nd) business day following the satisfaction or waiver of each of the conditions set forth in Section 6 (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at Closing), or at such other time and place as the Buyer and the Sellers may agree in writing. The date on which the Closing occurs is the "Closing Date".

3. Representations and Warranties of the Seller Parties. The Seller Parties, jointly and severally, hereby represent and warrant to the Buyer as of the date hereof, and at and as of the Closing Date, as follows:

3.1. Organization. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada. The Company has the requisite power and authority to own, lease and operate the properties now owned, leased and operated by it and to carry on its business as currently conducted. The Company is duly qualified to do business as a foreign entity in each jurisdiction in which the nature of its business or the character of its properties makes such qualification necessary, except where the failure to do so would not have a Material Adverse Effect on the Company. The Company does not have any subsidiaries or hold any equity securities of any other Person.

3.2. Enforceability. This Agreement and each other agreement or instrument executed and delivered by any Seller Party at the Closing (collectively, the "Seller Party Closing Documents") has been duly authorized by all requisite action on the part of such Seller Party. This Agreement constitutes, and the Seller Party Closing Documents will constitute as of the Closing, the legal, valid and binding obligation of the Seller Parties, enforceable against the Seller Parties in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, fraudulent conveyance, reorganization, or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies (whether in a proceeding at law or in equity) (collectively, the "Enforceability Exceptions").

3.3. No Violation, Consents. The execution and delivery of this Agreement and each Seller Party Closing Document by the Seller Parties, and the performance of their obligations hereunder and thereunder does not and will not (a) violate or conflict with any provision of the organizational documents of the Company, (b) violate, or conflict with, or result in a breach of any provision of, or constitute a default or give rise to any right of termination, cancellation or acceleration (with the passage of time, notice or both) under any Contract to which a Seller Party is a party or by which a Seller Party is bound, (c) violate or conflict with any Legal Requirement to which the Company or any of their properties or assets are subject or (d) result in any Encumbrance on any assets of the Company. Without limiting the foregoing, none of the Seller Parties have granted any right to any third party which would conflict with the conveyance of the Membership Interests to Buyer. Except for the notices and Consents required under Nevada Cannabis Legal Requirements, no Seller Party is required to give any notice to or obtain any

Consent from any Person in connection with the Seller Parties' execution and delivery of this Agreement or any of the Seller Party Closing Documents, or the consummation or performance of the transactions contemplated hereby or thereby.

3.4. Capitalization. The Sellers own 100% of the issued and outstanding membership interests of the Company, in the amounts set forth on the Allocation Schedule, and no other Person has ever held any equity interest in the Company. The Membership Interests were duly authorized, validly issued, and are fully paid and non-assessable. There are no securities outstanding which are convertible into, exchangeable for, or carrying the right to acquire, equity interests (or securities convertible into or exchangeable for equity interests) of the Company, or subscriptions, warrants, options, calls, convertible securities, registration or other rights or other arrangements or commitments obligating the Company to issue, transfer or dispose of any of its equity interests or any ownership interest therein and there are no pre-emptive rights in respect of any securities of the Company. There are no outstanding obligations of the Company to repurchase, redeem or otherwise acquire any equity interests.

3.5. Title. Each Seller is the lawful owner of, and has good and marketable title to, the Membership Interest set forth opposite such Seller's name on the Allocation Schedule, free and clear of all Encumbrances. None of the Sellers have granted a currently effective power of attorney or proxy to any person with respect to all or any part of the Membership Interests. There are no outstanding options, warrants or other similar rights in respect of the Membership Interests and, except as set forth in this Agreement, none of the Seller Parties is a party to or bound by any agreement, undertaking or commitment to, directly or indirectly, sell, exchange or transfer the Membership Interests. Following the Closing, the Buyer will own 100% of the outstanding membership interests of the Company, free and clear of all Encumbrances.

3.6. Legal Proceedings. There is no pending or, to the knowledge of any Seller Party, threatened Proceeding by or against any Seller Party (i) that relates to or may affect the Business or any of the Membership Interests; or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the transactions contemplated hereby. There are no Judgments currently outstanding involving or related to the Company (or any of their managers, officers or members in their capacities as such) or affecting the Business or any of the Company's assets.

3.7. Compliance With Legal Requirements; Governmental Authorizations.

(a) Except with respect to federal Legal Requirements regarding the manufacture, cultivation, possession, use, sale or distribution of cannabis or cannabis products, the Company is in material compliance with all Legal Requirement applicable to the Company. The Company has not received any written notice from a Governmental Body that alleges that it is not in compliance with any Legal Requirement, and the Company has not been subject to any adverse inspection, finding, investigation, penalty assessment, audit or other compliance or enforcement action.

(b) The Company has all Governmental Authorizations reasonably necessary for the conduct of the Business (the "Company Permits"). All conditions of or restrictions on the Company Permits that may materially affect the ability of the Company to

perform any cannabis related activity authorized by Nevada law, whether or not embodied in such Company Permit, have been disclosed to the Buyer. All of the Company Permits are valid and in full force and effect, and the Company is not in breach or default in any material respect under any Company Permit. No notices have been received by and no claims have been filed against the Company alleging a material violation of any Company Permit and no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, termination, lapse or limitation of any Company Permit. Each Seller Party hereby covenants that it shall promptly notify the Buyer of any such notice hereafter given and/or of any such action hereafter threatened or contemplated. All fees and charges with respect to the Company Permits due through the date hereof have been paid in full and will be paid in full through the Closing.

(c) Neither of the Sellers nor any of the Company's key employees, officers, directors or managers have been subject to a recommendation or determination by any Governmental Body that such Person is not suitable for licensure in connection with a cannabis business in the State of Nevada.

(d) None of the Seller Parties has, nor, to the knowledge of the Seller Parties have any employees, agents or other representatives of the Company on behalf of the Company, directly or indirectly, made or authorized any payment, contribution or gift of money, property or services, in contravention of applicable Legal Requirement, (1) as a kickback or bribe to any Person or (2) to any political organization, or the holder of or any candidate for any elective or appointive public office, except for personal political contributions not involving the direct or indirect use of funds of the Company.

(e) To the Seller Parties' knowledge (a) the Company is and has been in compliance with all Environmental Laws; (b) there has been no release or, to the Seller Parties' knowledge, threatened release, of any pollutant, contaminant or toxic or hazardous material, substance or waste or petroleum or any fraction thereof (each a "Hazardous Substance"), on, upon, into or from any site currently or heretofore owned, leased or otherwise used by the Company; (c) there have been no Hazardous Substances generated by the Company that have been disposed of or come to rest at any site that has been included in any published U.S. federal, state or local "superfund" site list or any other similar list of hazardous or toxic waste sites published by any governmental authority in the United States; and (d) there are no underground storage tanks located on, no polychlorinated biphenyls ("PCBs") or PCB-containing equipment used or stored on, and no hazardous waste as defined by the Resource Conservation and Recovery Act, as amended, stored on, any site owned or operated by the Company, except for the storage of hazardous waste in compliance with Environmental Laws. The Company has made available to the Buyer true and complete copies of all material environmental records, reports, notifications, certificates of need, permits, pending permit applications, correspondence, engineering studies and environmental studies or assessments. None of the Seller Parties have received any written notice regarding any actual or alleged violation of or material liability under Environmental Laws.

3.8. Brokers or Finders. No Seller Party has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of the Membership Interests or the transactions contemplated hereby.

3.9. Books and Records. All the books of account and other Records of the Company (including, without limitation, manager and member resolutions, minutes and written consents) have been made available to Buyer.

3.10. Property.

(a) Owned Property. The property and assets that the Company owns (including, without limitation, the Owned Real Property and the Tangible Personal Property) are (i) free and clear of Encumbrances, and (ii) are in good operating condition and repair (subject to normal wear and tear). The Company has good and insurable fee simple title to all parcels of Owned Real Property. The Company has not granted any lease, license or other agreement granting to any Person any right to use or occupancy of the Owned Real Property or any portion thereof. All Tangible Personal Property used in the Business is in the possession of the Company.

(b) Leased Property. With respect to the property and assets that the Company leases (including, without limitation, real property that the Company leases, subleases, licenses or otherwise uses or occupies (collectively, the "Leased Real Property," and together with the Owned Real Property, the "Company Real Property")), (i) the Company is in compliance with all agreements related to such property and assets, (ii) the Company holds a valid leasehold interest free of any Encumbrances, other than those of the lessors of such property or assets and (iii) such property and assets are in good operating condition and repair (subject to normal wear and tear). No Person other than the Company has any right to use or occupy the Leased Real Property or any portion thereof. The Company has made available to the Buyer true and correct copies of all leases with respect to the Leased Real Property.

(c) The Company Real Property is suitable for the conduct of the Business. The Closing will not affect the continued use and possession of the Company Real Property by the Company. Neither the operation of the Business on the Company Real Property nor such Company Real Property, including the improvements thereon, violate in any material respect any applicable building code, zoning requirement or statute relating to such property or operations thereon, and any such non-violation is not dependent on so-called non-conforming use exceptions. To the knowledge of the Seller Parties, there is no existing, pending or threatened (i) condemnation proceedings affecting the Company Real Property, (ii) zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability to operate the Business on the Company Real Property, or (iii) special assessments or public improvements that may result in special assessments against or otherwise affect the Company Real Property. Neither the whole nor any material portion of the Company Real Property has been damaged or destroyed by fire or other casualty. To the knowledge of the Seller Parties, there are no structural, latent or hidden, defects in the buildings and other structures that are part of the Company Real Property, and there are no restrictive covenants, easements or other written agreements with respect to the Company Real Property, in either case that would materially affect the ability of the Company to operate the Business on the Company Real Property.

3.11. Title To Assets; Sufficiency. The Company owns good and marketable title to, or a valid lease or license, as applicable, to all of its assets free and clear of all Encumbrances. The furniture, machinery, equipment, vehicles, goods and other items of Tangible Personal Property of the Company are structurally sound, are in satisfactory operating condition and repair,

and are adequate for the uses to which they are currently being put, and none of such furniture, machinery, equipment, vehicles, goods and other items of Tangible Personal Property of the Company is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The assets of the Company are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business.

3.12. Inventory. All inventory of the Company is and will, whether or not reflected in the Balance Sheet, consist of a quality and quantity useable and saleable in the Ordinary Course of Business consistent with past practice, except for obsolete, damaged or defective items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Company free and clear of all Encumbrances, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) at the Closing will be consistent with the quantities historically held by the Company.

3.13. Financial Statements. Complete copies of the financial statements of the Company consisting of (a) the balance sheet (audited if available) of the Company as of December 31, 2018 and the related statements of income, members' equity and cash flow for the year then ended and (b) the unaudited balance sheet of the Company as of June 30, 2019 (the "Balance Sheet") and the related statements of income, members' equity and cash flow for the six (6) months then ended (collectively, the "Financial Statements") have been made available to the Buyer. The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company as of the dates they were prepared and the results of the operations of the Company for the periods indicated.

3.14. Undisclosed Liabilities. The Company does not have any indebtedness or other Liabilities except for (a) Liabilities specifically reflected on, and fully reserved against in, the Balance Sheet and (b) Liabilities which have arisen since the date of the Balance Sheet in the ordinary course of business and which are, in nature and amount, consistent with those incurred historically and are not material to the Company, individually or in the aggregate.

3.15. Company Indebtedness. The Company has disclosed to the Buyer all of the Company's obligations for borrowed money or in respect of loans or advances (whether or not evidenced by bonds, debentures, notes or other similar instruments or debt securities) incurred prior to the Closing ("Company Indebtedness"), all of which shall be repaid, discharged or otherwise satisfied at or prior to the Closing. The Company is not a guarantor for any Liability of any other Person.

3.16. Taxes.

(a) The Company has timely filed all Tax Returns that were required to be filed by it, taking into account any valid extensions of time to file such Tax Returns. All such Tax Returns were true, correct and complete in all material respects and have been prepared in compliance with all Legal Requirements. All Taxes owed by the Company (whether or not shown on any Tax Return) have been timely paid. No penalty, interest or other charge is or will become due with respect to the late filing of any such Tax Return or late payment of any such Tax. The

Company is not liable for any Tax of any other Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), or as a transferee or successor, by Contract or otherwise.

(b) The Company (i) has withheld from all payments to employees, customers, independent contractors, creditors, members and any other applicable payees proper and accurate amounts for all taxable periods in compliance with all Tax withholding provisions of applicable federal, state, local and foreign laws, (ii) has remitted, or will remit on a timely basis, such amounts to the appropriate taxing authority, and (iii) has furnished or been furnished properly completed exemption certificates for all exempt transactions and has maintained records of such exemption certificates in compliance with all Legal Requirements.

(c) No audit, examination or other proceeding of any nature by a Governmental Body is presently in progress with respect to any Tax or Tax Return of the Company. Neither the Company nor any member, manager, director or officer of the Company has received (i) notice of commencement of an audit, examination or other proceeding of any nature by a Governmental Body with respect to any Tax or Tax Return of the Company, (ii) a request for information related to any Tax matters of the Company or (iii) the assessment (or proposed assessment) of any additional Taxes against the Company for any period, nor does any Seller Party have any reason to expect any such items to be forthcoming. The Seller Parties have delivered to the Buyer correct and complete copies of all examination reports and statements of deficiencies assessed against or agreed to by the Company or that relate to any tax year or other Tax period for which the applicable limitations period has not expired.

(d) There are no liens for Taxes upon the assets of the Company, other than liens for Taxes not yet due and payable.

(e) There are no outstanding agreements or waivers (by operation of law or otherwise) extending the statutory period of limitations applicable to any Tax or Tax Return of the Company for any period.

(f) The Company is not a party to any Tax allocation or Tax sharing agreement (including any Tax indemnity arrangement) pursuant to which it would have any obligation to make payments after the Closing. The Company is not, and it has never been, a member of an affiliated, combined or unitary group for Tax purposes. The Company (i) has not made any payments; (ii) is not obligated to make any payments; and (iii) is not a party to any agreement that could obligate it to make any payments that will not be deductible (in whole or in part) under Sections 162, 280G or 404 of the Code.

(g) None of the assets of the Company is property that any Seller Party is required to treat as being owned by any other Person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Code. None of the assets of the Company directly or indirectly secures any debt the interest on which is tax-exempt under Section 103(a) of the Code. None of the assets of the Company is "tax-exempt use property" within the meaning of Section 168(h) of the Code. The Company does not own an interest in any controlled foreign corporation (as defined in Section 957 of the Code), passive foreign investment company (as defined in Section

1297 of the Code) or other entity the income of which is or could be required to be included in the income of the Company.

(h) The Company is, and from the date of its formation has been, classified as either a partnership or a disregarded entity for federal income tax purposes and in each state where the Company does business or is required to file Tax Returns. No election has been made (on IRS Form 8832 or any other form, or on any comparable state tax form) to classify the Company as an association taxable as a corporation or any other form of entity other than a partnership or disregarded entity for federal and state income tax purposes. The Company is not, and it has never been, a publicly traded partnership as that term is defined in Section 7704 of the Code.

3.17. Employees; Employee Benefit Plans.

(a) The Company is not delinquent in payments to any of its employees, consultants or independent contractors for any wages, salaries, commissions, bonuses, or other direct compensation for any service performed for it to the date hereof or amounts required to be reimbursed to such employees, consultants and independent contractors. The Company has complied in all material respects with all applicable state and federal equal employment opportunity laws and with other laws related to employment, including those related to wages, hours, worker classification and collective bargaining. The Company has withheld and paid to the appropriate Governmental Body or is holding for payment not yet due to such Governmental Body all amounts required to be withheld from employees of the Company and is not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing.

(b) The employment of each employee of the Company is terminable at the will of the Company, and upon termination of the employment of any such employees, no severance or other payments will become due. The Company does not have any policy, practice, plan or program of paying severance pay or any form of severance compensation in connection with the termination of employment or services.

(c) The Company has made available to the Buyer each employment, bonus, profit sharing, or other employee benefit plan, agreement, policy or arrangement maintained or contributed to, or required to be contributed to, by the Company for the benefit of any officer, employee, former employee, consultant, independent contractor or other service provider of the Company (collectively referred to herein as the "Employee Plans").

(d) The Company has made all payments and contributions to or with respect to the Employee Plans on a timely basis as required by the terms of each such Employee Plan and any applicable Legal Requirement. The Company has paid and will continue to pay all applicable premiums for any insurance contract which funds an Employee Plan for coverage provided through the Closing.

(e) The Company has maintained all of its Employee Plans in material compliance with their terms and with all applicable provisions of ERISA, the Code and state laws.

(f) None of the Company nor any of its affiliates (hereafter referred to as an "ERISA Affiliate") that together with the Company are deemed a "single employer" within

the meaning of Section 4001(a)(14) of ERISA, currently maintains any Employee Plan that is subject to Title IV of ERISA, and has not previously maintained any such Employee Plan that has resulted in any material liability or potential material liability to the Company or its ERISA Affiliates under said Title IV.

(g) Neither the Company nor an ERISA Affiliate maintains, maintained or contributed to within the past five (5) years, any multiemployer plan, within the meaning of Section 3(37) or 4001(a)(3) of ERISA. Neither the Company nor an ERISA Affiliate currently has any liability to make withdrawal liability payments to any multiemployer plan.

3.18. Contracts; Customers and Suppliers.

(a) All of the Contracts to which the Company is a party or by with the Company is bound (the "Company Contracts") are in full force and effect, and constitute legal, valid, binding and enforceable obligations against the Company and, to the knowledge of the Seller Parties, any other parties thereto. The Company is not in breach in any material respect under any Company Contract, nor, to the knowledge of the Seller Parties, is any other party to any such Company Contract in breach thereunder.

(b) No customer, vendor, supplier or service provider has given the Company notice that it intends to terminate or materially alter its business relationship with the Company (whether as a result of the consummation of the transactions contemplated by this Agreement or otherwise).

3.19. Insurance. True and complete copies of all Insurance Policies currently owned or maintained by the Company have been made available to the Buyer. All premiums due to date under such Insurance Policies have been paid and will be paid through the Closing Date, no breach by the Company exists thereunder and no material term of any such policy is void or voidable. The Company has not received any notice of cancellation with respect to any such current Insurance Policy and the Company has no knowledge of any threatened termination of, or premium increase with respect to, any of the Insurance Policies. There are no claims that are pending under any of the Insurance Policies, and no other Person is a named or additional insured under any such Insurance Policies.

3.20. Intellectual Property. The Company does not own or license any patents, copyrights, trademarks, tradenames or other intellectual property other than its name.

3.21. Related Party Transactions. None of the Company's directors, officers, managers, members (including the Sellers) or employees, or any members of their immediate families, or any Affiliate of the foregoing has, directly or indirectly, (a) borrowed money from or loaned money to the Company which remains unpaid or owed, (b) any interest in any assets owned or used by the Company or (c) engaged in any other material transactions with the Company.

3.22. Securities Laws.

(a) The Buyer intends to issue the Shares pursuant to a "private placement" exemption or exemptions from registration under Section 4(2) of the Securities Act and/or Regulation D promulgated under the Securities Act and an exemption from qualification

under applicable state securities laws. The Parties shall comply with all applicable provisions of and rules under the Securities Act and applicable state securities laws in connection with the offering and issuance of the Shares pursuant to this Agreement. The Sellers understand that the Shares will be "restricted securities" under federal and state securities laws and cannot be offered or resold except pursuant to registration under the Securities Act or an available exemption from registration.

(b) Each Seller (i) is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act, (ii) is acquiring the Shares only for its own account and not for the account of others, and (iii) is not acquiring the Shares with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act.

3.23. Allocation Schedule. The Shares shall be distributed to the Sellers in accordance with the Allocation Schedule. Each of the Sellers irrevocably consents to the allocation of the Shares in accordance with the Allocation Schedule, notwithstanding anything to the contrary contained in the Company's governing documents.

3.24. Disclosure. No representation or warranty by the Seller Parties in this Agreement and no statement contained in any certificate furnished to the Buyer pursuant to the provisions hereof contains any untrue statement of material fact or omits to state any material fact necessary in order to make the statements made herein or therein not misleading.

4. Representations and Warranties of the Buyer. The Buyer represents and warrants to the Sellers as of the date hereof, and at and as of the Closing Date, as follows:

4.1. Organization And Good Standing. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware, with full power and authority to conduct its business as it is now conducted.

4.2. Enforceability. This Agreement and each other agreement or instrument executed and delivered by the Buyer at the Closing (collectively, the "Buyer Closing Documents") has been or will be by the Closing duly authorized by all requisite action on the part of the Buyer. This Agreement constitutes, and the Buyer Closing Documents will constitute as of the Closing, the legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, subject to the Enforceability Exceptions.

4.3. Brokers Or Finders. Neither the Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the transactions contemplated hereby.

4.4. Legal Proceedings. There is no pending or, to the knowledge of the Buyer, threatened Proceeding by or against the Buyer that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the transactions contemplated hereby.

5. Covenants and Other Agreements.

5.1. Conduct of Business by the Seller Parties. From the date hereof through the earlier of consummation of the Closing and any earlier termination of this Agreement, the Company shall, and the Seller Parties shall cause the Company to: (a) conduct its business and operations in the Ordinary Course of Business; (b) preserve intact its existence and business organization; (c) use its commercially reasonable efforts to preserve its assets; (d) pay all applicable Taxes as such Taxes become due and payable; and (e) maintain all licenses and Governmental Authorizations applicable to its operations and business.

5.2. Access to Information. From the date hereof through the earlier of consummation of the Closing and any earlier termination of this Agreement, the Seller Parties shall give the Buyer and its Representatives access on reasonable notice during normal business hours to all properties, facilities and offices, and complete and correct copies of all books, Records and Contracts (including customer and supplier Contracts) and such financial and operating data and other information with respect to the Company as such persons may reasonably request. Such review shall be at the Buyer's sole cost and shall be conducted in a fashion that does not unreasonably interfere with the ability of the Company to conduct its day-to-day operations.

5.3. Notice of Developments. During the Term of this Agreement, the Seller Parties shall promptly notify the Buyer in writing of any events, circumstances, facts and occurrences arising subsequent to the date of this Agreement which would result in a breach of a representation, warranty or covenant of any Seller Party in this Agreement, or which would have the effect of making any representation or warranty of any Seller Party in this Agreement untrue in any material respect, or would be reasonably likely to result in a Material Adverse Effect of the Company. Any disclosure by any Seller Party pursuant to this Section 5.3 shall not be deemed to prevent or cure any misrepresentation, breach of representation or warranty or breach of covenant, or limit the rights of the Buyer under Section 6.3 or Section 7.

5.4. Exclusivity. During the Term of this Agreement, each of the Seller Parties agrees, and shall cause its Representatives, not to, directly or indirectly, (i) solicit, facilitate or initiate, or encourage the submission of, proposals, inquiries or offers relating to; (ii) respond to any submissions, proposals, inquiries or offers relating to; (iii) participate or engage in any negotiations or discussions with any Person relating to; (iv) otherwise cooperate in any way with or facilitate in any way (including, without limitation, by providing information) with any Person, other than the Buyer, relating to; or (v) enter into any agreement or agreement in principle in connection with, any acquisition, merger, business combination, recapitalization, consolidation, liquidation, dissolution, disposition or similar transaction involving the Company, or any issuance, acquisition, sale or transfer of any securities or any substantial portion of the assets of the Company.

5.5. Confidentiality. No Seller Party shall, directly or indirectly, disclose or divulge any information relating to the existence of this Agreement and the documents and instruments contemplated hereby, the terms of this Agreement and the documents and instruments contemplated hereby, the transactions contemplated hereby and thereby or the negotiations hereof and thereof without the consent of the Buyer; *provided*, however, that such information may be disclosed to such Party's legal, tax, accounting or related financial advisors that have a need to know and that are subject to an obligation of confidentiality to such Party. From and after the Closing, no Seller shall, directly or indirectly, use, disclose or divulge any confidential or

proprietary information of the Company or the Buyer for any purpose without the consent of the Buyer. Following a termination of this Agreement pursuant to Section 6.3, (a) the Buyer, shall not, directly or indirectly, use, disclose, or divulge any confidential or proprietary information of the Company for any purpose whatsoever without the consent of the Company, and (b) no Seller Party, shall, directly or indirectly, use, disclose, or divulge any confidential or proprietary information of the Buyer for any purpose whatsoever without the consent of the Buyer.

5.6. Further Assurances. Subject to the terms and conditions hereof, each of the Parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to the extent permitted under Legal Requirements to consummate and give effect to the transactions contemplated hereby. Without limiting the foregoing, the Parties shall act promptly, and use their commercially reasonable best efforts, and shall cooperate with each other, in making, or causing to be made, any filings, applications and submissions required under Nevada Cannabis Legal Requirements, in order to permit consummation of the Buyer's acquisition of the Membership Interests. The Seller Parties, on the one hand, and the Buyer on the other hand, shall each be responsible for 50% of the fees required to be paid in connection with such filings, applications and submissions.

5.7. Tax Matters.

(a) The Sellers shall be responsible for, and shall pay when due, all sales, use, transfer, stamp or similar Taxes and fees (collectively, "Transfer Charges") imposed with respect to the transactions contemplated hereby. The Sellers shall, at their own expense, timely file any Tax Return or other document with respect to such Transfer Charges, and the Buyer shall cooperate with respect thereto, as necessary.

(b) For federal income tax purposes, the Parties shall treat the sale of the Membership Interests pursuant to this Agreement in accordance with IRS Revenue Ruling 99-6, 1999-1 C.B. 432 (situation 2), (i) with respect to each Seller, as a sale of partnership interests, and (ii) with respect to the Buyer, as a purchase of all of the assets of the Company and assumption by the Buyer of all of the Company's liabilities. No Party shall take any position (whether in a Tax Return, an audit or otherwise) that is inconsistent with the foregoing treatment, unless required to do so by applicable Legal Requirements.

6. Conditions to Closing; Termination.

6.1. Conditions Precedent to Obligations of the Buyer. The obligation of the Buyer to consummate the purchase of the Membership Interests at the Closing shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, any or all of which the Buyer may waive in writing, at its sole and absolute discretion:

(a) Representations and Warranties. Each of the representations and warranties made by the Seller Parties in this Agreement shall be true and correct in all material respects as of the Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all material respects as of that specified date).

(b) Covenants. The Seller Parties shall have duly performed in all material respects all of the covenants, acts and undertakings required to be performed by them prior to the Closing under this Agreement.

(c) No MAE. There shall have been no Material Adverse Effect.

(d) No Injunction, Etc. No action, proceeding, investigation, regulation or legislation shall have been instituted before any Governmental Body to enjoin, restrain, prohibit, or obtain damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the transactions contemplated hereby.

(e) Consents and Notices. All consents, approvals and waivers of any Person necessary or desirable to the consummation of the Closing and the transactions contemplated hereunder shall have been obtained and all notices to any Person necessary or desirable to the consummation of the Closing and the transactions contemplated hereunder shall have been delivered. A copy of each such consent, approval, waiver or notice shall have been provided to the Buyer and all such consents, approvals, waivers and notices shall be in a form reasonably acceptable to the Buyer.

(f) Regulatory Approval. Without limiting the foregoing, all consents, approvals and waivers of any Governmental Body necessary under Nevada Cannabis Legal Requirements in order to permit consummation of the Closing and the transactions contemplated hereunder shall have been obtained, and all notices to any Governmental Body necessary under Nevada Cannabis Legal Requirements in order to permit consummation of the Closing and the transactions contemplated hereunder shall have been delivered. A copy of each such consent, approval, waiver or notice shall have been provided to the Buyer and all such consents, approvals, waivers and notices shall be in a form reasonably acceptable to the Buyer.

(g) Seller Parties Closing Deliveries. The Seller Parties shall have delivered to the Buyer the following:

(i) Officer's Certificate. A certificate from an executive officer of the Company, dated as of the Closing Date, certifying that attached thereto are true and correct copies of the Company's certificate of formation and any amendments thereto to date, as well as the resolutions duly adopted by the members and/or managers of the Company authorizing the Company's execution, delivery and performance of this Agreement;

(ii) Good Standing Certificate. A certificate of good standing for the Company issued by the Secretary of the State of Nevada, dated within ten (10) business days prior to the Closing Date;

(iii) Compliance Certificate. A certificate from an executive officer of the Company, dated as of the Closing Date, certifying compliance with Sections 6.1(a), 6.1(b) and 6.1(c) in a form reasonably acceptable to the Buyer;

(iv) Resignation Letters. Letters of resignation from each manager and officer of the Company, in form and substance reasonably acceptable to the Buyer, effective as of the Closing;

(v) Assignment of Membership Interests. An assignment by the Sellers to the Buyer assigning the Membership Interests to the Buyer on the Closing Date;

(vi) Withholding Certificates. A completed and duly executed IRS Form W-9 from each Seller, and a certificate from each Seller, in a form reasonably acceptable to the Buyer and in accordance with the Code, in each case dated as of the Closing Date and certifying such facts as to establish that the transactions contemplated hereby are exempt from withholding pursuant to Section 1445 of the Code; and

(vii) Company Indebtedness. Evidence, reasonably satisfactory to the Buyer, that all Company Indebtedness has been repaid, discharged or otherwise satisfied at or prior to the Closing.

(viii) Other Agreements. All other agreements, certificates, instruments, or documents reasonably requested by the Buyer in order to fully consummate the transactions contemplated hereby and to carry out the purposes and intent of this Agreement.

6.2. Conditions Precedent to Obligations of the Sellers. The obligation of the Sellers to consummate sale of the Membership Interests at the Closing shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, any or all of which the Sellers may waive in writing, at their sole and absolute discretion:

(a) Representations and Warranties. Each of the representations and warranties made by the Buyer in this Agreement as of the Closing Date shall be true and correct in all material respects as of the Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all material respects as of that specified date).

(b) Covenants of Buyer. The Buyer shall have duly performed in all material respects all of the covenants, acts and undertakings required to be performed by it prior to the Closing.

(c) No Injunction, Etc. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, or which is related to or arises out of, this Agreement or the consummation of the transactions contemplated hereby.

6.3. Termination of Agreement. The Parties may terminate this Agreement as provided below:

(a) The Parties may terminate this Agreement by mutual written consent at any time prior to the Closing; and

(b) If the Buyer is not then in material breach under this Agreement, the Buyer may terminate this Agreement by giving written notice to the Seller Parties at any time prior to the Closing in the event any of the Seller Parties has materially breached any of their respective representations, warranties, or covenants contained in this Agreement, provided that Buyer has

notified the Seller Parties of the breach and the breach has continued without cure for a period of ten (10) business days after the notice of breach.

6.4. Effect of Termination. If this Agreement is terminated prior to the Closing for any reason, all rights and obligations of the Parties hereunder shall terminate without any Liability of any Party to any other Party except for provisions set forth in Sections 5.5, this Section 6.4 and Section 8. No termination of this Agreement shall relieve any Party of liability for its intentional breach or violation of this Agreement.

7. Indemnification.

7.1. Sellers' Obligation to Indemnify. Each Seller (the "Seller Indemnifying Parties"), jointly and severally, shall defend, indemnify and hold harmless the Buyer, its Affiliates and their respective Representatives and successors and permitted assigns, from and against any and all actions, suits, proceedings, claims, demands, debts, liabilities, obligations, losses, diminution in value, damages, costs and expenses (collectively "Adverse Consequences"), arising out of, or in connection with, or caused by, directly or indirectly, any or all of the following: (i) any misrepresentation or breach of any representation or warranty made by the Seller Parties in this Agreement or in any certificate or schedule delivered by the Seller Parties pursuant hereto, (ii) any breach by the Seller Parties to satisfy or perform any covenant, restriction or agreement applicable to the Seller Parties contained in this Agreement or in any certificate or schedule delivered pursuant hereto, (iii) any Liability for Taxes of the Company that are attributable to a taxable period (or portion thereof) ending on or prior to the Closing Date and any Transfer Charges, (iv) the termination of any officer or employee of the Company and (v) Company Indebtedness.

7.2. Matters Involving Third Parties.

(a) The party or parties seeking indemnification hereunder (each, an "Indemnified Party") shall give the party or parties from whom indemnification is sought or to be sought (each, an "Indemnifying Party") prompt written notice of any Adverse Consequences suffered by, affecting or otherwise directed at it. If an indemnification claim involves a claim by a third party (a "Third Party Claim"), the Indemnified Party shall promptly notify the Indemnifying Party thereof in writing, which notice shall include in reasonable detail a description of the Third Party Claim and copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practical of such Adverse Consequences, that has been or may be sustained by the Indemnified Party.

(b) The Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as the Indemnifying Party notifies the Indemnified Party in writing within fifteen (15) calendar days of its intention to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may compromise, defend such Third Party Claim and seek indemnification for any and all Adverse Consequences based upon, arising from or relating to such Third Party Claim. Seller and Buyer

shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(c) So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with Section 7.2(b) above, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be unreasonably withheld) and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld).

7.3. Survival. The representations and warranties made by the Seller Parties and the Buyer herein or in any certificate or schedule delivered pursuant hereto or thereto on the Closing Date, shall survive the Closing and continue in full force and effect for a period of eighteen (18) months from and after the Closing Date; provided, however, the representations and warranties set forth in Sections 3.1, 3.2, 3.4 and 3.5 shall survive indefinitely, and the representations and warranties set forth in Sections 3.7(e) and 3.16 shall survive until sixty (60) days after expiration of all applicable statutory limitation periods. Upon expiration of the representation and warranty limitation periods set forth herein, such representations and warranties shall cease to be of any further force or effect. No such expiration shall affect the rights of a Party hereto in respect of a claim made by such Party in writing received by another Party prior to the expiration of any such period until finally resolved.

8. Miscellaneous.

8.1. Expenses. Each Party shall pay all of the costs and expenses (including, without limitation, legal fees and expenses) incurred by it in negotiating and preparing this Agreement (and all other agreements, certificates, instruments and documents executed in connection herewith) and in consummating the transactions contemplated hereby.

8.2. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the Party to be notified, (b) when sent, if sent by electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the Parties at the addresses as set forth on the signature pages hereto, or to such e-mail address or address as subsequently modified by written notice given in accordance with this Section 8.2.

8.3. Entire Understanding; Amendments. This Agreement, together with the exhibits and schedules hereto, and the other documents, certificates, agreements and other

instruments delivered in connection with the transactions contemplated hereby, states the entire understanding among the Parties with respect to the subject matter hereof and supersedes all prior oral and written communications and agreements with respect to the subject matter hereof. This Agreement shall not be amended or modified except in a written document signed by all Parties.

8.4. Parties in Interest; Assignment; No Waivers; No Third Party Rights. This Agreement shall bind, benefit, and be enforceable by the Parties hereto and their respective successors, legal representatives and assigns, heirs, executors, administrators and personal representatives. No Party hereto may assign this Agreement or its obligations hereunder without the prior written consent of all other Parties hereto. No waiver with respect to this Agreement shall be enforceable unless in writing and signed by the Party against whom enforcement of such waiver is sought. No failure to exercise, delay in exercising or single or partial exercise of any right, power or remedy by any Party, and no course of dealing between or among any of the Parties, shall constitute a waiver of, or shall preclude any other or further exercise of, the same or any other right, power or remedy. Except as may be expressly set forth in this Agreement, nothing herein will be construed to give any Person other than the Parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

8.5. Further Assurances. At any time and from time to time after the Closing Date, at the request of a Party and without further consideration, the other Parties shall promptly execute and deliver all such further agreements, certificates, instruments and documents and perform such further actions as such Party may reasonably request, in order to fully consummate the transactions contemplated hereby and carry out the purposes and intent of this Agreement.

8.6. Severability. If any provision of this Agreement is construed to be invalid, illegal or unenforceable, then the remaining provisions hereof shall not be affected thereby and shall be enforceable without regard thereto, and the Parties agree that this Agreement shall be reformed to replace such unenforceable provisions with a valid and enforceable provision that comes as close as possible to expressing the intent of the unenforceable provision.

8.7. Counterparts; Electronic Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docuSign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

8.8. Governing Law; Exclusive Jurisdiction. This Agreement and the respective rights and obligations of the Parties under this Agreement shall be governed by, and shall be determined under, the internal laws of the State of Nevada without regard to choice of law principles.

8.9. Specific Enforcement; Remedies. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and

to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which they are entitled at law or in equity. Any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

8.10. Interpretation. In this Agreement, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) reference to any gender includes each other gender; (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (e) reference to any "Legal Requirement" means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision; (f) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof; (g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (h) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; and (i) references to articles, sections, schedules and exhibits means articles and sections of, and schedules and exhibits attached to, this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

* * * * *

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date set forth above.

COMPANY:

The Harvest Foundation LLC

By: _____

Name:

Title:

Address: 3395 Pinks Place
Las Vegas, Nevada 89102

E-mail:

SELLERS:

Donald Burton

Address:

E-mail:

Larry Lemons

Address:

E-mail:

Jeffrey Yokiel

Address:

E-mail:

BUYER:

MARIMED, INC

By: 

Name: *Robert Fireman*

Title: *CEO*

Address: 10 Oceana Way, Floor 2
Norwood, MA 02062

E-mail: *rfireman@marimedinc.com*

EXHIBIT A
DEFINITIONS

For purposes of the Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

“Adverse Consequences” shall have the meaning set forth in Section 7.1.

“Affiliate” of a specified Person means each other Person who directly or indirectly controls, is controlled by, or is under common control with the specified Person.

“Agreement” shall have the meaning set forth in the preamble to this Agreement.

“Allocation Schedule” shall have the meaning set forth in Section 2.2.

“Buyer” shall have the meaning set forth in the preamble to this Agreement.

“Buyer Closing Documents” shall have the meaning set forth in Section 4.2.

“Closing” shall have the meaning set forth in Section 2.3.

“Closing Date” shall have the meaning set forth in Section 2.3.

“Code” means the Internal Revenue Code of 1986, as amended.

“Company” shall have the meaning set forth in the background to this Agreement.

“Consent” means any approval, consent, ratification, waiver or other authorization.

“Contract” means any agreement, contract, lease, consensual obligation, promise or undertaking (whether written or oral).

“Employee Plans” shall have the meaning set forth in Section 3.17(c).

“Encumbrance” means any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage deed of trust, right of way, easement, encroachment, servitude, right of first option, right of first or last negotiation or refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

“Enforceability Exceptions” shall have the meaning set forth in Section 3.2.

“Environmental Laws” means any Legal Requirement relating to (a) releases or threatened release of Hazardous Substances; (b) pollution or protection of employee health or safety, public health or the environment; or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Substances.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any United States Department of Labor Regulations thereunder.

“Governmental Authorization” means any Consent, license, registration, approval, exemption, notification, franchise, certificate, authorization, bond or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

“Governmental Body” means any: (a) nation, state, county, city, town, borough, village, district or other jurisdiction; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); (d) multinational organization or body; (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (f) official of any of the foregoing.

“Indemnified Party” shall have the meaning set forth in Section 7.2(a).

“Indemnifying Party” shall have the meaning set forth in Section 7.2(a).

“Insurance Policy” means any public liability, product liability, general liability, comprehensive, property damage, vehicle, life, hospital, medical, dental, disability, worker’s compensation, key man, fidelity bond, theft, forgery, errors and omissions, directors’ and officers’ liability, or other insurance policy of any nature.

“IRS” means the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

“Judgment” means any order, writ, injunction, citation, award, decree, ruling, assessment or other judgment of any Governmental Body or arbitrator.

“Legal Requirement” means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, guideline, standard, order, Governmental Authorization, statute or treaty.

“Liability” means with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Material Adverse Effect” means any change or effect that is materially adverse to the business, assets, liabilities, financial condition, prospects or results of operations of the Company taken as a whole.

“Membership Interests” shall have the meaning set forth in the Recitals.

“Nevada Cannabis Legal Requirements” means Legal Requirements regarding the cultivation, manufacture, possession, use, sale or distribution of cannabis or cannabis products promulgated by state and local Governmental Bodies in the State of Nevada.

“Ordinary Course of Business” means the ordinary course of business of the Company consistent with the past practices of the Company or taken in the ordinary course of the normal, day-to-day operations of the Company.

“Owned Real Property” means all land, together with all buildings, structures, improvements, and fixtures located thereon, and all easements, servitudes and other interests and rights appurtenant thereto, owned by the Company.

“Person” means any individual, sole proprietorship, joint venture, partnership, corporation, limited liability company, association, cooperative, trust, estate, Governmental Body, administrative agency, regulatory authority, or other entity of any nature whatsoever.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

“Purchase Price” shall have the meaning set forth in Section 2.2.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Regulations” means the income tax regulations promulgated under the Code.

“Representative” means with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

“Securities Act” means the Securities Act of 1933, as amended.

“Seller Indemnifying Parties” shall have the meaning set forth in Section 7.1.

“Seller Party” or “Seller Parties” shall have the meaning set forth in the preamble to this Agreement.

“Seller Party Closing Documents” shall have the meaning set forth in Section 3.2.

“Sellers” shall have the meaning set forth in the preamble to this Agreement.

“Tangible Personal Property” shall mean all furniture, fixtures, leasehold improvements, production equipment, office equipment, accessories, parts, supplies, materials, vehicles, computer hardware, data processing equipment and other equipment owned by the Company and all other tangible personal property of every kind owned or leased by the Company and all related warranties and similar rights.

"Tax" or "Taxes" means (a) mean any and all federal, state, local and foreign (whether imposed by a country or political subdivision or authority thereunder) taxes, assessments and other governmental charges, duties, impositions and liabilities relating to taxes, including, without limitation, any federal, state, local or foreign income, earnings, profits, gross receipts, franchise, capital stock, net worth, sales, use, value added, ad valorem, profits, occupancy, general property, real property, personal property, intangible property, transfer, stamp, premium, custom, duty, escheat, environmental, fuel, excise, license, lease, service, service use, recapture, parking, employment, occupation, severance, payroll, withholding, unemployment compensation, social security, retirement, imputed underpayment or other tax, fiscal levy or charge of any nature; (b) any foreign, federal, state or local organization fee, qualification fee, annual report fee, filing fee, occupation fee, assessment, other fee or charge of any nature imposed by a Governmental Body or other authority; or (c) any deficiency, interest, penalty or addition imposed with respect to any of the foregoing and any obligations under any agreements or arrangements with any other Person with respect to such amounts, and including any liability for taxes of a predecessor entity.

"Tax Return" means (a) all returns and reports, amended returns, information returns, statements, declarations, estimates, schedules, notices, notifications, forms, elections, certificates or other documents filed or required to be filed or submitted to any Governmental Body or any Person with respect to the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of, or compliance with, any Tax, and (b) TD F 90-22.1 (and its successor form, FinCEN Form 114), including any amendment thereto.

"Term" means the period from the date of this Agreement through the consummation of the Closing or earlier termination of this Agreement pursuant to its terms.

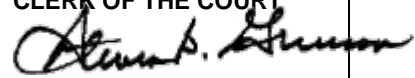
"Third Party Claim" shall have the meaning set forth in Section 7.2(a).

"Transfer Charges" shall have the meaning set forth in Section 5.7(a).

"Treasury Regulation" means a final, temporary or proposed regulation issued by the United States Department of the Treasury and/or the IRS under the Code.

EXHIBIT B
ALLOCATION SCHEDULE

Name of Seller	Membership Interest in Company		Pro Rata Portion of Purchase Price
Donald Burton	34.5%		34.5%
Larry Lemon	34.5%		34.5%
Jeffrey Yokiel	31%		31%



MTD

CANDACE HERLING, ESQ.
Nevada Bar No. 13503
JESSICA R. GANDY, ESQ.
Nevada Bar No. 14202
MESSNER REEVES LLP
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E-mail: cherling@messner.com
jgandy@messner.com

Attorneys for Defendants

Donald Burton, Larry Lemons and Snowell Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JDD, LLC, a Nevada Limited Liability Company; TCS
PARTNERS, LLC, a Nevada Limited Liability
Company; JOHN SAUNDERS, an individual; and
TREVOR SCHMIDT, an individual,

Plaintiff,

vs.

MARIMED INC. f/k/a WORLDS ONLINE, INC. a
Delaware Corporation; ITEM 9 LABS CORP. f/k/a
AIRWARE LABS CORP. AND CROWN DYNAMICS
CORP., a Delaware Corporation; ITEM 9
PROPERTIES LLC, a Nevada Limited Liability
Company; THE HARVEST FOUNDATION LLC f/k/a,
a Nevada Limited Liability Company a/k/a THE
HARVEST FOUNDATION, LLC; STRIVE
MANAGEMENT LLC d/b/a STRIVE LIFE, a Nevada
Limited Liability Company; STRIVE WELLNESS OF
NEVADA, LLC d/b/a STRIVE LIFE, a Nevada Limited
Liability Company; STRIVE WELLNESS OF
NEVADA 2 LLC d/b/a STRIVE LIFE, a Nevada
Limited Liability Company; VIRIDIS GROUP I9
CAPITAL, LLC, an Arizona Limited Liability
Company; VIRIDIS GROUP HOLDINGS, LLC, an
Arizona Limited Liability Company; SNOWELL
HOLDINGS, LLC, an Ohio Limited Liability Company;
ROBERT FIREMAN, an individual; JON LEVINE, an
individual; ANDREW BOWDEN, an individual;

Case No. A-20-811232-C
Dept. No. 26

HEARING REQUESTED

**DEFENDANT SNOWELL
HOLDINGS, LLC'S MOTION TO
DISMISS PURSUANT TO
NEVADA RULE OF CIVIL
PROCEDURE 12(b)(2)**

DOUGLAS BOWDEN, an individual; BRYCE SKALLA, an individual; JEFFREY RASSAS, an individual; DONALD BURTON, an individual; LARRY LEMONS, an individual; JEFFREY YOKIEL, an individual; JEROME YOKIEL, an individual; SARA GULLICKSON, an individual; CHASE HERSCHMAN, an individual; DOE INDIVIDUALS I through X, and ROE BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

Defendant Snowell Holdings, LLC ("Snowell") hereby moves to dismiss all claims against it for lack of personal jurisdiction, pursuant to Nevada Rules of Civil Procedure 12(b)(2). Snowell does not have sufficient contacts in Nevada to support a finding of either general or specific personal jurisdiction and Plaintiffs cannot meet their burden of showing that Snowell is subject to personal jurisdiction. Accordingly, Snowell requests that it be dismissed and that this Court award Snowell its reasonable attorney's fees and costs incurred in seeking dismissal.

Filing this Motion is in no way a consent to this Court's jurisdiction over Snowell, nor does it waive any defenses that may be raised in the future depending on the Court's ruling regarding jurisdiction.

DATED this 1st day of December 2020.

MESSNER REEVES LLP

/s/ Candace Herling
CANDACE C. HERLING, ESQ. (NBN 13503)
JESSICA R. GANDY, ESQ. (NBN 14202)
8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148
Telephone: (702) 363-5100
Facsimile: (702) 363-5101
E-mail: cherling@messner.com
jgandy@messner.com

Attorneys for Defendants

*Donald Burton, Larry Lemons and
Snowell Holdings, LLC*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Legal standard and burden of proof.**

3 **B. Snowell does not have sufficient contacts in Nevada to support a finding of either general**
4 **or specific jurisdiction.**

5 **1. General jurisdiction analysis.**

6 **2. Specific jurisdiction analysis.**

7 **C. Snowell should be awarded attorney's fees related to filing this Motion.**

8 **I.**

9 **Introduction**

10 This case stems from alleged breaches of contract and trust related to two ostensible contracts
11 between Plaintiffs and Defendants Donald Burton ("Burton") and Larry Lemons ("Lemons"). First
12 Amended Complaint ("FAC"), ¶¶ 32-57. Through these contracts, Plaintiffs purchased a small
13 membership interest in Defendant The Harvest Foundation, LLC ("Harvest"). FAC, ¶¶ 36, 49.
14 Plaintiffs allege Mr. Burton and Mr. Lemons improperly infringed on Plaintiffs' membership rights
15 in Harvest by excluding Plaintiffs from Harvest's management and dealings with other named
16 Defendants. FAC, ¶¶ 58-108.

17 Notwithstanding the merits of these claims, Snowell is not subject to suit in Nevada because
18 it has no minimum contacts with the state. Lacking personal jurisdiction over Snowell, this Court
19 should dismiss all claims against it and order Plaintiffs to pay Snowell's reasonable attorney's fees
20 and costs incurred in seeking dismissal.

21 **II.**

22 **Factual Background**

23 Snowell is an Ohio limited liability company owned entirely by Lemons, who is an Ohio
24 resident. Lemons Decl., **Ex. A**, ¶¶ 4-5. Snowell does not conduct any business activities in Nevada,
25 nor does it hold itself out as conducting business in Nevada. It has not sent any representatives to
26 Nevada, does not pay taxes in Nevada, and does not maintain any bank accounts, post office boxes,
27 or telephone listings in Nevada. **Ex. A**, ¶¶ 6-9.

Snowell does not advertise or solicit business in Nevada. **Ex. A, ¶¶10.** Snowell does not have an ownership interest in any Nevada company nor does it own a portion of any of the entities named as Defendants in this lawsuit, including, without limitation, Harvest. **Ex. A, ¶¶11-12.** Lemons has an ownership interest in Harvest in his individual capacity, and conducted all business related to Harvest in his individual capacity. **Ex. A, ¶¶13-14.**

These jurisdictional facts were initially presented to Plaintiffs’ counsel Albright, Stoddard, Warnick & Albright (“ASWA”) by phone on November 17, 2020. On November 20, 2020, ASWA informed Snowell that Plaintiffs agreed to dismiss Snowell for lack of personal jurisdiction. **Ex. B**, Email from ASWA. But on November 25, 2020, ASWA informed Snowell’s counsel that Plaintiffs were no longer willing to dismiss Snowell despite their previous agreement.

III.

Argument

A. Legal standard and burden of proof.

When personal jurisdiction is challenged, the plaintiff bears the burden of introducing evidence sufficient to make a prima facie showing of personal jurisdiction. *Trump v. Eighth Jud. Dist. Ct., In and For the Cnty. of Clark*, 857 P.2d 740, 743 (Nev. 1993). Nevada courts have held this burden is not met when plaintiff relies on the “bare allegations” in the complaint without proffering additional evidence that jurisdiction is proper. *See Basic Food Indus., Inc. v. Eighth Jud. Dist. Ct., In and For Clark Cnty.*, 575 P.2d 934, 936 (Nev. 1978).

B. Snowell does not have sufficient contacts in Nevada to support a finding of either general or specific jurisdiction.

This Court lacks personal jurisdiction over Snowell because it is an Ohio limited liability company that does not conduct any business in Nevada, has no presence in Nevada, and was not involved in any of the allegations underlying Plaintiffs' claims.

To establish personal jurisdiction, a plaintiff must show that (1) Nevada’s long-arm statute conferring personal jurisdiction over out-of-state defendants is satisfied and (2) Fourteenth Amendment due process is not offended by the exercise of jurisdiction. *See Trump*, 857 P.2d at 747.

1 These prongs are condensed to just the due process inquiry because Nevada’s long-arm statute
2 extends to the “outer reaches” of due process and satisfaction of due process accordingly satisfies the
3 long-arm statute. *Id.*

4 Due process is satisfied if the state has (1) general personal jurisdiction supported by the
5 defendant’s “substantial” or “continuous and systematic” contacts with the forum state, or (2) specific
6 personal jurisdiction supported by the defendant’s contacts related to the allegations in the lawsuit.
7 *Id.* at 748.

8 **1. General jurisdiction analysis.**

9 “The level of contact with the forum state necessary to establish general jurisdiction is high.”
10 *Budget Rent-A-Car v. Eighth Jud. Dist. Ct. In and For Cnty. of Clark*, 835 P.2d 17, 19 (Nev. 1992)
11 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984)). General
12 personal jurisdiction exists when the defendant’s activities in the state are so “substantial” or
13 “continuous and systematic” such that the defendant may be deemed to be present in the forum and
14 is thus held to answer in the forum for causes of action unrelated to the defendant’s forum activities.
15 *Id.* Even advertising and soliciting business in Nevada may not be enough to establish general
16 jurisdiction. *See e.g., Munley v. Second Jud. Dist. Ct. of State in and for Cnty. of Washoe*, 761 P.2d
17 414, 415-416 (Nev. 1988).

18 Plaintiffs have not alleged—nor can they establish—that Snowell had the type of continuous
19 or systematic contacts required to support the exercise of general jurisdiction. Indeed, the facts show
20 the absence of any contacts between Snowell and Nevada: Snowell is an Ohio limited liability
21 company with its principal place of business in Ohio; Snowell has not sent any representatives to
22 Nevada, does not pay any taxes in Nevada, and does not maintain any bank accounts, post office
23 boxes, or telephone listings in Nevada; Snowell does not conduct business in Nevada, hold itself out
24 as conducting business in Nevada, or advertise or solicit business in Nevada; and Snowell does not
25 have an ownership interest in any Nevada entities. **Ex. A**, Lemons Decl., ¶¶ 3-14

26 Snowell lacks the contacts necessary (by a significant margin) to establish general personal
27 jurisdiction in Nevada, meaning Plaintiffs must show that this Court may assert specific jurisdiction
28

1 over Snowell.

2 **2. Specific jurisdiction analysis.**

3 Specific personal jurisdiction exists when the defendant (1) purposefully directs its conduct
4 towards and avails itself of the benefits of operating in the forum state; (2) the causes of action
5 allegedly arise from such purposeful contact, and; (3) exercising jurisdiction over the defendant is
6 reasonable and comports with due process. *See Catholic Diocese, Green Bay v. John Doe* 119, 349
7 P.3d 518, 520 (Nev. 2015); *see also Trump*, 857 P.2d at 748.

8 The minimum contacts must be of important consequence in the forum state and be directly
9 related to the cause of action. *Trump*, 857 P.2d at 748; *see also Brainerd v. Governors of the Univ. of*
10 *Alberta*, 873 F.2d 1257, 1259 (9th Cir. 1989) (“It is the quality of [] contacts . . . that confers personal
11 jurisdiction . . .”).

12 Here, Plaintiffs have identified no purposeful conduct by Snowell that either took place in
13 Nevada or was directed at this forum. Again, Snowell does not do business in Nevada, does not
14 advertise or solicit business in Nevada, does not hold itself out as conducting business in Nevada, and
15 has not sent any representatives to Nevada. Importantly, Snowell has no ownership interest in any of
16 the Defendant entities and was not involved in the alleged facts underlying this lawsuit.

17 Because Snowell has not availed itself of any contacts in Nevada, let alone any contacts
18 related to the causes of action, exercising specific personal jurisdiction over Snowell violates due
19 process and Snowell should be dismissed.

20 **C. Snowell should be awarded attorney’s fees related to filing this Motion.**

21 This Court may award attorney’s fees for a motion to dismiss if Plaintiffs’ claims either were
22 without reasonable grounds or made to harass the prevailing party. N.R.S. 18.010. And Nevada courts
23 must liberally construe this standard in favor of awarding fees. *Id.* The inquiry for whether Plaintiffs’
24 claims are groundless is based on the actual facts, not hypothetical facts favoring their allegations.
25 *Bergmann v. Boyce*, 856 P.2d 560, 563 (Nev. 1993) (superseded by statute on other grounds).

26 Here, Plaintiffs’ counsel ASWA was informed that Snowell had no contacts in Nevada, and
27 initially agreed to dismiss Snowell. But ASWA backtracked several days later and stated Plaintiffs

1 would not dismiss Snowell, even though no facts had changed since their initial agreement to dismiss
2 it from this case. Snowell's inclusion in this lawsuit is without reasonable grounds and serves only to
3 harass. Should this Court grant the instant motion to dismiss, Snowell respectfully requests an award
4 of reasonable attorney's fees and costs incurred in seeking dismissal.

5 **IV.**

6 **Conclusion**

7 Nothing alleged in the First Amended Complaint establishes the necessary contacts between
8 Snowell and Nevada for either general or specific personal jurisdiction. Thus, this Court should
9 dismiss all claims against Snowell and order Plaintiffs to pay their reasonable attorneys' fees and
10 costs incurred in seeking dismissal.

11 DATED this 1st day of December 2020.

12 MESSNER REEVES LLP

13 /s/ Candace Herling
14 CANDACE C. HERLING, ESQ. (NBN 13503)
JESSICA R. GANDY, ESQ. (NBN 14202)
15 8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148
16 Telephone: (702) 363-5100
Facsimile: (702) 363-5101
17 E-mail: cherling@messner.com
jgandy@messner.com

18 *Attorneys for Defendants*

19 *Donald Burton, Larry Lemons and*
20 *Snowell Holdings, LLC*

CERTIFICATE OF SERVICE

On this 1st day of December 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANT SNOWELL HOLDINGS, LLC'S MOTION TO DISMISS PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 12(b)(2)** be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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Daniel R. Ormsby, Esq.
Hayden R. D. Smith, Esq.
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Viridis Group I9 Capital LLC, Viridis Group
Holdings, LLC, Andrew and Douglas Bowden,
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Herschman

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Attorney for Defendant Sara Gullickson

/s/ Tya Frabott
Employee of MESSNER REEVES LLP

Exhibit A

1 Candace C. Herling (SBN: 13503)
2 **MESSNER REEVES LLP**
3 8945 W. Russel Rd., Ste. 300
4 Las Vegas, NV 89148
5 Telephone: 702.363.5100
6 cherling@messner.com
7 *Attorneys for Defendants Burton,*
8 *Lemons, and Snowell*

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 JDD, LLC, a Nevada limited liability company;
13 TCS Partners, LLC, a Nevada limited liability
14 company; JOHN SAUNDERS, an individual;
15 and TREVOR SCHMIDT, an individual,

16 Plaintiffs,

17 v.

18 MARIMED INC. f/k/a Worlds Online, Inc., a
19 Delaware corporation; ITEM 9 LABS CORP.
20 f/k/a Airware Labs Corp. and Crown Dynamics
21 Corp., a Delaware corporation; ITEM 9
22 PROPERTIES LLC, a Nevada limited liability
23 company; THE HARVEST FOUNDATION,
24 LLC f/k/a, a Nevada limited liability company
25 a/k/a THE HARVEST FOUNDATION, LLC;
26 STRIVE MANAGEMENT L.L.C. d/b/a Strive
27 Life, a Nevada limited liability company;
STRIVE WELLNESS OF NEVADA, LLC
d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA
2 L.L.C. d/b/a Strive Life, a Nevada limited
liability company; VIRIDIS GROUP 19
CAPITAL, LLC, an Arizona limited liability
company; VIRIDIS GROUP HOLDINGS,
LLC, an Arizona limited liability company;
SNOWELL HOLDINGS, LLC, an Ohio limited
liability company; ROBERT FIREMAN, an
individual; JON LEVINE, an individual;
ANDREW BOWDEN, an individual; BRYCE
SKALLA, an individual; JEFFREY RASSAS,
an individual; DONALD BURTON, an
individual; LARRY LEMONS, an individual;
JEFFREY YOKIEL, an individual; JEROME
YOKIEL, an individual; CHASE
HERSCHMAN, and individual; DOE
INDIVIDUALS I through X, and ROE
BUSINESS ENTITIES XI through XX,
inclusive,

Defendants.

Case No. A-20-811232-C

Dept. No. 26

**DECLARATION OF LARRY
LEMONS IN SUPPORT OF
DEFENDANT SNOWELL
HOLDINGS, LLC'S MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION**

1 I, Larry Lemons, under penalty of perjury, declare that the following is true and correct
2 to the best of my knowledge:

- 3 1. I am over the age of eighteen years and I am competent to testify.
- 4 2. I make this declaration based upon my personal knowledge.
- 5 3. I am a resident of Ohio.
- 6 4. I am the sole owner and member of Snowell Holdings, LLC ("Snowell").
- 7 5. Snowell is an Ohio limited liability company with its principal place of business
8 in Ohio.
- 9 6. Snowell does not conduct any business activities in Nevada, nor does it hold
10 itself out as conducting business in Nevada.
- 11 7. Snowell has not sent any representatives to Nevada.
- 12 8. Snowell does not pay any taxes in Nevada.
- 13 9. Snowell does not maintain any bank accounts, post office boxes, or telephone
14 listings in Nevada.
- 15 10. Snowell does not advertise or solicit business in Nevada.
- 16 11. Snowell does not have an ownership interest in any Nevada companies.
- 17 12. Snowell does not have an ownership interest in any company named as a
18 Defendant in this lawsuit, including, without limitation, The Harvest Foundation, LLC
19 ("Harvest").
- 20 13. My ownership interest in Harvest is individual, not through Snowell, and I
21 conduct all activities related to Harvest and my ownership interest therein in my individual
22 capacity.

23 14. Snowell had no involvement in the alleged facts, events, and contracts
24 underlying this lawsuit.

25 **DATED:** November 18th, 2020.

26 By: _____

Larry Lemons



Exhibit B

Mukunda Shanbhag

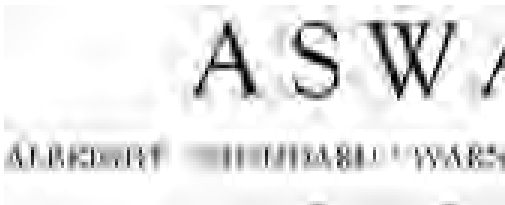
From: Hayden Smith <hsmith@albrightstoddard.com>
Sent: Friday, November 20, 2020 9:59 AM
To: Mukunda Shanbhag
Cc: Daniel Ormsby; CHerling@messner.com; Nicholas Scavio; Cheritta Grey; Mark Albright; Justin Brandt
Subject: RE: Dismissal of Item 9 parties and Snowell
Attachments: 2020-11-19-SAO to Dismiss wo Prej.FINAL.docx

Hi Mukunda and Justin,

We were able to get our clients to agree to dismiss Snowell Holdings without prejudice. Please see the attached Stipuation and Order dismissing the Item 9 parties and Snowell Holdings without prejudice, and to amend the complaint to remove these parties from the complaint. Please let us know if you have any revisions, and then we will circulate this with counsel who have appeared in this case before submitting it to chambers.

Thanks,

Hayden R. D. Smith, Esq.
Albright, Stoddard, Warnick & Albright
801 So. Rancho Dr., Suite D-4
Las Vegas, NV 89106
Phone (702) 384-7111
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From: Mukunda Shanbhag <mukunda@bianchibrandt.com>
Sent: Thursday, November 19, 2020 11:42 AM
To: Hayden Smith <hsmith@albrightstoddard.com>
Cc: Daniel Ormsby <dormsby@albrightstoddard.com>; CHerling@messner.com; Nicholas Scavio <nick@bianchibrandt.com>; Cheritta Grey <cgrey@albrightstoddard.com>; Mark Albright <gma@albrightstoddard.com>; Justin Brandt <justin@bianchibrandt.com>
Subject: Dismissal of Item 9 parties and Snowell

Hayden:

I am following up on our discussion on Tuesday regarding the dismissal of the Item 9 parties by the end of this week. Please let us know your progress on that front.

Further, please let me know if you had a chance to talk to your clients about dismissing Snowell from the lawsuit. Snowell does not have any contacts in Nevada or ownership interest in any named entity (or any Nevada entity), and was not involved in the alleged facts underlying this lawsuit. Your clients gain nothing from naming Snowell as a defendant.

Additionally, once the Item 9 parties and Snowell are dismissed, we request that you file another Amended Complaint appropriately removing the allegations against the Item 9 parties and Snowell.

Please let me know if you would like to get on the phone about any of these issues and I would be happy to do so.

With Regards,

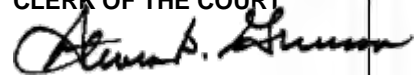
Mukunda Shanbhag, Esq.
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25 *Management, L.L.C. d/b/a Strive Life, Viridis Group I9*
26 *Capital, LLC, Viridis Group Holdings, LLC, Andrew*
27 *Bowden, Douglas Bowden, Bryce Skalla Jeffrey Rassas,*
28 *and Chase Herschman*

DISTRICT COURT

CLARK COUNTY, NEVADA

21 JDD, LLC, a Nevada limited liability company;
22 TCS Partners, LLC, a Nevada limited liability
23 company; JOHN SAUNDERS, an individual; and
24 TREVOR SCHMIDT, an individual,

25 Plaintiffs,

26 vs.

27 MARIMED INC. f/k/a Worlds Online, Inc., a
28 Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES
LLC, a Nevada limited liability company; THE
HARVEST FOUNDATION LLC f/k/a, a Nevada
limited liability company a/k/a THE HARVEST

CASE NO.: A-20-811232-C
DEPT. NO.: 26

**DEFENDANTS ITEM 9 LABS
CORP., ITEM 9 PROPERTIES,
LLC, STRIVE MANAGEMENT,
L.L.C., VIRIDIS GROUP I9
CAPITAL, LLC, VIRIDIS GROUP
HOLDINGS, LLC, ANDREW
BOWDEN, DOUGLAS BOWDEN,
BRYCE SKALLA JEFFREY
RASSAS, AND CHASE
HERSCHMAN'S MOTION TO**

FOUNDATION, LLC; STRIVE MANAGEMENT L.L.C. d/b/a Strive Life, a Nevada limited liability company; STRIVE WELLNESS OF NEVADA, LLC d/b/a Strive Life, a Nevada limited liability company; STRIVE WELLNESS OF NEVADA 2 L.L.C. d/b/a Strive Life, a Nevada limited liability company; VIRIDIS GROUP I9 CAPITAL, LLC, an Arizona limited liability company; VIRIDIS GROUP HOLDINGS, LLC, an Arizona limited liability company; SNOWELL HOLDINGS, LLC, an Ohio limited liability company; ROBERT FIREMAN, an individual; JON LEVINE, an individual; ANDREW BOWDEN, an individual; DOUGLAS BOWDEN, an individual; BRYCE SKALLA, an individual; JEFFREY RASSAS, an individual; DONALD BURTON, an individual; LARRY LEMONS, an individual; JEFFREY YOKIEL, an individual; JEROME YOKIEL, an individual; SARA GULLICKSON, an individual; CHASE HERSCHMAN, an individual; DOE INDIVIDUALS I through X, and ROE BUSINESS ENTITIES XI through XX, inclusive.

Defendants.

**DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED AND
LACK OF PERSONAL
JURISDICTION**

HEARING REQUESTED

Pursuant to Nevada Rules of Civil Procedure 12(b)(2) and 12(b)(5), Defendants Item 9 Labs Corp, Item 9 Properties, LLC, Strive Management L.L.C., Viridis Group I9 Capital, LLC, Viridis Group Holdings, LLC, Andrew Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassas, and Chase Herschman (collectively, "Moving Defendants"), by and through their undersigned counsel, move to dismiss Plaintiffs' First Amended Complaint ("FAC") in its entirety. This Motion is supported by the following Memorandum of Points and Authorities, the Exhibits attached hereto, and the entire record in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

The Moving Defendants consist of entities involved in the medical marijuana business (Item 9 Labs Corp. and Strive Management, LLC), entities that own or develop property (Item 9 Properties, LLC), entities that invest in real estate and sustainable projects (Viridis Group Holdings, LLC and Viridis Group I9 Capital, LLC), and multiple individuals who serve as

1 members, officers, independent contractors, and/or directors of one or more of the foregoing
2 entities (A. Bowden, D. Bowden, Skalla, Rassas, Herschman).

3
4 The Moving Defendants do not have any contracts or business dealings with
5 Plaintiffs. The Moving Defendants were not even aware of Plaintiffs or their respective entities
6 prior to this lawsuit. Notably, the FAC does not dispute these facts.

7 The FAC is not a model of clarity. Despite spanning over 240 paragraphs, it is difficult
8 to discern the basis for any viable claim for relief against any of the Moving
9 Defendants. Indeed, to describe Plaintiffs' allegations against the Moving Defendants as scant,
10 and the claims and theories underlying their claims as tenuous, would be a gross
11 understatement.

12 Plaintiffs' claims against the Moving Defendants apparently stem from the notion that
13 Plaintiffs and one or more of the Moving Defendants happened by chance to enter into separate
14 transactions with the same individuals. The FAC generally alleges Plaintiffs entered into
15 agreements with Defendants Lemons and Burtons regarding Defendant Harvest Foundation,
16 which holds marijuana cultivation licenses in Nevada. The FAC alleges that one or more of the
17 Moving Defendants entered into *separate* agreements with Defendants Lemons and Burton
18 regarding *different* marijuana dispensary (not cultivation) licenses in Nevada. The FAC alleges
19 that these separate agreements (between one or more of the Moving Defendants, Lemons,
20 Burtons, etc.) somehow violate rights or interests Plaintiffs claim to have in their *separate*
21 agreements relating to the Harvest Foundation and its cultivation license.

22 Based on that fundamental (and totally flawed) premise, Plaintiffs have concocted eight
23 (8) far-fetched and nonsensical claims for relief against the Moving Defendants, which range
24 from conspiracy to aiding and abetting breaches of fiduciary duty. Plaintiffs' claims are not
25 well-founded. That is precisely why Plaintiffs initially agreed to dismiss each of the claims
26 against the Moving Defendants without prejudice in November 2020, only to later inexplicably
27 revoke their agreement to dismiss days later.

28 In all events, this Court should dismiss the FAC for the following reasons:

1 First, this Court lacks personal jurisdiction over several of the Moving
2 Defendants. These particular defendants (described further below) are residents of or doing
3 business in the State of Arizona, and do not have any substantial continuous or systematic
4 contacts with the State of Nevada to support general jurisdiction. And the Court lacks specific
5 jurisdiction, because the FAC does not allege that these defendants purposefully availed
6 themselves of the benefits of the State of Nevada, or that this action arises out of any alleged
7 conduct by these defendants in the State of Nevada.

8
9 Second, Plaintiffs do not have a justiciable controversy with, and lack standing to pursue
10 claims against, the Moving Defendants. Plaintiffs failed to allege a viable interest in the
11 Harvest Foundation, and failed to allege any agreement or connection with any of the Moving
12 Defendants that might give rise to a viable claim for relief.

13 Third, there are a host of defects with each of Plaintiffs' claims against the Moving
14 Defendants, which render them subject to immediate dismissal. Indeed, before this lawsuit, the
15 Moving Defendants were not even aware of Plaintiffs, a critical element for several of their
16 claims.

17 For these reasons, and those set forth below, the Court should dismiss the FAC against
18 the Moving Defendants with prejudice.

19 **II. FACTUAL BACKGROUND.**

20 **A. The Moving Defendants.**

21 Item 9 Labs Corp. and Item 9 Properties. Item 9 Labs Corp. is a Delaware corporation,
22 which is in the business of providing cannabis solutions, products and delivery platforms. See
23 FAC ¶ 6. Item 9 Labs Corp. is headquartered in Phoenix, Arizona. The FAC alleges that Item
24 9 Labs Corp. invested and/or acquired an ownership interest in Strive Management and/or
25 Strive Wellness, and is engaged in "operations" in Nevada. See, e.g., FAC ¶¶ 6, 103.

26 Item 9 Properties is a Nevada limited liability company that owns and develops property
27 in Nevada. See FAC ¶ 7. The FAC alleges that Item 9 Properties entered into agreements to
28 develop and construct a marijuana cultivation facility in Nevada. FAC ¶ 105.

1 Strive Management. Strive Management is a Nevada limited liability company. FAC
2 ¶ 9. The FAC alleges that Strive Management is the "management arm" of Defendant Strive
3 Wellness, which holds two marijuana dispensary licenses in Nevada. FAC ¶ 99.

4 Viridis Group Holdings and Viridis Group I9 Capital LLC. Viridis Group Holdings and
5 Viridis Group I9 Capital are Arizona-based investment companies that focus on real estate and
6 sustainable development projects. See FAC ¶¶ 12-13. The FAC speculates that the Viridis
7 entities may have made investments in Strive Management. See FAC ¶ 101.

8 The Individual Defendants. Andrew Bowden is the CEO of Item 9 Labs Corp. See
9 Declaration of Andrew Bowden in Support of the Motion ("Decl. of A. Bowden"), attached
10 hereto as **Exhibit 1**, ¶ 1. Andrew Bowden is also a member and manager of Viridis Group
11 Holdings and a member and manager of Viridis Group I9 Capital, LLC. See *id.* ¶ 2.

12 Douglas Bowden is a member and manager of Viridis Group I9 Capital, LLC. See
13 Declaration of Douglas Bowden in Support of the Motion ("Decl. of D. Bowden"), attached
14 hereto as **Exhibit 2**, ¶ 1.

15 Jeffrey Rassas is the Chief Strategy Officer of Item 9 Labs Corp. See Declaration of
16 Jeffrey Rassas in Support of the Motion ("Decl. of J. Rassas"), attached hereto as **Exhibit 3**,
17 ¶ 1.

18 Bryce Skalla is the Chief Revenue Officer of Item 9 Labs Corp. and also a manager of
19 Item 9 Properties. See Declaration of Bryce Skalla in Support of the Motion ("Decl. of B.
20 Skalla"), attached hereto as **Exhibit 4**, ¶ 1.

21 Chase Herschman is an independent contractor for Item 9 Properties.

22 Andrew Bowden, Douglas Bowden, Jeffrey Rassas, Bryce Skalla, and Chase
23 Herschman are collectively referred to as the "Individual Defendants".

24 **B. Harvest Foundation and the "Harvest Agreements"**

25 The FAC alleges that Defendants Lemons and Burton hold ownership interests in
26 Defendant Harvest Foundation, which holds two marijuana cultivation licenses from the State
27 of Nevada. See, e.g., FAC ¶¶ 8, 36. The FAC alleges that Plaintiffs, Lemons, and Burton
28

1 entered into written or unwritten agreements, pursuant to which Plaintiffs were to obtain
2 minority ownership interests in Harvest Foundation in exchange for a monetary investment (the
3 "Harvest Agreements"). *See* FAC ¶¶ 32-57. The FAC alleges that, as part of the Harvest
4 Agreements, Plaintiffs, Lemons, and Burton also agreed that Harvest Foundation would not
5 transfer its marijuana cultivation licenses or enter into certain types of marijuana-related deals
6 in Nevada without Plaintiffs' prior written consent (a.k.a., the "Exclusive Authorization
7 Rights"). *See* FAC ¶ 52. Notably, the FAC does *not* (and cannot) allege that the Moving
8 Defendants were parties to the Harvest Agreements, or that the Moving Defendants claim any
9 interest in or to the Harvest Foundation or its cultivation license.
10

11 **C. The Strive Entities and Strive Licenses.**

12 The FAC alleges that Defendants Burton and Lemons also have interests in two separate
13 companies, Defendants Strive Management and Strive Wellness. *See* FAC ¶¶ 94-95. The FAC
14 further alleges that Strive Wellness holds two marijuana dispensary licenses in the State of
15 Nevada, and Strive Management is the "management arm" of Strive Wellness. *See* FAC
16 ¶ 99. Notably, the FAC does *not* allege that Plaintiffs have any agreements with or ownership
17 in Strive Wellness or Strive Management, or that Harvest Foundation had any agreements with
18 Strive Wellness or Strive Management. Moreover, the FAC does not allege that the Strive
19 Wellness cultivation licenses are the same as the Harvest Foundation cultivation license, and
20 identifies difference license numbers for the Harvest and Strive licenses. FAC ¶¶ 8, 10.

21 **D. The "Item 9 Agreements".**

22 The FAC alleges one or more of the Moving Defendants entered into agreements with
23 Strive Management and/or Strive Wellness, which the FAC refers to as the "Item 9
24 Agreements". *See* FAC ¶ 99. The FAC alleges that, pursuant to the Item 9 Agreements, one
25 or more of the Moving Defendants made a capital contribution to Strive Management, and
26 acquired an ownership interest or invested in Strive Management and/or Strive Wellness. *See*
27 FAC ¶¶ 99, 101-04. Notably, the FAC does *not* allege that Plaintiffs are parties to, or have
28 interests in, the Item 9 Agreements.

E. The Claims and Allegations Against the Moving Defendants.¹

The FAC generally alleges that the Item 9 Agreements (which Plaintiffs are not parties to) somehow violate Plaintiffs' separate rights or interest in the Harvest Foundation and Harvest Agreements (which the Moving Defendants are not parties to). *See generally* FAC ¶¶ 93-108. Based on that fundamental assertion, the FAC asserts eight (8) claims against the Moving Defendants: unjust enrichment (Count Two, FAC ¶¶ 119-24), civil conspiracy (Count Eleven, FAC ¶¶ 182-88), alter ego (Count Twelve, FAC ¶¶ 189-92), aiding and abetting breach of fiduciary duty (Count Thirteen, FAC ¶¶ 193-99), intentional interference with contract (Count Fourteen, FAC ¶¶ 200-13), intentional interference with prospective economic advantage (Count Fifteen, FAC ¶¶ 207-213), equitable relief (promissory estoppel, injunctive relief, accounting) (Count Sixteen, FAC ¶¶ 214-222), attorneys' fees as special damages (Count Eighteen, FAC ¶¶ 237-239), and declaratory relief (Count Nineteen, FAC ¶¶ 240-44).

III. THIS COURT LACKS PERSONAL JURISDICTION OVER THE NON-RESIDENT DEFENDANTS.

To "obtain jurisdiction over a non-resident defendant, a plaintiff must show: (1) that the requirements of the state's long-arm statute [NRS 14.065] have been satisfied, and (2) that due process is not offended by the exercise of jurisdiction." *Trump v. Eighth Judicial Dist. Ex rel. Clark County*, 109 Nev. 687, 698 (1993); *Catholic Diocese, Green Bay v. John Doe 119*, 131 Nev. 246, 249 (2015).²

¹ The FAC also alleges that Defendants Lemons and Burton "excluded" Plaintiffs from the operations of, and mismanaged, Harvest Foundation. *See, e.g.*, FAC ¶ 65-66, 78-79. The FAC also alleges that Defendants Lemons and Burton violated Plaintiffs' ownership and Exclusive Authorization Rights agreements by entering into an agreement with Defendant MariMed to transfer the Harvest Foundation cultivation license to MariMed. *See* FAC ¶¶ 85-92. Plaintiffs do not allege that the Moving Defendants were parties to these transactions, and these transactions do not form the basis of any claim against the Moving Defendants.

² Under the Fourteenth Amendment's Due Process Clause, a nonresident defendant must have sufficient "minimum contacts" with the forum state such that subjecting the defendant to the state's jurisdiction will not "offend traditional notions of fair play and substantial justice." *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 512 (2006) (internal quotations omitted). Because Nevada's long-arm statute is coterminous with the limits of constitutional due process, these two requirements are the same. *Fulbright v. Eighth Judicial Dist. Court*, 131 Nev. 30, 36 (2015).

Several of the Moving Defendants are not residents of, located in, or doing business in Nevada: Andrew Bowden, Douglas Bowden, Jeffrey Rassas, Bryce Skalla, Viridis Group I9 Capital, LLC, and Viridis Group Holdings, LLC (the "Non-Resident Defendants"). This Court lacks jurisdiction over the Non-Resident Defendants.

A. This Court Does Not Have General Jurisdiction

Courts may exercise general jurisdiction where a defendant's "affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *See Viega GmbH*, 130 Nev. 368, 376 (2014) (quoting *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011)); *Arbella*, 122 Nev. at 513; *Budget Rent-A-Car v. Eighth Judicial Dist. Court*, 108 Nev. 483, 485 (1992) ("The level of contact with the forum state necessary to establish general jurisdiction is high."). For a corporate entity, general jurisdiction typically exists in the corporation's place of incorporation or principal place of business. *See Viega GmbH*, 130 Nev. at 376-77.

Plaintiffs did not (and cannot) demonstrate that the Non-Resident Defendants are subject to general jurisdiction in Nevada. The Non-Resident Defendants are comprised of (1) individuals who reside in the State of Arizona (Defendants A. Bowden, D. Bowden, Rassas, and Skalla); and (2) Arizona limited liability companies with Arizona members that are located and doing business in Arizona (Viridis Group I9 Capital, LLC and Viridis Group Holdings, LLC). *See* Ex. 1, Decl. of A. Bowden, ¶ 6; Ex. 2, Decl. of D. Bowden, ¶ 5; Ex. 3, Decl. of J. Rassas, ¶ 4; Ex. 4, Decl. of B. Skalla, ¶ 4; Declaration of Andrew Bowden as Member/Manager of Viridis Group I9 Capital, LLC in Support of the Motion ("Decl. of Viridis Group I9 Capital"), attached hereto as **Exhibit 5**, ¶; Declaration of Andrew Bowden as Member/Manager of Viridis Group Holding, LLC in Support of the Motion ("Decl. of Viridis Group Holding"), attached hereto as **Exhibit 6**, ¶ 5.

The Non-Resident Defendants do not own property in the State of Nevada, do not pay taxes in the State of Nevada, and do not have W-2 employees living or working within the State of Nevada. *See* Ex. 1, Decl. of A. Bowden, ¶¶ 7-12; Ex. 2, Decl. of D. Bowden, ¶¶ 6-11; Ex.

1 3, Decl. of J. Rassas, ¶¶ 5-10; Ex. 4, Decl. of B. Skalla, ¶¶ 5-10; Ex. 5, Decl. of Viridis Group
2 19 Capital, ¶¶ 6-13; Ex. 6, Decl. of Viridis Group Holding, ¶¶ 6-13.

3
4 The Non-Resident Defendants simply do not have any substantial, continuous, and
5 systematic contacts with the State of Nevada that would support the exercise of general
6 jurisdiction over them. Indeed, there are *no* allegations in the FAC that suggest otherwise,
7 much less any evidence sufficient to establish that the Non-Resident Defendants have ever had
8 the type of substantial, continuous, or systematic contacts with the State of Nevada required to
9 obtain general jurisdiction over them.

10 **B. This Court Does Not Have Specific Jurisdiction.**

11 "Specific personal jurisdiction arises when the defendant purposefully enters the forum's
12 market or establishes contacts in the forum and affirmatively directs conduct there, *and* the
13 claims arise from that purposeful contact or conduct." *Viega GmbH*, 130 Nev. at 375 (emphasis
14 added); *Dogra v. Liles*, 129 Nev. 932, 937 (2013). To establish specific personal jurisdiction
15 over a non-resident defendant, the plaintiff must demonstrate that: (1) "the defendant must
16 purposefully avail himself of the privilege of acting in the forum state or of causing important
17 consequences in that state"; (2) "[t]he cause of action must arise from the consequences in the
18 forum state of the defendant's activities"; and (3) "those activities, or the consequences thereof,
19 must have a substantial enough connection with the forum state to make the exercise of
20 jurisdiction over the defendant reasonable." *Consipio Holding, BV v. Carlberg*, 128 Nev. 454,
21 458 (App. 2012) (quotation omitted).

22 The FAC does not contain any allegations whatsoever that give rise to specific
23 jurisdiction over the Non-Resident Defendants, or which demonstrate that the Non-Resident
24 Defendants purposefully availed themselves of the privilege of conducting activities in Nevada.
25 Indeed, the FAC alleges only that, "upon information and belief", the Non-Resident Defendants
26 are "regularly [] doing business" in Clark County, Nevada. *See* FAC ¶¶ 12-13, 21-24.

27 Moreover, the FAC does not arise out of any purposeful contact or activities by the Non-
28 Resident Defendants within the State of Nevada, as is necessary in order to maintain specific

1 personal jurisdiction. The FAC does not allege that Non-Resident Defendants engaged or
2 directed any conduct within the State of Nevada that gives rise to Plaintiffs' claims. Indeed, the
3 Non-Resident Defendants have not. *See* Ex. 1, Decl. of A. Bowden, ¶¶ 7-12; Ex. 2, Decl. of D.
4 Bowden, ¶¶ 6-11; Ex. 3, Decl. of J. Rassas, ¶¶ 5-10; Ex. 4, Decl. of B. Skalla, ¶¶ 5-10; Ex. 5,
5 Decl. of Viridis Group 19 Capital, ¶¶ 6-13; Ex. 6, Decl. of Viridis Group Holding, ¶¶ 6-13.
6 Under these circumstances, exercising personal jurisdiction over the Non-Resident Defendants
7 simply does not comport with "fair play and substantial justice," as Nevada does not have an
8 interest in regulating the conduct of non-citizens (like the Non-Resident Defendants).
9

10 In sum, Plaintiffs' jurisdictional allegations are woefully insufficient, and this Court
11 should dismiss the FAC as to the Non-Resident Defendants for lack of personal jurisdiction.

12 **IV. THERE IS NO JUSTICIABLE CONTROVERSY AND PLAINTIFFS' LACK**
13 **STANDING TO PURSUE EACH OF THE CLAIMS IN THE FAC.**

14 "Nevada has a long history of requiring an actual justiciable controversy as a predicate
15 to judicial relief." *In re America Derivative Litig.*, 127 Nev. 196, 213 (2011) (quoting *Doe v.*
16 *Bryan*, 102 Nev. 523, 525 (Nev. 1986)). Because Plaintiffs have not – and cannot – allege "an
17 actual justiciable controversy," Plaintiffs lack standing to pursue their claims against the
18 Moving Defendants.

19 **A. Plaintiffs Did Not Allege a Valid Interest in Harvest Foundation.**

20 Each of Plaintiffs' claims in the FAC is predicated on the assertion that Plaintiffs entered
21 into valid agreements to obtain ownership interests in and rights to the Harvest Foundation (i.e.,
22 the "Harvest Agreements"). *See, e.g.*, FAC ¶ 98 (alleging "actual or constructive knowledge of
23 Plaintiffs' membership interest in Harvest"); ¶ 100 (alleging the "Item 9 Agreements were in
24 direct violation of Plaintiffs' Exclusive Authorization Rights"). However, under N.A.C.
25 § 453D.315, no transfer of ownership in marijuana establishments may take place unless and
26 until such transfer is approved by the Department: A "transfer of an ownership interest in any
27 amount in a marijuana establishment is not effective until the Department has been
28 notified...and the Department has found that each person to whom an ownership interest is

1 proposed to be transferred is individually qualified to be an owner of the marijuana
2 establishment." *See* N.A.C. § 453D.315(5); *see also* § 453D.15(3) ("A person shall not . . .
3 enter into or create . . . any other agreement of any sort in connection with any marijuana
4 establishment or any portion thereof, except in accordance with this chapter and [Title 40,
5 Chapter 453]."). The FAC does *not* allege that the Department has approved a transfer of
6 interests in the Harvest Foundation to Plaintiffs.³ Absent such approval, Plaintiffs have not
7 alleged a valid interest in the Harvest Foundation. And while they may have standing to pursue
8 claims against Defendants Lemons and Burton regarding the transfer of interest in the Harvest
9 Foundation, Plaintiffs simply do not have any standing to assert claims against the Moving
10 Defendants.

11
12 **B. Plaintiffs Cannot Establish Any Connection to the Moving Defendants.**

13 Even if Plaintiffs could allege a valid ownership interest in the Harvest Foundation,
14 Plaintiffs' claims against the Moving Defendants still fail because there is simply no connection
15 or controversy between Plaintiffs and the Moving Defendants. The FAC alleges that the
16 Harvest Agreements only grant Plaintiffs rights vis-à-vis the Harvest Foundation. *See generally*
17 FAC ¶¶ 32-57. The Moving Defendants do not claim any interest in the Harvest Foundation.
18 On the other hand, the FAC alleges that the Moving Defendants have interest or rights in Strive
19 Management or Strive Wellness. *See* FAC ¶¶ 99, 100-04. But Plaintiffs do not claim any
20 ownership interest in Strive Management or Strive Wellness. Absent some overlapping interest
21 or rights by Plaintiffs and the Moving Defendants in the Harvest Foundation and/or the Strive
22 Entities, there is no justiciable controversy between Plaintiffs and the Moving Defendants, and
23 thus Plaintiffs lack standing to pursue their claims.

24
25
26
27
28 ³ Relatedly, the FAC also does not allege that Plaintiffs applied for (and received) the "cannabis
agent registration card" required "to hold an ownership interest in a cannabis establishment of
5 percent or more," as required by N.R.S. § 678B.350.

1 **V. THE FAC FAILS TO STATE A CLAIM FOR RELIEF.**

2 **A. The Legal Standard**

3 Pursuant to Nevada Rule of Civil Procedure 12(b)(5), a complaint should be dismissed
4 if it fails "to state a claim upon which relief can be granted." NRCP 12(b)(5). While courts
5 construe the complaint liberally, the allegations therein must still be "sufficiently definite to
6 give fair notice of the nature and basis or grounds of the claim and a general indication of the
7 type of litigation involved." *Taylor v. State of Nevada*, 73 Nev. 151, 152 (1957). A plaintiff
8 must still show "facts which support a legal theory." *See Liston v. LVMPD*, 111 Nev. 1575,
9 1578 (1995); *Johnson v. Travelers Ins. Co.*, 89 Nev. 467, 472, 515 P.2d 68, 71 (1973) (stating
10 that "the complaint must, in any event, allege facts sufficient to establish all necessary elements
11 of the claim for relief") (internal citations omitted).

12 **B. The FAC Fails to State Claims Against the Individual Defendants.**

13 The Individual Defendants are officers, members, or employees of one or more of the
14 corporate Moving Defendants (i.e., Item 9 Group, Item 9 Properties, Viridis Group, etc.). The
15 FAC does not allege any specific conduct by the Individual Defendants that is separate and
16 independent from the corporate Moving Defendants, or any separate act by any Individual
17 Defendant that contributed to the Plaintiffs' alleged injuries. The Individual Defendants are
18 lumped in and group-pled along with the corporate entities in the FAC. *See, e.g.*, FAC ¶¶ 98-
19 99, 104. That is woefully insufficient to state a claim against an individual officer, member, or
20 employee of a corporate entity. *See Gardner v. Henderson Water Park, LLC*, 133 Nev. 391
21 (2017) (affirming summary judgment in favor of LLC member, where plaintiff failed to identify
22 any specific and separate conduct by the LLC member that contributed to plaintiffs' injury).

23 Indeed, under Nevada law, officers, members, and employees of a limited liability
24 company or corporation (like the Individual Defendants) are not personally liable for the
25 conduct of the entity solely based on their position with the entity. *See Gardner on Behalf of*
26 *L.G. v. Eighth Judicial Dist. Court*, 133 Nev. 730, 733 (2017) ("LLC members do not lose their
27 limited liability for participating in control of the business."). Under N.R.S. §§ 78.747 and
28

1 86.381, individuals are not proper parties to proceedings against a corporation or limited
2 liability company, "except where the object is to enforce the member's right against or liability
3 to the company." And Individual Defendants are not liable for the acts of the corporate entities
4 they are employed by, unless the plaintiff can prove that the individual is an alter ego of the
5 entity. N.R.S. §§ 86.376, 78.747.

6
7 As demonstrated further below, none of the Individual Defendants is an alter ego of any
8 corporate entity defendant nor have Plaintiffs' properly alleged such. For these reasons, each
9 of the claims against the Individual Defendants fails and should be dismissed.

10 **C. The FAC Fails to State a Claim for Alter Ego.**

11 "The corporate cloak is not lightly thrown aside." *Baer v. Amos J. Walker, Inc.*, 85 Nev.
12 219 (1969); *see also Wyatt v. Bowers*, 103 Nev. 597 (1987). To state a claim for alter ego, the
13 plaintiff must demonstrate that "(1) the corporation [is] influenced and governed by the person
14 asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is
15 inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction
16 of a separate entity would, under the circumstances, sanction [a] fraud or promote injustice."
17 *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601 (1987).

18 The FAC alleges that each of the Defendants – individuals and entities – is an alter ego
19 of every other Defendant (e.g., Defendant Andrew Bowden is an alter ego of each and every
20 entity *and* individual named as a defendant). *See* FAC ¶¶ 190-92. Candidly, the assertion that
21 each Defendant is an alter ego of every other Defendant, and that each Defendant is
22 "inseparable" and part of the same "corporate fiction" is laughable. It is also impossible, as
23 natural persons cannot be alter egos of other natural persons.

24 In any event, the FAC does not contain any allegations to support an alter ego claim
25 beyond boilerplate legal conclusions. *See* FAC ¶¶ 190-92. Such barebones allegations fall far
26 short of stating a viable alter ego claim against any of the Moving Defendants. *See Aetna Cas.*
27 *& Surety Co. v. Rasa Mgmt. Co.*, 621 F. Supp. 892, 893-94 (D. Nev. 1985) (dismissing
28 complaint as against alleged alter ego defendant because conclusory allegations of ownership

1 and control were insufficient); *Wilson Logistics Nev., Inc. v. Lincoln Gen. Ins. Co.*, 2011 WL
2 5080176, at *2-3 (D. Nev. Oct. 26, 2011) (dismissing complaint as against defendants alleged
3 to be alter egos where the allegations did not plead specific *facts* in support); *Anahuac Mgmt.*
4 *v. Maser*, 2011 WL 1131392, at *2-3 (D. Nev. Mar. 24, 2011) (dismissing complaint against
5 alleged alter ego where complaint merely "repeat[ed] the elements necessary for alter ego
6 liability, without the necessary facts to support the allegation" and holding that "[t]he mere
7 recitation of elements of [the] cause of action are insufficient to make a claim facially
8 plausible").

9
10 **D. The FAC Fails to State a Claim for Unjust Enrichment.**

11 To state a claim for unjust enrichment, a plaintiff must demonstrate that it (1) conferred
12 a benefit on the defendant, (2) the defendant appreciated the benefit, and (3) the defendant
13 accepted and retained the benefit under circumstances where it would be inequitable for the
14 defendant not to reimburse the plaintiff. *See Certified Fire Prot., Inc. v. Precision Constr.,*
15 *Inc.*, 128 Nev. 371, 381 (2012).

16 Here, Plaintiffs allege that the Moving Defendants were unjustly enriched because they
17 excluded Plaintiffs from participating in the Item 9 Agreements and failed to pay Plaintiffs a
18 reasonably equivalent value as a result this so-called exclusion. *See* FAC ¶ 120. But Plaintiffs
19 do not allege that they are parties to or have rights in the Item 9 Agreements. Plaintiffs did not
20 allege that they conferred any benefit on the Moving Defendants, or that the Moving Defendants
21 unjustly retained any such benefit. And to the extent Plaintiffs allege that the Moving
22 Defendants accepted a benefit as a result of the Item 9 Agreements – which Plaintiffs were not
23 parties to – the unjust enrichment claim fails based on the existence of a written contract. *See*
24 *Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 755 (1997)
25 ("An action based on a theory of unjust enrichment is not available when there is an express,
26 written contract, because no agreement can be implied when there is an express agreement.").

E. The FAC Fails to State a Claim for Civil Conspiracy.

A civil conspiracy claim exists when "two or more persons undertake some concerted action with the intent 'to accomplish an unlawful objective for the purpose of harming another,' and damage results." *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813 (2014) (quoting *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311 (1998)). Plaintiffs generally allege that *all* Defendants conspired and agreed to commit unlawful and improper conduct that caused damage to Plaintiffs. See FAC ¶¶ 183-84. This claim fails for several reasons.

With respect to the Moving Defendants, the FAC alleges only that one or more of the Moving Defendants entered into the Item 9 Agreements. See FAC ¶ 99. The FAC does not allege that the Item 9 Agreements are unlawful. And Plaintiffs cannot legitimately maintain that the Item 9 Agreements were "improper", when they fail to allege that they have any interest in the subject matter of those agreements in the first place.

Moreover, Plaintiffs failed to allege – because they cannot allege – that the Moving Defendants entered into the Item 9 Agreements for the purpose of harming Plaintiffs. The FAC does not allege that any of the Moving Defendants even knew or should have known of Plaintiffs or Plaintiffs' alleged agreements with Lemons, Burton, and/or the Harvest Foundation. As such, the Moving Defendants could not have acted with the intent to harm Plaintiffs, nor could the Moving Defendants have acted in concert with the other Defendants with the intent to harm Plaintiffs.

Finally, to the extent the claim is pled against the Individual Defendants, the claim fails because agents of a corporation cannot conspire with their corporate principal when acting in their corporate capacities. See *Collins v. Union Fed. S&L Ass'n*, 99 Nev. 284, 303 (1983) (holding that "[a]gents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage").

CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 9th day of August, 2021,
I caused service of a true and correct copy of the foregoing **APPENDIX TO
PETITIONERS' WRIT OF MANDAMUS** by the following means:

X BY MAIL: I placed a true copy thereof enclosed in a sealed envelope
addressed as follows:

The Honorable Timothy C. Williams
Eighth Judicial District Court
Civil Dept. XVI
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Respondent

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/s/ Diana L. Wheelen
An Employee of Fennemore Craig

IN THE SUPREME COURT OF THE STATE OF NEVADA

JDD, LLC; TCS PARTNERS, LLC; JOHN
SAUNDERS; and TREVOR SCHMIDT,

Petitioners,

vs.

THE HONORABLE TIMOTHY C.
WILLIAMS, EIGHTH JUDICIAL DISTRICT
COURT IN AND FOR THE COUNTY OF
CLARK,

Respondent,

-and-

ITEM 9 LABS CORP. f/k/a Airware Labs
Corp. and Crown Dynamics Corp.; ITEM 9
PROPERTIES, LLC; STRIVE
MANAGEMENT, LLC f/k/a Strive Life;
VIRIDIS GROUP I9 CAPITAL, LLC;
VIRIDIS GROUP HOLDINGS, LLC;
SNOWELL HOLDINGS, LLC; ANDREW
BOWDEN; DOUGLAS BOWDEN; BRYCE
SKALLA; and CHASE HERSCHMAN,

Real Parties in Interest.

Case No.:

District Court Case No.: A-20-
811232-C

APPENDIX TO PETITIONER'S WRIT OF MANDAMUS

Volume 1 (Part 2) of 4 – Pages PA_0093-0200

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APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
First Amended Complaint	09.09.2020	1	PA_0001-0063
Snowell Holdings, LLC's Motion to Dismiss	12.01.2020	1	PA_0064-0077
Item 9 Labs Corp.'s et al. Motion to Dismiss	12.18.2020	1	PA_0078-0123
Plaintiff's Opposition to Snowell Holdings, LLC's Motion to Dismiss	01.18.2021	1	PA_0124-0127
Snowell Holdings, LLC's Reply In Support of Motion to Dismiss	01.20.2021	1	PA_0128-0133
Plaintiff's Opposition to Item 9 Labs Corp.'s et al. Motion to Dismiss	01.26.2021	1	PA_0134-0151
Item 9 Labs Corp.'s et al. Reply in Support of Motion to Dismiss	02.17.2021	1	PA_0152-0166
Transcript – Motion to Dismiss	02.24.2021	1	PA_0167-0247
Snowell Holdings, LLC Motion for Attorneys' Fees	03.24.2021	2	PA_0248-0264
Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0265-0278
Notice of Entry of Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0279-0295
Plaintiff's Opposition to Snowell Holdings, LLC Motion for Fees	04.07.2021	2	PA_0296-0367
Order Granting Item 9 Labs Corp.'s et al. Motion to Dismiss	04.12.2021	2	PA_0368-0383
Notice of Entry of Order Granting Item 9 Labs Corp.'s et al. Motion to Dismiss	04.13.2021	2	PA_0384-0404
Snowell Holdings, LLC Reply in Support of Motion for Attorneys' Fees	04.22.2021	2	PA_0405-0409

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
Item 9 Labs Corp.'s et al. Motion for Attorneys' Fees and Costs	05.04.2021	2	PA_0410-0494
Minute Order Granting Snowell Holdings, LLC's Motion for Attorneys' Fees	05.12.2021	2	PA_0495
Plaintiff's Opposition to Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	05.19.2021	3	PA_0496-0882
Minute Order regarding Snowell Holdings, LLC's Motion for Attorneys' Fees (Issue of Work Performed)	05.26.2021	4	PA_0883
Item 9 Lab Corp.'s Reply in Support of Motion for Attorneys' Fees and Costs	06.01.2021	4	PA_0884-0895
Minute Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	06.08.2021	4	PA_0896
Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	07.07.2021	4	PA_0897-0911
Notice of Entry of Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	07.07.2021	4	PA_0912-0930

APPENDIX – ALPHABETICAL TABLE OF CONTENTS

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
First Amended Complaint	09.09.2020	1	PA_0001-0063
Item 9 Lab Corp.’s Reply in Support of Motion for Attorneys’ Fees and Costs	06.01.2021	4	PA_0884-0895
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Transcript – Motion to Dismiss	02.24.2021	1	PA_0167-0247

F. The FAC Fails to State a Claim for Aiding and Abetting.

To state a claim for aiding and abetting a breach of fiduciary duty, the plaintiff must demonstrate that: "(1) a fiduciary relationship exists, (2) the fiduciary breached the fiduciary relationship, (3) the third party knowingly participated in the breach, and (4) the breach of the fiduciary relationship resulted in damages." *In re Amerco Derivative Litig.*, 127 Nev. 196, 225 (2011); *Dow Chem. Co. v. Muhlum*, 114 Nev. 1468, 1490 (1998), *overruled in part on other grounds by* *GES, Inc. v. Corbitt*, 117 Nev. 265 (2001) (alleged aider and abettor must "knowingly and substantially assist[]" the primary violator's breach). "The standard for an aiding and abetting claim is a stringent one: one that turns on proof of scienter of the alleged abettor." *Binks v. DSL.net, Inc.*, 2010 WL 1713629, at *10 (Del. Ch. Apr. 29, 2010).⁴ Plaintiffs' aiding and abetting claim fails for several reasons.

First, Plaintiffs allege that they have a fiduciary relationship with Lemons and Burton. See FAC ¶ 194. For the reasons set forth in Section IV(A) however, Plaintiffs have not alleged a valid interest in the Harvest Foundation that could ostensibly give rise to a fiduciary relationship or a breach of a fiduciary relationship.

Second, Plaintiffs generically allege that the Moving Defendants knowingly participated in the breach of fiduciary duty. See FAC ¶¶ 195-96. However, Plaintiffs failed to allege how or why the Moving Defendants knew or should have known of Plaintiffs' alleged agreements with Lemons and Burton regarding the Harvest Foundation or any duties that may have arisen as a result of the same. See *In re Gen. Motors (Hughes) S'holder Litig.*, 2005 WL 1089021, at *24 (Del. Ch. May 4, 2005), *aff'd* 897 A.2d 162 (Del. 2006) (stating that there "must be factual allegations in the complaint from which knowing participation can be reasonably inferred").

⁴ Nevada has adopted Delaware law on aiding and abetting. See *In re Amerco Derivative Litig.*, 127 Nev. at 225.

1 Third, the FAC contains no facts that would suggest that the Moving Defendants
2 substantially assisted or encouraged Lemons or Burton to breach of any fiduciary duty owed to
3 Plaintiffs.

4 Finally, the FAC lumps all of the Moving Defendants together and fails to demonstrate
5 that each (or any) of them knowingly participated in the alleged fraud or breach. See FAC
6 ¶ 196. In fact, Plaintiffs fail to identify a single person who purportedly "knowingly
7 participated" in the breach on behalf of the companies identified.

8
9 **G. The FAC Fails to State Claims for Intentional Interference With Contract
or Intentional Interference with Business Expectancy**

10 To state a claim for intentional interference with a contractual relationship, a plaintiff
11 must demonstrate "(1) a valid and existing contract; (2) the defendant's knowledge of the
12 contract; (3) intentional acts intended . . . to disrupt the contractual relationship; (4) actual
13 disruption of the contract; and (5) resulting damage." *J.J. Indus., LLC v. Bennett*, 119 Nev.
14 269, 274 (2003); see *Wichinsky v. Mosa*, 109 Nev. 84, 87-88 (1993) ("[T]he tort of intentional
15 interference with prospective economic advantage requires proof of . . . a prospective
16 contractual relationship between the plaintiff and a third party . . . [and] knowledge by the
17 defendant of the prospective relationship . . ."). Plaintiffs' claims for intentional interference
18 make no sense, and fail in any event for several reasons.

19 First, Plaintiffs have not identified a valid and existing contract with a third party.
20 Plaintiffs allege that the Moving Defendants interfered with their purported agreements with
21 Lemons and Burton regarding the Harvest Foundation (see, e.g., FAC ¶ 100). But Plaintiffs
22 have not sufficiently alleged that those agreements are valid agreements as set forth in Section
23 IV above.

24 Second, even if there was a valid agreement between Plaintiffs, Lemons, and Burton
25 regarding the Harvest Foundation, Plaintiffs fail to credibly allege any disruption caused by the
26 Moving Defendants. To the contrary, the FAC alleges that Lemons and Burton – not the
27 Moving Defendants – instigated any disruption. See FAC ¶¶ 58-84.
28

1 Third, Plaintiffs failed to allege that any of the Moving Defendants knew or should have
2 known about the alleged Harvest Agreements or the terms thereof.

3 Fourth, to the extent Plaintiffs claim that the Moving Defendants interfered with
4 "contractual relationships between Plaintiffs and other cannabis entities" (including the Moving
5 Defendants), the FAC fails to allege the existence of any valid contract between the Plaintiffs
6 and the Moving Defendants. And regardless, the Moving Defendants cannot interfere with their
7 own contract. *See Blanck v. Hager*, 360 F.Supp.2d 1137, 1154 (D. Nev. 2005) ("In Nevada, a
8 party cannot, as a matter of law, tortiously interfere with its own contract.").

9 Fifth, to the extent Plaintiffs' "interference with prospective economic advantage" claim
10 is predicated on alleged "contractual relationships" with other cannabis entities (*see* FAC ¶
11 209), the FAC fails to allege the existence of a prospective contract, that the Moving Defendants
12 knew about any such prospective contract, and or that such prospective contract was actually
13 disrupted by virtue of the Item 9 Agreements. *See Wichinsky*, 109 Nev. 84, 87-88 (1993); *see*
14 *also* Ex. 1, Decl. of A. Bowden, ¶¶ 13-14; Ex. 2, Decl. of D. Bowden, ¶¶ 12-13; Ex. 3, Decl. of
15 J. Rassas, ¶¶ 11-12; Ex. 4, Decl. of B. Skalla, ¶¶ 11-12; Ex. 5, Decl. of Viridis Group I9 Capital,
16 ¶¶ 14-15; Ex. 6, Decl. of Viridis Group Holding, ¶¶ 14-15.

17
18 **H. The FAC Fails to State a Claim for Declaratory Relief.**

19 Plaintiffs seek declaratory relief with respect to "the Item 9 Membership Purchase
20 Agreement" and "assert a claim of legally protected right" therein. *See* FAC ¶¶ 240-44.
21 However, Plaintiffs do not allege – and cannot allege – that they were parties to the Item 9
22 Agreements or have any rights in or to the subject matter of those agreements or any "legally
23 protectable" interest therein. *See Wells v. Bank of Nevada*, 90 Nev. 192, 297 (1974) (holding
24 heirs to an estate had no legally protectable interest in a contract between the decedent and his
25 family corporation within the meaning of NRS § 30.040, since they were not parties contract).
26 The claim for declaratory relief also fails because there is no justiciable controversy between
27 Plaintiffs and the Moving Defendants as set forth in Section IV.
28

L. The FAC Fails to State a Claim for Equitable Relief.

Count Sixteen of the FAC asserts a claim for "Equitable Relief – Promissory Estoppel, Injunctive Relief, and Accounting". See FAC ¶¶ 214-22. The FAC does not identify any legitimate basis upon which Plaintiffs would be entitled such relief. The FAC does not allege the existence of a valid contract between Plaintiffs and the Moving Defendants that might confer accounting rights. The FAC does not allege any facts that might give rise to promissory estoppel, such as any representation by the Moving Defendants or detrimental reliance on the part of Plaintiffs. See, e.g., *Vancheri v. GNLV*, 105 Nev. 417, 421 (1989). And the FAC does not allege any facts that could conceivably support injunctive relief in favor of Plaintiffs and against the Moving Defendants.

VI. THE COURT SHOULD AWARD ATTORNEYS' FEES AND COSTS.

The Moving Defendants should not have been forced to incur the time and expense of preparing and filing this Motion. More than one month ago, Arizona counsel for the Moving Defendants contacted counsel for Plaintiffs (then, the Albright Stoddard firm) and requested that Plaintiffs dismiss their claims against the Moving Defendants because they do *not* have or claim any interest in cannabis licenses held by the Harvest Foundation, and had *no* knowledge regarding Plaintiffs or agreements they purport to have with Defendants Burton and Lemons. Plaintiffs initially agreed to dismiss their claims against the Moving Defendants (except Strive Management) without prejudice, but later revoked that agreement without any explanation or alteration of the facts alleged in the FAC. Plaintiffs' claims against the Moving Defendants are not proper, and Plaintiffs effectively admitted as much when they agreed to dismiss the claims. The Court should award the Moving Defendants their attorneys' fees and costs pursuant to N.R.S. § 18.010 for having to submit this motion. *Id.* (stating that the "court shall liberally construe the provisions of this paragraph in favor of warding attorney's fees in all appropriate situations").

1 **VII. CONCLUSION.**

2 For the foregoing reasons, this court should dismiss the FAC against each of the Moving
3 Defendants with prejudice and award the Moving Defendants their attorneys' fees and costs
4 pursuant to N.R.S. § 18.010.
5

6 DATED this 18th day of December, 2020.

7 SMITH LARSEN & WIXOM

8
9 /s/ Karl L. Nielson

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23 *Corp.; Item 9 Properties, LLC, Strive*

24 *Management, L.L.C. d/b/a/ Strive Life, Viridis*

25 *Group I9 Capital, LLC, Viridis Group*

26 *Holdings, LLC, Andrew Bowden, Douglas*

27 *Bowden; Bryce Skalla Jeffrey Rassas, and*

28 *Chase Herschman*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 18, 2020 a true copy of the foregoing
**DEFENDANTS ITEM 9 LABS CORP., ITEM 9 PROPERTIES, LLC, STRIVE
 MANAGEMENT, L.L.C., VIRIDIS GROUP 19 CAPITAL, LLC, VIRIDIS GROUP
 HOLDINGS, LLC, ANDREW BOWDEN, DOUGLAS BOWDEN, BRYCE SKALLA
 JEFFREY RASSAS, AND CHASE HERSCHMAN'S MOTION TO DISMISS FOR
 FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED AND
 LACK OF PERSONAL JURISDICTION** was sent via U.S. Mail and/or electronic means
 to the following at their last known email addresses, pursuant to EDCR 8.05(a):

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/s/ Mindy Warner

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QB\172300.00004\66157057.7

Exhibit 1

Exhibit 1

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Capital, LLC, Viridis Group Holdings, LLC, Andrew
Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassas,
and Chase Herschman*

DISTRICT COURT
CLARK COUNTY, NEVADA

JDD, LLC, a Nevada limited liability company;
TCS Partners, LLC, a Nevada limited liability
company; JOHN SAUNDERS, an individual; and
TREVOR SCHMIDT, an individual.

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES
LLC, a Nevada limited liability company; THE
HARVEST FOUNDATION LLC f/k/a, a Nevada
limited liability company a/k/a THE HARVEST
FOUNDATION, LLC; STRIVE MANAGEMENT
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA,
LLC d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA 2
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; VIRIDIS GROUP I9 CAPITAL, LLC,
an Arizona limited liability company; VIRIDIS
GROUP HOLDINGS, LLC, an Arizona limited
liability company; SNOWELL HOLDINGS, LLC,
an Ohio limited liability company; ROBERT

CASE NO.: A-20-811232-C
DEPT. NO.: 26

**DECLARATION OF ANDREW
BOWDEN IN SUPPORT OF
DEFENDANTS ITEM 9 LABS
CORP., ITEM 9 PROPERTIES,
LLC, STRIVE MANAGEMENT,
L.L.C., VIRIDIS GROUP I9
CAPITAL, LLC, VIRIDIS GROUP
HOLDINGS, LLC, ANDREW
BOWDEN, DOUGLAS BOWDEN,
BRYCE SKALLA JEFFREY
RASSAS, AND CHASE
HERSCHMAN'S MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED AND
LACK OF PERSONAL
JURISDICTION**

HEARING REQUESTED

FIREMAN, an individual; JON LEVINE, an individual; ANDREW BOWDEN, an individual; DOUGLAS BOWDEN, an individual; BRYCE SKALLA, an individual; JEFFREY RASSAS, an individual; DONALD BURTON, an individual; LARRY LEMONS, an individual; JEFFREY YOKIEL, an individual; JEROME YOKIEL, an individual; SARA GULLICKSON, an individual; CHASE HERSCHMAN, an individual; DOE INDIVIDUALS I through X, and ROE BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

I, Andrew Bowden, declare as follows:

1. I am Chief Executive Officer at Item 9 Labs Corp., one of the other defendants in the above captioned case.

2. I am also Member and Manager of both Viridis Group I9 Capital, LLC and Viridis Group Holdings, LLC, two other defendants in the above captioned case.

3. I am over eighteen years of age, and am competent to testify regarding the matters stated herein. I submit this Declaration in support of my Motion for Failure to State a Claim Upon Which Relief May be Granted and Lack of Personal Jurisdiction.

4. I submit this Declaration as an individual and not as an officer of Item 9 Labs Corp. or as a Member/Manager of Viridis Group I9 Capital, LLC and Viridis Group Holdings, LLC.

5. I have personal knowledge of all the matters stated in this declaration and if called to testify, I could and would testify competently thereto.

6. I am a resident of Arizona.

7. I do not conduct any business in Nevada on behalf of myself.

8. I have not travelled to Nevada to conduct business on behalf of myself.

9. I am not obligated to file taxes in Nevada nor have I paid taxes in Nevada.

10. I do not own property in Nevada.

11. I do not maintain an address in Nevada.

12. I do not have an ownership interest in any Nevada companies.

SMITH LARSEN & WIXOM

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13. I have had no involvement in the alleged facts, events, and contracts between Plaintiffs and Defendants Lemons and Burton.

14. I have no knowledge, other than from this litigation, of Plaintiffs.

I declare under the penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this declaration was executed in Phoenix, Arizona.

DATED this 18th day of December, 2020.

By: 

Andrew Bowden

Exhibit 2

Exhibit 2

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Capital, LLC, Viridis Group Holdings, LLC, Andrew
Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassus,
and Chase Herschman*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JDD, LLC, a Nevada limited liability company;
TCS Partners, LLC, a Nevada limited liability
company; JOHN SAUNDERS, an individual; and
TREVOR SCHMIDT, an individual,

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES
LLC, a Nevada limited liability company; THE
HARVEST FOUNDATION LLC f/k/a, a Nevada
limited liability company a/k/a THE HARVEST
FOUNDATION, LLC; STRIVE MANAGEMENT
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA,
LLC d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA 2
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; VIRIDIS GROUP 19 CAPITAL, LLC,
an Arizona limited liability company; VIRIDIS
GROUP HOLDINGS, LLC, an Arizona limited
liability company; SNOWELL HOLDINGS, LLC,
an Ohio limited liability company; ROBERT

CASE NO.: A-20-811232-C
DEPT. NO.: 26

**DECLARATION OF DOUGLAS
BOWDEN IN SUPPORT OF
DEFENDANTS ITEM 9 LABS
CORP., ITEM 9 PROPERTIES,
LLC, STRIVE MANAGEMENT,
L.L.C., VIRIDIS GROUP 19
CAPITAL, LLC, VIRIDIS GROUP
HOLDINGS, LLC, ANDREW
BOWDEN, DOUGLAS BOWDEN,
BRYCE SKALLA JEFFREY
RASSAS, AND CHASE
HERSCHMAN'S MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED AND
LACK OF PERSONAL
JURISDICTION**

HEARING REQUESTED

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
(702) 252-5002 • (702) 252-5006

1 FIREMAN, an individual; JON LEVINE, an
2 individual; ANDREW BOWDEN, an individual;
3 DOUGLAS BOWDEN, an individual; BRYCE
4 SKALLA, an individual; JEFFREY RASSAS, an
5 individual; DONALD BURTON, an individual;
6 LARRY LEMONS, an individual; JEFFREY
7 YOKIEL, an individual; JEROME YOKIEL, an
8 individual; SARA GULLICKSON, an individual;
9 CHASE HERSCHMAN, an individual; DOE
10 INDIVIDUALS I through X, and ROE
11 BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

I, Douglas Bowden, declare as follows:

1. I am Member and Manager of both Viridis Group I9 Capital, LLC and Viridis Group Holdings, LLC, two other defendants in the above captioned case.

2. I am over eighteen years of age, and am competent to testify regarding the matters stated herein. I submit this Declaration in support of my Motion for Failure to State a Claim Upon Which Relief May be Granted and Lack of Personal Jurisdiction.

3. I submit this Declaration as an individual and not as a Member of Viridis Group I9 Capital, LLC and Viridis Group Holdings, LLC.

4. I have personal knowledge of all the matters stated in this declaration and if called to testify, I could and would testify competently thereto.

5. I am a resident of Arizona.

6. I do not conduct any business in Nevada on behalf of myself.

7. I have not travelled to Nevada to conduct business on behalf of myself.

8. I am not obligated to file taxes in Nevada nor have I paid taxes in Nevada.

9. I do not own property in Nevada.

10. I do not maintain an address in Nevada.

11. I do not have an ownership interest in any Nevada companies.

12. I have had no involvement in the alleged facts, events, and contracts between Plaintiffs and Defendants Lemons and Burton.

13. I have no knowledge, other than from this litigation, of Plaintiffs.

SMITH LARSEN & WIXOM
ATTORNEYS
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LAS VEGAS, NEVADA 89134
(702) 252-5002 • (702) 252-5006

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I declare under the penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this declaration was executed in Phoenix, Arizona.

DATED this 18th day of December, 2020.

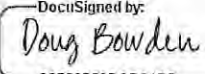
By: 
39F00752DCD8485
Douglas Bowden

Exhibit 3

Exhibit 3

Michael B. Wixom, Esq.
Nevada Bar No. 2812
Karl L. Nielson, Esq.
Nevada bar No. 5082
SMITH LARSEN & WIXOM
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1935 Village Center Circle
Las Vegas, Nevada 89134
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Fax: (702) 252-5006
Email: mbw@slwlaw.com
kln@slwlaw.com

*Attorneys for Defendants Item 9 Labs Corp. f/k/a Airware Labs Corp.
and Crown Dynamics Corp.; Item 9 Properties, LLC, Strive
Management, L.L.C. d/b/a Strive Life, Viridis Group I9
Capital, LLC, Viridis Group Holdings, LLC, Andrew
Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassas,
and Chase Herschman*

DISTRICT COURT
CLARK COUNTY, NEVADA

JDD, LLC, a Nevada limited liability company;
TCS Partners, LLC, a Nevada limited liability
company; JOHN SAUNDERS, an individual; and
TREVOR SCHMIDT, an individual,

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES
LLC, a Nevada limited liability company; THE
HARVEST FOUNDATION LLC f/k/a, a Nevada
limited liability company a/k/a THE HARVEST
FOUNDATION, LLC; STRIVE MANAGEMENT
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA,
LLC d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA 2
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; VIRIDIS GROUP I9 CAPITAL, LLC,
an Arizona limited liability company; VIRIDIS
GROUP HOLDINGS, LLC, an Arizona limited
liability company; SNOWELL HOLDINGS, LLC,
an Ohio limited liability company; ROBERT

CASE NO.: A-20-811232-C
DEPT. NO.: 26

**DECLARATION OF JEFFREY
RASSAS IN SUPPORT OF
DEFENDANTS ITEM 9 LABS
CORP., ITEM 9 PROPERTIES,
LLC, STRIVE MANAGEMENT,
L.L.C., VIRIDIS GROUP I9
CAPITAL, LLC, VIRIDIS GROUP
HOLDINGS, LLC, ANDREW
BOWDEN, DOUGLAS BOWDEN,
BRYCE SKALLA JEFFREY
RASSAS, AND CHASE
HERSCHMAN'S MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED AND
LACK OF PERSONAL
JURISDICTION**

HEARING REQUESTED

1 FIREMAN, an individual; JON LEVINE, an
2 individual; ANDREW BOWDEN, an individual;
3 DOUGLAS BOWDEN, an individual; BRYCE
4 SKALLA, an individual; JEFFREY RASSAS, an
5 individual; DONALD BURTON, an individual;
6 LARRY LEMONS, an individual; JEFFREY
7 YOKIEL, an individual; JEROME YOKIEL, an
8 individual; SARA GULLICKSON, an individual;
9 CHASE HERSCHMAN, an individual; DOE
10 INDIVIDUALS I through X, and ROE
11 BUSINESS ENTITIES XI through XX, inclusive,

12 Defendants.

13 I, Jeffrey Rassas, declare as follows:

14 1. I am Chief Strategy Officer at Item 9 Labs Corp., one of the other defendants
15 in the above captioned case. I am over eighteen years of age, and am competent to testify
16 regarding the matters stated herein. I submit this Declaration in support of my Motion for
17 Failure to State a Claim Upon Which Relief May be Granted and Lack of Personal
18 Jurisdiction.

19 2. I submit this Declaration as an individual and not as an officer of Item 9 Labs
20 Corp.

21 3. I have personal knowledge of all the matters stated in this declaration and if
22 called to testify, I could and would testify competently thereto.

23 4. I am a resident of Arizona.

24 5. I do not conduct any business in Nevada on behalf of myself.

25 6. I have not travelled to Nevada to conduct business on behalf of myself.

26 7. I am not obligated to file taxes in Nevada nor have I paid taxes in Nevada.

27 8. I do not own property in Nevada.

28 9. I do not maintain an address in Nevada.

10 10. I do not have an ownership interest in any Nevada companies.

11 11. I have had no involvement in the alleged facts, events, and contracts between
12 Plaintiffs and Defendants Lemons and Burton.

13 12. I have no knowledge, other than from this litigation, of Plaintiffs.

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
(702) 252-5002 • (702) 252-5006

1 I declare under the penalty of perjury of the laws of the State of Nevada that the
2 foregoing is true and correct and that this declaration was executed in Phoenix, Arizona.
3

4 DATED this 8th day of December, 2020.
5

6
7 By: _____

8 Jeffrey Rassas
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Exhibit 4

Exhibit 4

Michael B. Wixom, Esq.
Nevada Bar No. 2812
Karl L. Nielson, Esq.
Nevada bar No. 5082
SMITH LARSEN & WIXOM
Hills Center Business Park
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kln@slwlaw.com

*Attorneys for Defendants Item 9 Labs Corp. f/k/a Airware Labs Corp.
and Crown Dynamics Corp.; Item 9 Properties, LLC, Strive
Management, L.L.C. d/b/a Strive Life, Viridis Group I9
Capital, LLC, Viridis Group Holdings, LLC, Andrew
Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassas,
and Chase Herschman*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JDD, LLC, a Nevada limited liability company;
TCS Partners, LLC, a Nevada limited liability
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TREVOR SCHMIDT, an individual,

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES
LLC, a Nevada limited liability company; THE
HARVEST FOUNDATION LLC f/k/a, a Nevada
limited liability company a/k/a THE HARVEST
FOUNDATION, LLC; STRIVE MANAGEMENT
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA,
LLC d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA 2
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; VIRIDIS GROUP I9 CAPITAL, LLC,
an Arizona limited liability company; VIRIDIS
GROUP HOLDINGS, LLC, an Arizona limited
liability company; SNOWELL HOLDINGS, LLC,
an Ohio limited liability company; ROBERT

CASE NO.: A-20-811232-C
DEPT. NO.: 26

**DECLARATION OF BRYCE
SKALLA IN SUPPORT OF
DEFENDANTS ITEM 9 LABS
CORP., ITEM 9 PROPERTIES,
LLC, STRIVE MANAGEMENT,
L.L.C., VIRIDIS GROUP I9
CAPITAL, LLC, VIRIDIS GROUP
HOLDINGS, LLC, ANDREW
BOWDEN, DOUGLAS BOWDEN,
BRYCE SKALLA JEFFREY
RASSAS, AND CHASE
HERSCHMAN'S MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED AND
LACK OF PERSONAL
JURISDICTION**

HEARING REQUESTED

1 FIREMAN, an individual; JON LEVINE, an
2 individual; ANDREW BOWDEN, an individual;
3 DOUGLAS BOWDEN, an individual; BRYCE
4 SKALLA, an individual; JEFFREY RASSAS, an
5 individual; DONALD BURTON, an individual;
6 LARRY LEMONS, an individual; JEFFREY
7 YOKIEL, an individual; JEROME YOKIEL, an
8 individual; SARA GULLICKSON, an individual;
9 CHASE HERSCHMAN, an individual; DOE
10 INDIVIDUALS I through X, and ROE
11 BUSINESS ENTITIES XI through XX, inclusive,

12 Defendants.

13 I, Bryce Skalla, declare as follows:

14 1. I am Chief Revenue Officer at Item 9 Labs Corp., one of the other defendants
15 in the above captioned case. I am also a manager of Item 9 Properties, LLC. I am over
16 eighteen years of age, and am competent to testify regarding the matters stated herein. I
17 submit this Declaration in support of my Motion for Failure to State a Claim Upon Which
18 Relief May be Granted and Lack of Personal Jurisdiction.

19 2. I submit this Declaration as an individual and not as an officer of Item 9 Labs
20 Corp.

21 3. I have personal knowledge of all the matters stated in this declaration and if
22 called to testify, I could and would testify competently thereto.

23 4. I am a resident of Arizona.

24 5. I do not conduct any business in Nevada on behalf of myself.

25 6. I have not travelled to Nevada to conduct business on behalf of myself.

26 7. I am not obligated to file taxes in Nevada nor have I paid taxes in Nevada.

27 8. I do not own property in Nevada.

28 9. I do not maintain an address in Nevada.

10 10. I do not have an ownership interest in any Nevada companies.

11 11. I have had no involvement in the alleged facts, events, and contracts between
12 Plaintiffs and Defendants Lemons and Burton.

13 12. I have no knowledge, other than from this litigation, of Plaintiffs.

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
(702) 252-5002 • (702) 252-5006

1 I declare under the penalty of perjury under the laws of the State of Nevada that the
2 foregoing is true and correct and that this declaration was executed in Phoenix, Arizona.
3

4
5 DATED this 18th day of December, 2020.
6

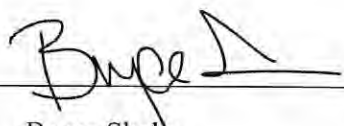
7 By: 
8 Bryce Skalla
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Exhibit 5

Exhibit 5

Michael B. Wixom, Esq.
Nevada Bar No. 2812
Karl L. Nielson, Esq.
Nevada bar No. 5082
SMITH LARSEN & WIXOM
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Email: mbw@slwlaw.com
kln@slwlaw.com

*Attorneys for Defendants Item 9 Labs Corp. f/k/a Airware Labs Corp.
and Crown Dynamics Corp.; Item 9 Properties, LLC, Strive
Management, L.L.C. d/b/a Strive Life, Viridis Group I9
Capital, LLC, Viridis Group Holdings, LLC, Andrew
Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassas,
and Chase Herschman*

DISTRICT COURT
CLARK COUNTY, NEVADA

JDD, LLC, a Nevada limited liability company;
TCS Partners, LLC, a Nevada limited liability
company; JOHN SAUNDERS, an individual; and
TREVOR SCHMIDT, an individual,

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES
LLC, a Nevada limited liability company; THE
HARVEST FOUNDATION LLC f/k/a, a Nevada
limited liability company a/k/a THE HARVEST
FOUNDATION, LLC; STRIVE MANAGEMENT
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA,
LLC d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA 2
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; VIRIDIS GROUP I9 CAPITAL, LLC,
an Arizona limited liability company; VIRIDIS
GROUP HOLDINGS, LLC, an Arizona limited
liability company; SNOWELL HOLDINGS, LLC,
an Ohio limited liability company; ROBERT

CASE NO.: A-20-811232-C
DEPT. NO.: 26

**DECLARATION OF ANDREW
BOWDEN AS
MEMBER/MANAGER FOR
VIRIDIS GROUP I9 CAPITAL,
LLC IN SUPPORT OF
DEFENDANTS ITEM 9 LABS
CORP., ITEM 9 PROPERTIES,
LLC, STRIVE MANAGEMENT,
L.L.C., VIRIDIS GROUP I9
CAPITAL, LLC, VIRIDIS GROUP
HOLDINGS, LLC, ANDREW
BOWDEN, DOUGLAS BOWDEN,
BRYCE SKALLA JEFFREY
RASSAS, AND CHASE
HERSCHMAN'S MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED AND**

FIREMAN, an individual; JON LEVINE, an individual; ANDREW BOWDEN, an individual; DOUGLAS BOWDEN, an individual; BRYCE SKALLA, an individual; JEFFREY RASSAS, an individual; DONALD BURTON, an individual; LARRY LEMONS, an individual; JEFFREY YOKIEL, an individual; JEROME YOKIEL, an individual; SARA GULLICKSON, an individual; CHASE HERSCHMAN, an individual; DOE INDIVIDUALS I through X, and ROE BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

LACK OF PERSONAL JURISDICTION

HEARING REQUESTED

I, Andrew Bowden, declare as follows:

1. I am Member and Manager at Viridis Group 19 Capital, LLC ("Viridis Group 19 Capital"). I am over eighteen years of age, and am competent to testify regarding the matters stated herein. I submit this Declaration in support of Viridis Group 19 Capital's Motion for Failure to State a Claim Upon Which Relief May be Granted and Lack of Personal Jurisdiction.

2. I submit this Declaration in my capacity as Manager of Viridis Group 19 Capital.

3. I have personal knowledge of all the matters stated in this declaration and if called to testify, I could and would testify competently thereto.

4. I am a resident of Arizona.

5. Viridis Group 19 Capital is an Arizona limited liability company with its principal place of business in Phoenix, Arizona.

6. None of the Members of Viridis Group 19 Capital are residents of Nevada.

7. Viridis Group 19 Capital does not conduct any business activities in Nevada.

8. Viridis Group 19 Capital has not sent any representatives to Nevada on its behalf.

9. Viridis Group 19 Capital is not obligated to file taxes nor does it pay any taxes in Nevada.

10. Viridis Group 19 Capital does not own property in Nevada.

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
(702) 252-5002 • (702) 252-5006

- 1 11. Viridis Group I9 Capital does not have any employees in Nevada.
2
3 12. Viridis Group I9 Capital does not maintain an address in Nevada.
4
5 13. Viridis Group I9 Capital does not have an ownership interest in any Nevada
6 companies.
7
8 14. Viridis Group I9 Capital had no involvement in the alleged facts, events, and
9 contracts between Plaintiffs and Defendants Lemons and Burton.
10
11 15. Viridis Group I9 Capital has no knowledge, other than from this litigation, of
12 Plaintiffs.

13 I declare under the penalty of perjury of the laws of the State of Nevada that the
14 foregoing is true and correct and that this declaration was executed in Phoenix, Arizona.
15

16 DATED this 18th day of December, 2020.

17 By: 
18

19 Andrew Bowden

20 Manager/Member

21 Viridis Group I9 Capital, LLC
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Exhibit 6

Exhibit 6

Michael B. Wixom, Esq.
Nevada Bar No. 2812
Karl L. Nielson, Esq.
Nevada bar No. 5082
SMITH LARSEN & WIXOM
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*Attorneys for Defendants Item 9 Labs Corp. f/k/a Airware Labs Corp.
and Crown Dynamics Corp.; Item 9 Properties, LLC, Strive
Management, L.L.C. d/b/a Strive Life, Viridis Group I9
Capital, LLC, Viridis Group Holdings, LLC, Andrew
Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassas,
and Chase Herschman*

DISTRICT COURT
CLARK COUNTY, NEVADA

JDD, LLC, a Nevada limited liability company;
TCS Partners, LLC, a Nevada limited liability
company; JOHN SAUNDERS, an individual; and
TREVOR SCHMIDT, an individual,

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES
LLC, a Nevada limited liability company; THE
HARVEST FOUNDATION LLC f/k/a, a Nevada
limited liability company a/k/a THE HARVEST
FOUNDATION, LLC; STRIVE MANAGEMENT
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA,
LLC d/b/a Strive Life, a Nevada limited liability
company; STRIVE WELLNESS OF NEVADA 2
L.L.C. d/b/a Strive Life, a Nevada limited liability
company; VIRIDIS GROUP I9 CAPITAL, LLC,
an Arizona limited liability company; VIRIDIS
GROUP HOLDINGS, LLC, an Arizona limited
liability company; SNOWELL HOLDINGS, LLC,
an Ohio limited liability company; ROBERT

CASE NO.: A-20-811232-C
DEPT. NO.: 26

**DECLARATION OF ANDREW
BOWDEN AS
MEMBER/MANAGER FOR
VIRIDIS GROUP HOLDING, LLC
IN SUPPORT OF DEFENDANTS
ITEM 9 LABS CORP., ITEM 9
PROPERTIES, LLC, STRIVE
MANAGEMENT, L.L.C., VIRIDIS
GROUP I9 CAPITAL, LLC,
VIRIDIS GROUP HOLDINGS,
LLC, ANDREW BOWDEN,
DOUGLAS BOWDEN, BRYCE
SKALLA JEFFREY RASSAS, AND
CHASE HERSCHMAN'S MOTION
TO DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED AND
LACK OF PERSONAL
JURISDICTION**

1 FIREMAN, an individual; JON LEVINE, an
2 individual; ANDREW BOWDEN, an individual;
3 DOUGLAS BOWDEN, an individual; BRYCE
4 SKALLA, an individual; JEFFREY RASSAS, an
5 individual; DONALD BURTON, an individual;
6 LARRY LEMONS, an individual; JEFFREY
7 YOKIEL, an individual; JEROME YOKIEL, an
8 individual; SARA GULLICKSON, an individual;
9 CHASE HERSCHMAN, an individual; DOE
10 INDIVIDUALS I through X, and ROE
11 BUSINESS ENTITIES XI through XX, inclusive.

12 Defendants.

HEARING REQUESTED

13 I, Andrew Bowden, declare as follows:

14 1. I am Member and Manager at Viridis Group Holdings, LLC ("Viridis Group
15 Holdings"). I am over eighteen years of age, and am competent to testify regarding the
16 matters stated herein. I submit this Declaration in support of Viridis Group Holdings' Motion
17 for Failure to State a Claim Upon Which Relief May be Granted and Lack of Personal
18 Jurisdiction.

19 2. I submit this Declaration in my capacity as Manager of Viridis Group
20 Holdings.

21 3. I have personal knowledge of all the matters stated in this declaration and if
22 called to testify, I could and would testify competently thereto.

23 4. I am a resident of Arizona.

24 5. Viridis Group Holdings is an Arizona limited liability company with its
25 principal place of business in Phoenix, Arizona.

26 6. None of the Members of Viridis Group Holdings are residents of Nevada.

27 7. Viridis Group Holdings does not conduct any business activities in Nevada.

28 8. Viridis Group Holdings has not sent any representatives to Nevada on its
29 behalf.

30 9. Viridis Group Holdings is not obligated to file taxes nor does it pay any taxes
31 in Nevada.

32 10. Viridis Group Holdings does not own property in Nevada.

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
(702) 252-5002 • (702) 252-5006

11. Viridis Group Holdings does not have any employees in Nevada.
12. Viridis Group Holdings does not maintain an address in Nevada.
13. Viridis Group Holdings does not have an ownership interest in any Nevada companies.
14. Viridis Group Holdings had no involvement in the alleged facts, events, and contracts between Plaintiffs and Defendants Lemons and Burton.
15. Viridis Group Holdings has no knowledge, other than from this litigation, of Plaintiffs.

I declare under the penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this declaration was executed in Phoenix, Arizona.

DATED this 8th day of December, 2020.

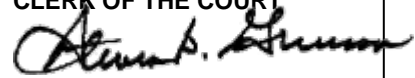
By: _____



Andrew Bowden

Manager/Member

Viridis Group Holdings, LLC



OMD

Lee I. Iglody, Esq.
Nevada Bar #: 7757
2580 St Rose Pkwy., Suite 330
Henderson, Nevada 89074
Tel: (702) 425-5366
Email: Lee@Iglody.com
Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JDD, LLC, a Nevada limited liability company; TCS
Partners, LLC, a Nevada limited liability company;
JOHN SAUNDERS, an individual; and TREVOR
SCHMIDT, an individual

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP. f/k/a
Airware Labs Corp. and Crown Dynamics Corp., a
Delaware corporation; ITEM 9 PROPERTIES LLC, a
Nevada limited liability company; THE HARVEST
FOUNDATION LLC f/k/a, a Nevada limited liability
company a/k/a THE HARVEST FOUNDATION,
LLC; STRIVE MANAGEMENT L.L.C. d/b/a Strive
Life, a Nevada limited liability company; STRIVE
WELLNESS OF NEVADA, LLC d/b/a Strive Life, a
Nevada limited liability company; STRIVE
WELLNESS OF NEVADA 2 L.L.C. d/b/a Strive
Life, a Nevada limited liability company; VIRIDIS
GROUP I9 CAPITAL, LLC, an Arizona limited
liability company; VIRIDIS GROUP HOLDINGS,
LLC, an Arizona limited liability company;
SNOWELL HOLDINGS, LLC, an Ohio limited
liability company; ROBERT FIREMAN, an
individual; JON LEVINE, an individual; ANDREW
BOWDEN, an individual; DOUGLAS BOWDEN, an
individual; BRYCE SKALLA, an individual;
JEFFREY RASSAS, an individual; DONALD
BURTON, an individual; LARRY LEMONS, an
individual; JEFFREY YOKIEL, an individual;
JEROME YOKIEL, an individual; SARA
GULLICKSON, an individual; CHASE
HERSCHMAN, an individual; DOE INDIVIDUALS
I through X, and ROE BUSINESS ENTITIES XI
through XX, inclusive,

Defendants.

CASE NO.: A-20-811232-C

DEPT. NO.: XXVI

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS SNOWELL
HOLDINGS' MOTION TO DISMISS**

Hearing date: January 20, 2021

Hearing time: 9:30 a.m.

1 Plaintiffs, JDD, LLC; TCS Partners, LLC; JOHN SAUNDERS; and TREVOR SCHMIDT,
2 by and through undersigned counsel, hereby opposes the Motion to Dismiss filed by Defendant
3 Snowell Holdings, LLC (“Snowell”).

4 **MEMORANDUM**

5 Defendant Snowell alleges that this Court does not have the requisite jurisdiction to hear
6 the claims at issue. Specifically, Snowell alleges that this Court lacks personal jurisdiction, or
7 jurisdiction over the parties, rather than subject matter jurisdiction. Although this Court may not
8 have general personal jurisdiction over Snowell due to its non-domicile in Nevada, this Court does
9 have specific personal jurisdiction over Snowell due to it having sufficient contacts with the state
10 of Nevada, thus giving this Court its requisite jurisdiction to be able to adjudicate the claims at
11 issue.
12

13 The Nevada Supreme Court has articulated that “[s]pecific personal jurisdiction is
14 appropriate when the defendant has ‘purposefully established minimum contacts’ such that
15 jurisdiction would ‘comport with “fair play and substantial justice.”’” *Consipio Holding, BV v.*
16 *Carlberg*, 128 Nev. 454, 458-59, 282 P.3d 751, 754-55 (2012). This inquiry involves a
17 reasonableness determination, guided by the following factors: (1) burden on the defendant, (2)
18 the state’s interest in hearing the case, (3) the plaintiff’s interest in swift adjudication, (4) “the
19 interstate judicial system’s interest in obtaining the most efficient resolution of controversies,” and
20 (5) the “shared interest of the several States in furthering fundamental substantive social policies.”
21 *See id.*
22

23
24 In this case, the Plaintiffs have alleged that Defendants, including Snowell, are actively
25 intermingled and engaged with one another as part of an ongoing enterprise focused on the
26 Nevada cannabis industry. The Plaintiffs allege with specificity that Snowell participates in the
27 cannabis industry – in Clark County, Nevada in particular – via its association with other
28 Defendant business entities.

1 Additionally, the Plaintiffs allege with specificity that Defendant Lemons' ownership
2 interest in Harvest may be via his 100% ownership of Snowell. It is Plaintiffs' contention that the
3 facts of this case (in which Harvest's members shut out Plaintiffs and denied them access to the
4 business), as well as the inherent nature of a conspiracy (which often involves a secretive
5 agreement to harm others) prohibit Plaintiffs from articulating the exact degree of Snowell's
6 involvement in the claims at issue.

7
8 Absent discovery, Plaintiffs should not be penalized for the current inability to articulate
9 Snowell's involvement without further specificity – which is a direct result of Defendants shutting
10 Plaintiffs out of the business entirely.

11 Keeping all of this in mind, Plaintiffs believe this Court has specific personal jurisdiction
12 over Defendant Snowell, as the main transaction at issue (Marimed's purchase of Harvest), which
13 occurred in Nevada, is part of that ongoing enterprise involving all Defendants, especially Snowell
14 given (1) its 100% ownership by Defendant Lemons, and (2) Plaintiffs' belief that Snowell may
15 actually be a listed or beneficial owner of Harvest.
16

17 As such, Plaintiffs contend that Snowell, by way of its involvement in and affiliation with
18 Harvest, has established the requisite contacts with Nevada, contacts that are sufficient enough so
19 that granting jurisdiction would not offend "fair play and substantial justice."

20 Overall, granting this Court jurisdiction does not place a large burden on the non-resident
21 Defendant Snowell, a sophisticated business entity with sprawling business interests. Nevada has a
22 strong interest in hearing this case, as the transaction at issue transpired in Nevada between two
23 Nevada-domiciled parties. As the Nevada Plaintiffs have lost hundreds of thousand dollars in the
24 cannabis related transaction at issue, they have a clear interest in swift adjudication here in
25 Nevada.
26

27 Finally, granting this Court jurisdiction would not interfere with the interstate efficiencies
28 or social policies of Nevada or Ohio.

1 DATED this 18th day of January, 2021.

2 Respectfully submitted,

3 /s/ Lee Iglody

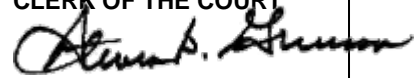
4 Lee I. Iglody, Esq.

5 *Attorney for Plaintiffs*

6 **CERTIFICATE OF SERVICE**

7 I hereby certify that on the 18th day of January, 2021, the foregoing **OPPOSITION TO**
8 **MOTION TO DISMISS** was served on the parties via electronic service through Odyssey
9 pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26.

10 /s/ Lee Iglody



RPLY

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cherling@messner.com

Attorneys for Defendants

Donald Burton, Larry Lemons and Snowell Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JDD, LLC, a Nevada Limited Liability Company; TCS
PARTNERS, LLC, a Nevada Limited Liability
Company; JOHN SAUNDERS, an individual; and
TREVOR SCHMIDT, an individual,

Plaintiff,

vs.

MARIMED INC. f/k/a WORLDS ONLINE, INC. a
Delaware Corporation; ITEM 9 LABS CORP. f/k/a
AIRWARE LABS CORP. AND CROWN DYNAMICS
CORP., a Delaware Corporation; ITEM 9
PROPERTIES LLC, a Nevada Limited Liability
Company; THE HARVEST FOUNDATION LLC f/k/a,
a Nevada Limited Liability Company a/k/a THE
HARVEST FOUNDATION, LLC; STRIVE
MANAGEMENT LLC d/b/a STRIVE LIFE, a Nevada
Limited Liability Company; STRIVE WELLNESS OF
NEVADA, LLC d/b/a STRIVE LIFE, a Nevada Limited
Liability Company; STRIVE WELLNESS OF
NEVADA 2 LLC d/b/a STRIVE LIFE, a Nevada
Limited Liability Company; VIRIDIS GROUP I9
CAPITAL, LLC, an Arizona Limited Liability
Company; VIRIDIS GROUP HOLDINGS, LLC, an
Arizona Limited Liability Company; SNOWELL
HOLDINGS, LLC, an Ohio Limited Liability Company;
ROBERT FIREMAN, an individual; JON LEVINE, an
individual; ANDREW BOWDEN, an individual;
DOUGLAS BOWDEN, an individual; BRYCE
SKALLA, an individual; JEFFREY RASSAS, an

Case No. A-20-811232-B

Dept. No. 16

**DEFENDANT SNOWELL
HOLDINGS, LLC'S REPLY
IN SUPPORT OF ITS
MOTION TO DISMISS
PURSUANT TO RULE
12(b)(2)**

individual; DONALD BURTON, an individual;
LARRY LEMONS, an individual; JEFFREY YOKIEL,
an individual; JEROME YOKIEL, an individual; SARA
GULLICKSON, an individual; CHASE
HERSCHMAN, an individual; DOE INDIVIDUALS I
through X, and ROE BUSINESS ENTITIES XI through
XX, inclusive,

Defendants.

**DEFENDANT SNOWELL HOLDINGS, LLC'S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS PURSUANT TO RULE 12(b)(2)**

COMES NOW, Defendant SNOWELL HOLDINGS, LLC by and through its attorneys of
record, MESSNER REEVES LLP, and hereby files this Reply to Plaintiffs' Opposition to its Motion
to Dismiss Pursuant to Rule 12(b)(2).

DATED this 20th day of January, 2021.

MESSNER REEVES LLP

/s/ Candace C. Herling, Esq.

CANDACE C. HERLING, ESQ.

Nevada Bar No. 13503

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Attorneys for Defendants

*Donald Burton, Larry Lemons and Snowell
Holdings, LLC*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Snowell Holdings, LLC (hereinafter referred to as "Snowell") moved for dismissal from the
case as it has insufficient contacts to support personal jurisdiction in Nevada. Plaintiffs' untimely

1 Opposition concedes that no general personal jurisdiction exists but asserts that the allegations in
2 the Amended Complaint are sufficient to establish specific personal jurisdiction over Snowell,
3 despite no supporting evidence. This is contrary to Nevada law, which requires a plaintiff to make
4 a *prima facie* showing of specific personal jurisdiction with evidence and goes beyond mere
5 allegations. As such, Snowell must be dismissed from the instant action and awarded its reasonable
6 attorneys' fees and costs.

7 **II.**

8 **ARGUMENT**

9 **A. Plaintiffs' Opposition is Untimely and Should be Stricken**

10 Under Eighth Judicial District Court Rule 2.20(e), "[f]ailure of the opposing party to serve and
11 file written opposition may be construed as an admission that the motion . . . is meritorious and a
12 consent to granting the same." In this case, the extended deadline for Plaintiffs' Opposition was
13 December 29, 2020. Plaintiffs did not file the Opposition until the night of January 18, 2021, less than
14 thirty-six (36) hours before the hearing on the instant Motion. Not only is Plaintiffs' Opposition
15 untimely, its late filing in the eleventh hour before the hearing prejudiced Snowell by forcing it to
16 prepare and file this Reply in just one (1) day. Thus, Plaintiffs' Opposition must be struck as untimely
17 and Snowell's Motion granted in its entirety.

18 **B. Plaintiffs Did Not Meet their Burden to Establish Personal Jurisdiction**

19 When personal jurisdiction is challenged, the plaintiff bears the burden of introducing
20 "competent evidence of essential facts which establish a prima facie showing that personal jurisdiction
21 exists." *Trump v. Eighth Jud. Dist. Ct., In and For the Cnty. of Clark*, 857 P.2d 740, 743 (Nev. 1993).
22 To satisfy this evidentiary burden, the plaintiff "must introduce some evidence and may not simply
23 rely on the allegations of the complaint to establish personal jurisdiction." *Id.* at 744; *see also Basic*
24 *Food Indus., Inc. v. Eighth Jud. Dist. Ct., In and For Clark Cnty.*, 575 P.2d 934, 936 (Nev. 1978). In
25 their Opposition, Plaintiffs admit that there is no general personal jurisdiction over Snowell, but assert
26 that specific personal jurisdiction exists. However, Plaintiffs provide no competent evidence, *as none*
27

1 *exists*, and instead rely solely on the allegations in their Amended Complaint. This does not meet their
2 evidentiary burden to make a *prima facie* showing that personal jurisdiction exists.

3 The crux of Plaintiffs' argument is that Snowell is "intermingled and engaged" with the other
4 Defendant entities and that Defendant Larry Lemons' (hereinafter referred to as "Lemons") ownership
5 interest in Defendant The Harvest Foundation, LLC (hereinafter referred to as "Harvest") may be
6 through Snowell. *See* Opposition at 2-3. Plaintiffs provide no support for these assertions beyond the
7 allegations in the Amended Complaint and have thus failed to meet their evidentiary burden under
8 Nevada law. *See Trump*, 857 P.2d at 743. Moreover, Plaintiffs' unsupported assertions directly
9 contradict the declaration by Lemons establishing that Snowell is an Ohio entity that does no business
10 in Nevada, does not advertise or solicit business in Nevada, does not hold itself out as conducting
11 business in Nevada, has not sent any representatives to Nevada, has no ownership in any Defendant
12 entities, including Harvest, and was not involved in the alleged facts underlying this lawsuit. *See*
13 Lemons Decl., Ex. A to the Snowell's Motion to Dismiss, ¶¶5-14.

14 Further, Plaintiffs apparently recognize that they have not met their evidentiary burden and
15 assert that the nature of their claims for "conspiracy" prevents them from sufficiently articulating the
16 basis for specific personal jurisdiction over Snowell without discovery. *See* Opposition at 3. Neither
17 due process nor Nevada law excuses or delays a plaintiff's burden to establish specific personal
18 jurisdiction for certain claims. It is unsurprising that Plaintiffs cite no law supporting this argument.
19 *See* Opposition at 3.

20 As Plaintiffs admit there is no general personal jurisdiction over Snowell and have failed to
21 meet their burden to produce competent evidence to establish a *prima facie* showing of specific
22 personal jurisdiction, Snowell must be dismissed from this case.

23 **III.**

24 **CONCLUSION**

25 Plaintiffs failed to timely file an Opposition. As such, this Honorable may grant Snowell's
26 Motion to Dismiss based upon the same. Even if considered on the merits, Plaintiffs' Opposition
27

1 failed to establish any competent evidence to make a *prima facie* showing of personal jurisdiction over
2 Snowell. Thus, this Honorable Court should dismiss Snowell from this case and award Snowell its
3 reasonable attorneys' fees and costs incurred in seeking this dismissal.

4 DATED this 20th day of January, 2021.

5 MESSNER REEVES LLP

6
7 /s/ Candace C. Herling, Esq.

8
9 CANDACE C. HERLING, ESQ.

10 Nevada Bar No. 13503

11 8945 West Russell Road, Suite 300

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15 E-mail: dmortensen@messner.com

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17 Attorneys for Defendants

18 Donald Burton, Larry Lemons and
19 Snowell Holdings, LLC

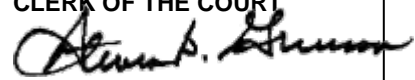
1 **CERTIFICATE OF SERVICE**

2 On this 20th day of January, 2021, pursuant to Administrative Order 14-2 and Rule 9 of the
3 NEFCR, I caused the foregoing **DEFENDANT SNOWELL HOLDINGS, LLC'S REPLY IN**
4 **SUPPORT OF ITS MOTION TO DISMISS PURSUANT TO RULE 12(b)(2)** to be transmitted
5 to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of
6 the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report
7 reported service as complete and a copy of the service transmission report will be maintained with
8 the document(s) in this office.

9
10 Lee I. Iglody, Esq.
11 2580 St Rose Pkwy., Suite 350
12 Henderson, Nevada 89074
13 Tel: (702) 425-5366
Email: Lee@Iglody.com
Attorney for Plaintiffs

All parties registered through the Court's e-file system.

14
15 /s/ Candace C. Herling
16 Employee of MESSNER REEVES LLP
17
18
19
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26
27
28



1 **OMD**

2 Lee I. Iglody, Esq.
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5 Henderson, Nevada 89074
6 Tel: (702) 425-5366
7 Email: Lee@Iglody.com
8 *Attorney for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

9 JDD, LLC, a Nevada limited liability company; TCS
10 Partners, LLC, a Nevada limited liability company;
11 JOHN SAUNDERS, an individual; and TREVOR
12 SCHMIDT, an individual

13 Plaintiffs,

14 vs.

15 MARIMED INC. f/k/a Worlds Online, Inc., a
16 Delaware corporation; ITEM 9 LABS CORP. f/k/a
17 Airware Labs Corp. and Crown Dynamics Corp., a
18 Delaware corporation; ITEM 9 PROPERTIES LLC, a
19 Nevada limited liability company; THE HARVEST
20 FOUNDATION LLC f/k/a, a Nevada limited liability
21 company a/k/a THE HARVEST FOUNDATION,
22 LLC; STRIVE MANAGEMENT L.L.C. d/b/a Strive
23 Life, a Nevada limited liability company; STRIVE
24 WELLNESS OF NEVADA, LLC d/b/a Strive Life, a
25 Nevada limited liability company; STRIVE
26 WELLNESS OF NEVADA 2 L.L.C. d/b/a Strive
27 Life, a Nevada limited liability company; VIRIDIS
28 GROUP I9 CAPITAL, LLC, an Arizona limited
liability company; VIRIDIS GROUP HOLDINGS,
LLC, an Arizona limited liability company;
SNOWELL HOLDINGS, LLC, an Ohio limited
liability company; ROBERT FIREMAN, an
individual; JON LEVINE, an individual; ANDREW
BOWDEN, an individual; DOUGLAS BOWDEN, an
individual; BRYCE SKALLA, an individual;
JEFFREY RASSAS, an individual; DONALD
BURTON, an individual; LARRY LEMONS, an
individual; JEFFREY YOKIEL, an individual;
JEROME YOKIEL, an individual; SARA
GULLICKSON, an individual; CHASE
HERSCHMAN, an individual; DOE INDIVIDUALS
I through X, and ROE BUSINESS ENTITIES XI
through XX, inclusive,

Defendants.

CASE NO.: A-20-811232-B

DEPT. NO.: XVI

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS ITEM 9 LABS CORP.,
ITEM 9 PROPERTIES, LLC, STRIVE
MANAGEMENT, L.L.C., VIDRIS
GROUP I9 CAPITAL, LLC, VIDRIS
GROUP HOLDINGS, LLC, ANDREW
BOWDEN, DOUGLAS BOWDEN,
BRYCE SKALLA, JEFFREY
RASSAS, AND CHASE
HERSCHMAN'S MOTION TO
DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF
CAN BE GRANTED AND LACK OF
PERSONAL JURISDICTION**

Hearing date: February 24, 2021

Hearing time: 1:15 a.m.

PA_0134

1 Plaintiffs, JDD, LLC; TCS Partners, LLC; JOHN SAUNDERS; and TREVOR SCHMIDT,
2 by and through undersigned counsel, hereby opposes the Motion to Dismiss filed by Defendants
3 Item 9 Labs Corp.; Item 9 Properties, LLC; Strive Management, L.L.C.; Vidris Group I9 Capital,
4 LLC; Vidris Group Holdings, LLC; Andrew Bowden; Douglas Bowden; Bryce Skalla; Jeffrey
5 Rassas; and Chase Herschman (collectively the “Item 9 Defendants”).

6 MEMORANDUM

7 **I. INTRODUCTION**

8 Plaintiffs allege that, between them, they invested nearly \$1 million in Defendant Harvest
9 Foundation LLC (“Harvest”), a Nevada marijuana business, and obtained a collective 19.8%
10 ownership interest in the company. Plaintiffs also allege that Harvest’s managing members,
11 Defendants Donald Burton and Larry Lemons, ignored Plaintiffs’ investment and ownership, and
12 sold the company to Defendant MariMed Inc. without obtaining Plaintiffs’ consent or
13 compensating Plaintiffs for the loss of their ownership interests.

14 In addition, Plaintiffs allege that Burton and Lemons are also members of other companies
15 engaged in the marijuana business in Nevada, including Strive Management, in violation of their
16 fiduciary duties to Plaintiffs, as members of Harvest, and of Plaintiffs’ contractual rights. Plaintiffs
17 allege that Burton and Lemon (through Strive Management) violated their duties to Plaintiffs by
18 entering an agreement under which the Item 9 Defendants invested in Strive Management.

19 Plaintiffs have alleged that the Item 9 Defendants were knowing participants in Burton and
20 Lemons’s scheme to deprive Plaintiffs of their ownership interests and of opportunities to which
21 they were entitled as members of Harvest. Plaintiffs have therefore brought several claims against
22 the Item 9 Defendants, including (among others) claims for civil conspiracy and aiding and
23 abetting breaches of fiduciary duty.

24 Those claims have merit, and (except as noted below) the Item 9 Defendants’ motion to
25 dismiss them should be denied.
26
27
28

1 **II. FACTUAL BACKGROUND**

2 **The TCS Agreement**

3 In or about the beginning of 2015, Plaintiff Trevor Schmidt learned of Harvest—a Clark
4 County, Nevada, limited liability company that holds a special use permit and two licenses for
5 recreational and medical cannabis cultivation—and met two of its owners and officers, Donald
6 Burton and Larry Lemons. First Amended Complaint (“Compl.”) ¶¶ 8, 15-16, 32. Schmidt then
7 toured the Harvest facility and expressed interest in investing in its operations and becoming part
8 of the company. *Id.* ¶ 33.

10 On or about January 22, 2015, after negotiations with Burton and Lemon, Schmidt, as the
11 managing member of Plaintiff TCS Partners, LLC (“TCS”), entered into a Membership Interest
12 Sales Agreement (“TCS Agreement”) with Burton and Lemons, who were acting as officers of
13 Harvest. *Id.* ¶ 34. A true and accurate copy of the TCS Agreement is attached to Plaintiffs’ First
14 Amended Complaint as Exhibit 1. *Id.* ¶ 36 & Ex. 1.

16 Under Section 1 of the TCS Agreement, Burton and Lemons agreed to transfer 9.9% of the
17 total membership interests in Harvest to Schmidt in exchange for Schmidt’s payment of
18 \$371,250.00. *Id.* ¶ 35. Section 1 of the TCS Agreement stated that, upon the transfer of the 9.9%
19 interest to TCS, the other members of Harvest would retain the following percentages of the total
20 ownership interests: Burton would own 25.05%; Lemons would own 25.05%; Jeffrey Yokiell
21 would own 30%; and Jerome Yokiell would own 10%. *Id.* ¶ 36 & Ex. 1 at 1.

23 Additionally, under Section 4 of the TCS Agreement, Burton and Lemons, as officers of
24 Harvest, agreed that there would be no additional transfer of any equity or membership interest in
25 Harvest for a period of twelve months, to prevent TCS’s 9.9% membership from being diluted. *Id.*
26 ¶ 37. Further, under Sections 5 and 6 of the TCS Agreement, TCS would be entitled to a pro rata
27 share of any distributions of profits and would have the right to vote as a member of Harvest
28 pursuant to Harvest’s operating agreement. *Id.* ¶ 38 & Ex. 1 at 2.

1 Also, Burton and Lemons reaffirmed that they would continue as Harvest's CEO and
2 COO, respectively, and as managing members. *Id.* Finally, under Section 8 of the TCS
3 Agreement, Harvest's operating agreement and all other governing documents were to be revised
4 to reflect TCS's 9.9% membership interest, with a copy of the TCS Agreement to be attached
5 thereto. *Id.* ¶ 39 & Ex. 1 at 2.

6 On or about January 22, 2015, TCS performed all of its obligations under the TCS
7 Agreement by wiring the full \$371,250.00 to Harvest. *Id.* ¶ 40.

9 **The JDD Agreement**

10 In or about 2016, Plaintiff John Saunders learned of Harvest and expressed interest in
11 becoming part of the company to Burton, Lemons, and Schmidt. *Id.* ¶ 41. In or about 2016, as
12 managing member of Plaintiff JDD, LLC, Saunders entered into an agreement with Burton and
13 Lemons, acting in their respective capacities as CEO and COO of Harvest and as members of
14 Harvest, to purchase 9.9% of the Harvest membership interests (the "JDD Agreement"). *Id.* ¶ 42.
15 Although this deal was not memorialized in a fully integrated writing like the TCS Agreement,
16 Saunders engaged in a series of negotiations with Burton and Lemons—via text, emails, and other
17 documents—to purchase his 9.9% interest, and all members of Harvest approved or otherwise
18 ratified the JDD Agreement. *Id.* ¶¶ 43-45.

19 Under the JDD Agreement, JDD agreed to pay \$370,000.00 to Harvest for 9.9% of the
20 total membership interests in Harvest, and, like TCS, JDD was expressly granted the rights to vote
21 and receive distributions. *Id.* ¶ 46. Moreover, under the JDD Agreement, Saunders was appointed
22 as Harvest's Chief Financial Officer, was to be paid an annual salary of \$70,000.00, and was to be
23 given an active role in Harvest's operations. *Id.* ¶ 47.

24 As with the TCS Agreement, the JDD Agreement required Harvest's other members,
25 except TCS, to transfer portions of their own respective membership interests to JDD. *Id.* ¶ 48.
26 Thus, the new distribution of membership interests was to be:
27
28

- Burton would own 24.1%;
- Lemons (either individually or through Snowell Holdings, LLC) would own 24.1%;
- Jeffrey Yokiell would own 22%;
- Jerome Yokiell would own 10%;
- TCS would own 9.9%; and
- JDD would own 9.9%.

Id. ¶ 49.

Moreover, as part of the JDD Agreement, TCS and JDD's interests were to remain undiluted by any future sale or transfer of interests by other members. *Id.* ¶ 50. In fact, TCS and JDD retained a right of first refusal to purchase any of the other Harvest members' ownership interests, if any owner proposed the sale or transfer of his or her respective membership interests.

Id. ¶ 51.

Also, as part (the "Exclusive Authorizations Rights") of the JDD Agreement, Burton and Lemons (acting as CEO and COO of Harvest, respectively) agreed that Harvest would not sell any of Harvest's assets, including its licenses, or make any additional marijuana deal regarding Harvest's operations in Nevada, without the express prior written authorization of both JDD and TCS. *Id.* ¶ 52. Finally, TCS and JDD were to receive a pro rata share of any cash distributions that Harvest would make to its members, as the JDD Agreement closely mirrored the terms of the TCS agreement. *Id.* ¶ 53.

Burton, Lemons, Jeffrey Yokiell, and Harvest agreed to all terms of the JDD Agreement and also agreed that Harvest's operating agreement would be amended to reflect TCS's and JDD's respective 9.9% ownership interests (totaling 19.8%). *Id.* ¶ 54. Defendant Jerome Yokiell, Harvest's other member, also ratified or otherwise accepted the JDD Agreement. *Id.* ¶¶ 17, 55.

1 On or about May 6, 2016, JDD made a partial payment of \$200,000.00 to Harvest under
2 the JDD Agreement. *Id.* ¶ 56. On or about June 17, 2016, JDD paid the remaining \$170,000 to
3 Harvest, as the JDD Agreement required. *Id.* ¶ 57.

4 **Plaintiffs' Exclusion from Harvest**

5 Initially, Burton and Lemons actively involved Plaintiffs in drafting an amended operating
6 agreement for Harvest and kept Plaintiffs apprised of Harvest's operations. *Id.* ¶ 60. In fact, in or
7 around 2016, Saunders attended the Third Annual Marijuana Business and Conference Expo (the
8 "2016 Conference") in Las Vegas with Burton and Lemons. *Id.* ¶¶ 61, 89.

10 At the 2016 Conference, Saunders met Defendants Fireman and Levine, who were the
11 CEO and CFO, respectively, of Defendant MariMed, and informed them directly that Saunders
12 and Schmidt owned nearly 20 percent of the membership interests in Harvest. *Id.* ¶ 62. Saunders
13 informed Fireman and Levine that he was the CFO and a member of Harvest. *Id.* ¶ 63.

15 In or about mid-2016, Burton and Lemons became less responsive and more
16 confrontational with regard to the proposed amended Harvest operating agreement. *Id.* ¶ 64. Then
17 Burton and Lemons began excluding Plaintiffs from Harvest's business operations altogether. *Id.* ¶
18 65. Specifically, Saunders attempted to participate in Harvest's operations as CFO, but Burton and
19 Lemons repeatedly excluded him. *Id.* at ¶ 66. Additionally, Burton and Lemons refused Plaintiffs'
20 multiple requests to review Harvest's books and records, in violation of both Harvest's operating
21 agreement and NRS 86.241, claiming that the books and records were not "ready" for review. *Id.* ¶
22 67.

24 In or around 2017, after several unsuccessful attempts to reconcile with Burton and
25 Lemons and to participate in the operations of the business, Plaintiffs demanded that Harvest buy
26 out their entire membership interests. *Id.* ¶ 68. For several months afterward, Burton and Lemons
27 claimed to be working on a plan to do so—but they never provided any concrete plan. *Id.* ¶ 69.

1 Although Plaintiffs were frustrated by Burton and Lemons's unfulfilled promises, they
2 nonetheless continued to attempt to amicably resolve the dispute without resorting to litigation. *Id.*
3 ¶ 70. In or about the beginning of 2018, however, Burton and Lemons became unresponsive to
4 Plaintiffs' requests. *Id.* ¶ 71.

5 In or about 2018, Plaintiffs began to suspect that Defendants were deliberately concealing
6 Harvest's financial situation from Plaintiffs, and that Harvest might lack the means to buy out
7 their membership interests. *Id.* ¶ 72. Plaintiffs renewed their demand for Harvest's books and
8 records, and in or about August of 2018, Burton finally resumed communications with Plaintiffs
9 and told them that the books and records were "ready" for review and that their buyout requests
10 had been "submitted." *Id.* ¶¶ 73-74.

12 After months of difficulty in arranging the inspection, Saunders finally was given access to
13 Harvest's books and records—and discovered that Harvest had *failed to keep any books and*
14 *records since its inception.* *Id.* ¶¶ 75-78. And Harvest's bookkeeper revealed that all of Harvest's
15 transactions had been conducted with cash, with Burton and Lemons personally removing it from
16 and depositing it in a safe box in the office. *Id.* ¶ 79.

18 After that, Saunders worked with Harvest's office manager to implement proper financial
19 records. *Id.* ¶ 80. For the next several months, Saunders continued to attempt to fulfill his role as
20 CFO and to assist in the business's operations while awaiting his buyout, but Burton and Lemons
21 refused to respond to his calls and emails. *Id.* ¶ 81.

23 Finally, in or around September 2019, and in response to Saunders's request for his 2018
24 K-1 and a demand for the buyout to be finalized, Lemons asked to set up a phone call. *Id.* ¶ 82.
25 But Lemons then failed to answer his phone and continued to evade Saunders's calls and emails.
26 *Id.* ¶ 83.

27 **Conspiracy with MariMed**

28 While Saunders was attempting to exercise his rights, act as CFO, and get Harvest's

1 financial records in order, Defendants were secretly selling his and Schmidt's interests in Harvest
2 without their consent.

3 In or about December 2019, Plaintiffs received a copy of a Membership Interest Purchase
4 Agreement entered into between Burton, Lemons, Jeffrey Yokiell, and MariMed (the "MariMed
5 Purchase Agreement"), which had been executed on August 8, 2019. *Id.* ¶ 85. A true and accurate
6 copy of that agreement is attached to the First Amended Complaint as Exhibit 2. *Id.* ¶ 85 & Ex. 2.
7

8 The MariMed Purchase Agreement falsely stated that Burton, Lemons, and Jeffrey were
9 the only members of Harvest (with ownership interests of 34.5%, 34.5%, and 31%, respectively)
10 and that these three individuals owned 100% of the membership interests in Harvest. *Id.* ¶¶ 86-87
11 & Ex. 2 at 1. MariMed agreed to pay \$1,200,000 in MariMed's common stock to purportedly
12 purchase 100% of the membership interests of Harvest. *Id.* ¶ 86 & Ex. 2 at 1.
13

14 MariMed entered this agreement even though Fireman and Levine (MariMed's CEO and
15 CFO, respectively) had actual knowledge of Plaintiffs' ownership interests, which they had been
16 informed of when they met with Saunders, Burton, and Lemons at the 2016 Conference. *Id.* ¶¶ 88-
17 89.

18 **Conspiracy with the Item 9 Defendants**

19 Burton and Lemons, along with Defendant Sara Gullickson, are also managing members of
20 Strive Management and Strive Wellness 2. *Id.* ¶ 94. Burton and Gullickson are additionally
21 managing members of Strive Wellness. *Id.* ¶ 95. Strive Wellness is a Nevada company that has a
22 special use permit and two licenses for production and cultivation of medical cannabis. *Id.* ¶ 10.
23 Strive Management, also a Nevada company, is Strive Wellness's management arm. *Id.* ¶ 9.
24

25 On or about September 12, 2018, Strive Management received a \$1.5 million capital
26 contribution from the Item 9 Defendants through the "Item 9 Agreements." *Id.* ¶ 99. In exchange
27 for this capital contribution, some or all of the Item 9 Defendants received 20% membership
28 interests in Strive Management, with Burton, Lemons, and Gullickson holding the remaining

1 ownership. *Id.* ¶ 103. Defendants Vidris Capital, Vidris Holdings, Andrew, and Douglas will also
2 receive waterfall revenue participation. *Id.* ¶ 104.

3 The Item 9 Agreements were in direct violation of Plaintiffs’ Exclusive Authorization
4 Rights. *Id.* ¶ 100. Item 9 Labs’s most recent 10K filing with the SEC, dated January 14, 2020,
5 acknowledged the breach of Plaintiffs’ Exclusive Authorization Rights by describing an Item 9
6 Labs and Harvest joint venture in Nevada. *Id.* ¶ 104.

8 **III. LEGAL STANDARD**

9 **A. Personal Jurisdiction**

10 For the Court to exercise jurisdiction over a non-resident defendant, “a plaintiff must
11 show: (1) that the requirements of the state’s long-arm statute have been satisfied, and (2) that due
12 process is not offended by the exercise of jurisdiction.” *Arbella Mut. Ins. Co. v. Eighth Judicial*
13 *Dist. Court*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006). For the Court to exercise specific
14 personal jurisdiction under these criteria, the defendant must have “purposely “purposefully
15 avail[ed] himself of the privilege of serving the market in the forum or of enjoying the protection
16 of the laws of the forum,” or must have “purposefully establish[ed] contacts with ... and
17 affirmatively direct[ed] conduct toward the forum state.” *Id.* at 513, 712-13. In considering
18 challenges to personal jurisdiction, the Court must resolve factual disputes in the plaintiffs’ favor.
19 *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014).

22 **B. Motion to Dismiss for Failure to State a Claim**

23 A complaint must include “a short and plain statement of [any] claim showing that the
24 pleader is entitled to relief.” NRCP 8(a)(2). Nevada courts construe complaints liberally to “place
25 into issue matters which are fairly noticed to the adverse party.” *W. States Constr., Inc. v. Michoff*,
26 108 Nev. 931, 936, 804 P.2d 1220, 1223 (1992).

27 A “complaint cannot be dismissed for failure to state a claim unless it appears beyond a
28 doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would

entitle him to relief.” *Washoe Med. Center, Inc. v. Reliance Ins. Co.*, 112 Nev. 494, 496, 915 P.2d 288, 289 (1996). The Court “must construe the pleadings liberally and accept all factual allegations in the complaint as true.” *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). Also, the Court “must draw every fair inference in favor of the non-moving party.” *Id.*

IV. ARGUMENT

A. This Court Has Jurisdiction Over the Non-Resident Defendants

Defendants allege that this Court lacks personal jurisdiction over some of the Item 9 Defendants who are not Nevada residents—namely, Vidris Capital, Vidris Holdings, Andrew Bowden, Douglas Bowden, Jeffrey Rassas, and Bryce Skalla. Defendants do *not* deny that the Court has personal jurisdiction over the other Item 9 Defendants: Item 9 Labs, Item 9 Properties, Strive Management, and Chase Herschman.

Plaintiffs do not object to dismissal of all of the individual Item 9 Plaintiffs *without prejudice*, which renders any arguments about the Court’s jurisdiction over the individual non-resident Defendants moot. Thus, the only Item 9 Defendants over whom there is a jurisdictional dispute are Vidris Capital and Vidris Holdings (the “Vidris Defendants”). This Court has specific jurisdiction over both companies.

1. The Court has specific jurisdiction over the Vidris Defendants because they have availed themselves of the financial benefits of doing business in Nevada.

This Court has specific jurisdiction over the Vidris Defendants because the two companies engaged in transactions directed at companies in Nevada and availed themselves of the financial benefits of doing business in Nevada, and Plaintiffs’ claims arise out of those actions. *Arbella*, 122 Nev. at 512, 134 P.3d at 712-14.

Plaintiffs allege that: (1) the Vidris Defendants (together with other Item 9 Defendants) made a \$1.5 million capital contribution to a Nevada limited liability company, Strive

1 Management, *id.* ¶ 99; (2) this capital was based on a total investment of \$2.7 million from the
2 Vidris Defendants under a revenue participation agreement, *id.* ¶ 101; (3) the Vidris Defendants
3 (together with other Item 9 Defendants) purchased 20 percent of the membership interests in
4 Strive Management, *id.* ¶ 102; and (4) the Vidris Defendants and associated individuals will
5 receive waterfall revenue participation, including 5% of Item 9 Labs’s gross revenue from Nevada
6 operations and scaling down to a lower percentage in perpetuity, *id.* ¶ 104.

7
8 Defendants assert that Plaintiffs’ complaint “does not arise out of any purposeful contact or
9 activities by the Non-Resident Defendants within the State of Nevada,” MTD 9, but that is not
10 true. Plaintiffs specifically allege that the Vidris Defendants made capital contributions, obtained
11 ownership interests in, and have revenue participation in, a Nevada limited liability company
12 doing business in Nevada. Thus, the Vidris Defendants have engaged in transactions directed at a
13 Nevada company and availed themselves of the financial benefits of doing business in Nevada,
14 and this Court has specific jurisdiction over them for that reason.

15
16 **2. The Court has specific jurisdiction over the Vidris Defendants**
17 **because they affirmatively directed tortious conduct at**
Nevada residents.

18 Specific jurisdiction is also established where, as here: (1) a defendant establishes contacts
19 with or affirmatively directs conduct toward the forum state; and (2) the cause of action arises
20 from that purposeful contact with the form or conduct targeting the forum. *Arbella*, 122 Nev. at
21 515-16, 134 P.3d at 713. The Vidris Defendants are subject to this Court’s jurisdiction because
22 they committed tortious activity directed at Plaintiffs, who are two Nevada residents and two
23 Nevada limited liability companies.

24
25 Plaintiffs allege that, by entering into the Item 9 Agreements (Compl. ¶¶ 99-104), the
26 Vidris Defendants participated in a civil conspiracy to harm Plaintiffs (*id.* ¶¶ 182-88) and aided
27 and abetted Burton’s and Lemons’s breaches of their fiduciary duties to Plaintiffs (*id.* ¶¶ 193-99).

1 Thus, the Vidris Defendants were parties to and therefore directly involved with
2 transactions that underlie Plaintiffs' claims for civil conspiracy and aiding and abetting breaches
3 of fiduciary duty.

4 These activities support this Court's jurisdiction over the Vidris Defendants. *Viega*, 130
5 Nev. at 375, 328 P.3d at 1157 ("Specific personal jurisdiction arises when the defendant ...
6 establishes contacts in the forum and affirmatively directs conduct there, and the claims arise from
7 that purposeful contact or conduct."); *see also Consipio Holding, BV v. Carlberg*, 128 Nev. 454,
8 282 P.3d 751, 755 (2012) (noting that corporate officers and directors who "purposefully directing
9 harm towards a Nevada citizen ... establish contacts with Nevada and 'affirmatively direct[]
10 conduct' toward Nevada" and that "officers or directors 'caus[e] important consequences' in
11 Nevada when they directly harm a Nevada corporation").

12
13 **3. The Court has specific jurisdiction over the Vidris Defendants**
14 **because they engaged in a conspiracy to harm Nevada residents.**

15 The Court also has specific personal jurisdiction over the Vidris Defendants because they
16 engaged in a conspiracy directed at Nevada residents. Conspiracy allegations can support personal
17 jurisdiction over a defendant if "the co-conspirators could have reasonably expected at the time of
18 entering into the conspiracy that their actions would have consequences in the forum state."
19 *Tricarichi v. Cooperative Rabobank, U.A.*, 440 P.3d 645, 654, 135 Nev. 87, 97 (2019).

20
21 Again, Plaintiffs have alleged facts to establish that—by entering into the Item 9
22 Agreements with actual or constructive knowledge of Plaintiffs' rights—the Vidris Defendants
23 engaged in a conspiracy with other Defendants to harm Plaintiffs, who are Nevada residents and
24 Nevada limited liability companies. Of course the Vidris Defendants would have reasonably
25 expected these actions to have consequences in Nevada: they made a capital contribution to a
26 Nevada business, obtained ownership interests in a Nevada business, and are or will be sharing in
27 revenue from a Nevada business, all to the detriment of Plaintiffs, who are Nevada residents and
28

1 companies. This provides a third basis for the Court’s personal jurisdiction over the Vidris
2 Defendants.²

3 **B. Plaintiffs Have Standing, and There is a Justiciable Controversy**

4 Like MariMed in its motion to dismiss, the Item 9 Defendants contend that the Plaintiffs
5 lack standing because the State of Nevada has not approved their membership interests in Harvest.
6 MTD 10-11. In response, Plaintiffs incorporate by reference their argument on this issue in their
7 response to MariMed’s motion to dismiss. Opposition to MTD 8-9.

9 **C. Alter Ego**

10 Plaintiffs do not oppose dismissal of this claim for relief *without prejudice* as to the
11 moving Defendant.

12 **D. Plaintiffs Have Pleaded a Viable Unjust Enrichment Claim**

13 Plaintiffs have stated a claim for unjust enrichment against the Item 9 Defendants. The
14 Nevada Supreme Court has defined unjust enrichment as “the unjust retention of a benefit to the
15 loss of another, or the retention of money or property of another against the fundamental
16 principles of justice or equity and good conscience.” *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 856,
17 839 P.2d 606, 613 (1992).

19 In this case, the Plaintiffs transferred hundreds of thousands of dollars to Defendants
20 Burton and Lemons in 2015 and 2016, money that undoubtedly helped Harvest continue its
21 operations and grow into an attractive investment opportunity for MariMed. Thus, the Plaintiffs’
22 investment in Harvest conferred a benefit on all Defendants, who by way of their intermingled
23 business interests collectively benefited from the MariMed transaction. Their retention of this
24 benefit (and non-compensation for) would be unjust.

27 ² If the Court were to conclude that Plaintiffs have not presented sufficient evidence of the Vidris Defendants’ conduct
28 directed toward Nevada and Nevada residents, Plaintiffs would respectfully request that the Court defer ruling on the
Vidris Defendants’ jurisdictional challenge until the parties have had an opportunity to complete jurisdictional
discovery.

1 The Item 9 Defendants argue that Plaintiffs cannot bring a claim for unjust enrichment
2 because “to the extent Plaintiffs allege that the Moving Defendants accepted a benefit as a result
3 of the Item 9 Agreements – which Plaintiffs were not parties to – the unjust enrichment claim fails
4 based on the existence of a written contract.” MTD 14. But Plaintiffs’ unjust enrichment claim
5 would fail as to the Item 9 Defendants only if Plaintiffs had a written contract with the Item 9
6 Defendants. *See Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747,
7 755, 942 P.2d 182 (1997) (“An action based on a theory of unjust enrichment is not available
8 when there is an express, written contract, because no agreement can be implied when there is an
9 express agreement.”). Neither Plaintiffs nor Defendants make that allegation.

11 Defendants’ argument for dismissal of Plaintiffs’ unjust enrichment claim is moot with
12 respect to the individual Defendants because Plaintiffs do not object to dismissal of all of the
13 individual Plaintiffs *without prejudice*.

14 **E. Civil Conspiracy Claim**

15 Plaintiffs have stated a claim for civil conspiracy against the Item 9 Defendants.

17 A cause of action for civil conspiracy exists where there is “a combination of two or more
18 persons who, by some concerted action, intend to accomplish an unlawful objective for the
19 purpose of harming another, and damage results from the act or acts.” *Sutherland v. Gross*, 105
20 Nev. 192, 196, 772 P.2d 1287, 1290 (1989). To succeed on a civil conspiracy claim, a plaintiff
21 must prove an explicit or tacit agreement between the alleged conspirators. *Dow Chem. Co. v.*
22 *Mahlum*, 114 Nev. 1468, 1489, 970 P.2d 98, 112 (1998).

24 Here, Plaintiffs have alleged that the Item 9 Defendants conspired with the other
25 Defendants to enter the Item 9 Agreements despite their actual or constructive knowledge that, by
26 entering the Item 9 Agreements, Defendants Burton and Lemons (through Strive Management, of
27 which they were members) were violating Plaintiffs’ Equal Authorization Rights and breaching
28 their fiduciary duties to Plaintiffs. Compl. ¶¶ 93-108, 182-88, 193-94. Plaintiffs have therefore

1 alleged what they must to state a claim for civil conspiracy against all Defendants, including the
2 Item 9 Defendants

3 In arguing for dismissal of this claim, the Item 9 Defendants assert that Plaintiffs do “not
4 allege that any of the [Item 9] Defendants even knew or should have known of Plaintiffs or
5 Plaintiffs’ alleged agreements with Lemons, Burton, and/or [Harvest].” MTD 15. In fact, Plaintiffs
6 have alleged exactly that. Compl. ¶ 98.

7
8 Defendants’ argument for dismissal of Plaintiffs’ civil conspiracy claim with respect to the
9 individual Defendants is moot because Plaintiffs do not object to dismissal of all of the individual
10 Plaintiffs without prejudice.

11 **F. Aiding & Abetting Breach of Fiduciary Duty**

12 Plaintiffs have stated a viable claim against the Item 9 Defendants for aiding and abetting a
13 breach of fiduciary duty. A third party is liable for aiding and abetting a breach of fiduciary duty
14 where “(1) a fiduciary relationship exists, (2) the fiduciary breached the fiduciary relationship, (3)
15 the third party knowingly participated in the breach, and (4) the breach of the fiduciary
16 relationship resulted in damages.” *Kahn v. Dodds*, 127 Nev. 196, 225, 252 P.3d 681, 701-702
17 (2011).

18
19 Here, the Item 9 Defendants do not dispute that the Plaintiffs have alleged the first, second,
20 and fourth elements: Plaintiffs have alleged that Defendants Burton and Lemons owed fiduciary
21 duties to Plaintiffs pursuant to their contractual agreements; that Burton and Lemons breached
22 their fiduciary duties by (among other things) appropriating for their own use an opportunity that
23 belonged to Harvest and its members, including Plaintiffs; and that Plaintiffs suffered damages as
24 a result. Compl. ¶¶ 156-67.

25
26 And Plaintiffs have also alleged the third element: the third party’s knowing participation
27 in the breach of fiduciary duty. *Kahn*, 127 Nev. at 225, 252 P.3d at 701-02. Plaintiffs specifically
28 allege that “[e]ach Defendant ... knowingly participated in or facilitated these breaches.” Compl.

¶ 196. Plaintiffs have supported this allegation by further alleging that all of the named Defendants “had actual or constructive knowledge of Plaintiffs’ membership interests and the associated Exclusive Authorization rights.” *Id.* ¶ 98.

To argue that Plaintiffs’ allegations are insufficiently specific, Defendants (MTD 16) quote a Delaware Chancery Court case that stated that there “must be factual allegations in the complaint from which knowing participation can be reasonably inferred.” *In re Gen. Motors (Hughes) S’holder Litig.*, 2005 WL 1089021, *24 (Del. Ch. May 4, 2005), *aff’d* 897 A.2d 162 (Del. 2006). But Defendants avoid quoting the first part of that sentence, which states that “[a] claim of knowing participation *need not be pled with particularity.*” *Id.* (emphasis added). Here, Plaintiffs have alleged that Defendants knew of Plaintiffs’ ownership interests and Equal Authorizations Rights, which provides a basis to reasonably infer that Defendants knew that they were aiding and abetting Burton’s and Lemons’s breaches of their fiduciary duties when they entered the Item 9 Agreements.

Defendants’ argument for dismissal of Plaintiffs’ aiding-and-abetting claim is moot with respect to the individual Defendants because Plaintiffs do not object to dismissal of all of the individual Plaintiffs without prejudice.

G. Intentional Interference with Contract and Business Expectancy

Plaintiffs do not oppose dismissal of this claim for relief *without prejudice* as to the Item 9 Defendants only.

H. Plaintiffs are Entitled to Declaratory Relief

NRS 30.040 allows individuals to obtain a “declaration of rights, status or other legal relations” with respect to a contract or instrument, with NRS 30.030 stating that courts are the entities that provide such declarations. A party may obtain declaratory relief if “(1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial

determination.” *Cty. of Clark v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998). In this case, a justiciable controversy exists between Plaintiffs and Defendants, who collectively engaged in a series of interconnected transactions that erased Plaintiffs’ interest in Harvest and shut them out of the cannabis industry in Nevada. As such, the Plaintiffs clearly have an interest in this action at issue, which is also ripe for adjudication given the damages sustained.

I. Equitable Relief

Plaintiffs do not oppose dismissal of this claim for relief without prejudice as to the Item 9 Defendants only.

J. The Item 9 Defendants are Not Entitled to Attorney’s Fees

The Item 9 Defendants are not entitled to an award of attorney’s fees. The Item 9 Defendants assert that they are entitled to a fee award because, they say, Plaintiffs’ previous counsel initially agreed to their request that Plaintiffs dismiss their claims against them but later “revoked that agreement without any explanation or alteration of the facts alleged in the FAC.” MTD 19. The Item 9 Defendants say that, by initially agreeing to dismiss Plaintiffs’ claims against them, Plaintiffs’ former counsel “effectively admitted” that Plaintiffs’ claims the Item 9 Defendants are “not proper.” *Id.*

Of course an attorney’s informal “agreement” to dismiss a client’s claims without prejudice is not an admission that the claims lack merit. Even an *actual* dismissal without prejudice would have preserved Plaintiffs’ right to pursue their claims against the Item 9 Defendants later without the prior dismissal being held against them (i.e., *without prejudice*).

Further, in the absence of an actual settlement agreement signed by the Plaintiffs themselves, there was no “agreement” to dismiss the claims. Plaintiffs have no obligation to explain why they have chosen not to dismiss their claims, just as they have no obligation to explain or disclose any other aspect of their litigation strategy.

1 Moreover, any statements Plaintiffs' counsel allegedly made in response to Defendants'
2 request for dismissal would have been part of "compromise negotiations" and therefore would be
3 inadmissible as evidence regarding the merits of Plaintiffs' claims. NRS 48.105(1) ("Evidence of
4 conduct or statements made in compromise negotiations is ... not admissible.").

5 Defendants have cited no authority supporting their assertion that they are entitled to
6 attorney's fees under these circumstances. In the absence of evidence to show that Plaintiffs'
7 claims were unreasonable or brought to harass the Item 9 Defendants, the Court cannot award the
8 Item 9 Defendants fees under NRS 18.010. *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213, 234
9 (2009). The Court therefore should deny the Item 9 Defendants' request for fees.

10
11 DATED this 26th day of January, 2021.

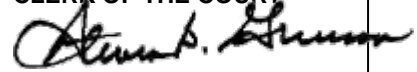
12 Respectfully submitted,

13 /s/ Lee Iglody
14 Lee I. Iglody, Esq.
15 *Attorney for Plaintiffs*

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on the 26th day of January, 2021, the foregoing **OPPOSITION TO**
18 **MOTION TO DISMISS** was served on the parties via electronic service through Odyssey
19 pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26.

20 /s/ Lee Iglody
21
22
23
24
25
26
27
28



1 **RIS**

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25 *Strive Management, LLC, Viridis Group I9 Capital, LLC, Viridis Group*
26 *Holdings, LLC, Andrew Bowden, Douglas Bowden, Bryce Skalla,*
Jeffrey Rassas, and Chase Herschman

DISTRICT COURT

CLARK COUNTY, NEVADA

JDD, LLC, et al.,

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP.
f/k/a Airware Labs Corp. and Crown Dynamics
Corp., a Delaware corporation; ITEM 9
PROPERTIES LLC, a Nevada limited liability
company; THE HARVEST FOUNDATION
LLC f/k/a, a Nevada limited liability company
a/k/a THE HARVEST FOUNDATION, LLC;
STRIVE MANAGEMENT L.L.C. d/b/a Strive

CASE NO. A-20-811232-C
DEPT. NO. XXVI

**DEFENDANTS ITEM 9 LABS CORP.,
VIRIDIS GROUP I9 CAPITAL LLC,
VIRIDIS GROUP HOLDINGS, LLC,
ANDREW BOWDEN, DOUGLAS
BOWDEN, BRYCE SKALLA, JEFFREY
RASSAS, AND CHASE HERSCHMAN'S
REPLY IN SUPPORT OF THEIR
MOTION TO DISMISS**

1 Life, a Nevada limited liability company;
2 STRIVE WELLNESS OF NEVADA, LLC
3 d/b/a Strive Life, a Nevada limited liability
4 company; STRIVE WELLNESS OF NEVADA
5 2 L.L.C. d/b/a Strive Life, a Nevada limited
6 liability company; VIRIDIS GROUP I9
7 CAPITAL, LLC, an Arizona limited liability
8 company; VIRIDIS GROUP HOLDINGS,
9 LLC, an Arizona limited liability company;
10 SNOWELL HOLDINGS, LLC, an Ohio
11 limited liability company; ROBERT
12 FIREMAN, an individual; JON LEVINE, an
13 individual; ANDREW BOWDEN, an
14 individual; DOUGLAS BOWDEN, an
15 individual; BRYCE SKALLA, an individual;
16 JEFFREY RASSAS, an individual; DONALD
17 BURTON, an individual; LARRY LEMONS,
18 an individual; JEFFREY YOKIEL, an
19 individual; JEROME YOKIEL, an individual;
20 SARA GULLICKSON, an individual; CHASE
21 HERSCHMAN, an individual; DOE
22 INDIVIDUALS I through X, and ROE
23 BUSINESS ENTITIES XI through XX,
24 inclusive,

Defendants.

Date of Hearing: February 24, 2021

Time of Hearing: 1:15 P.M.

15 Defendants Item 9 Labs Corp, Item 9 Properties, LLC, Strive Management L.L.C., Viridis
16 Group I9 Capital, LLC (“Viridis Capital”), Viridis Group Holdings, LLC (“Viridis Holdings”),
17 Andrew Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassas, and Chase Herschman
18 (collectively, “Moving Defendants”), submit this Reply in support of Moving Defendants’ Motion
19 to Dismiss Plaintiffs’ First Amended Complaint (the “Motion”).

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION.**

22 Plaintiffs’ First Amended Complaint (the “FAC”) asserted eight (8) implausible and absurd
23 claims for relief against the Moving Defendants, which ranged from conspiracy to aiding and
24 abetting breaches of fiduciary duty. Plaintiffs were informed early on that their claims were
25 meritless, which is why Plaintiffs initially agreed to dismiss each of their claims against the Moving
26 Defendants without prejudice in November 2020. Plaintiffs later inexplicably refused to dismiss

1 their claims against the Moving Defendants, forcing them to incur significant time and expense in
2 preparing and filing the Motion.

3 Plaintiffs' Opposition to the Motion (the "Opposition") affirms that the FAC should have
4 never been filed against the Moving Defendants in the first place and that it should have been
5 dismissed against them back in November 2020 – before the Moving Defendants were forced to
6 incur significant expense. Indeed, in the Opposition, Plaintiffs have now agreed to dismiss without
7 prejudice each of their claims against the Individual Defendants. Plaintiffs have also now agreed
8 to dismiss their claims for alter ego, intentional interference, and equitable relief, against each of
9 the Moving Defendants.

10 With respect to the handful of claims that remain against the Moving Defendants left in this
11 action, Plaintiffs' Opposition fails to identify any legitimate or persuasive reason why the Motion
12 should be denied. Among other things, Plaintiffs failed to satisfy their burden by offering evidence
13 to establish a *prima facie* showing of personal jurisdiction over Viridis Group and Viridis Capital
14 (the remaining non-resident Moving Defendants). Plaintiffs concede that their claims derive from
15 an alleged ownership interest in Defendant Harvest Foundation, but the Department has not
16 approved that ownership as required under N.A.C. § 453D. 315, which renders each claim in the
17 FAC pled against the Moving Defendants subject to dismissal. Plaintiffs failed to allege any
18 "benefit" allegedly received by or given to any of the Moving Defendants, as necessary to sustain
19 a claim for unjust enrichment. Plaintiffs failed to allege fundamental elements necessary to sustain
20 a conspiracy claim. Plaintiffs failed to allege a valid fiduciary relationship and the substantial
21 assistance elements of the aiding and abetting claim. Plaintiffs failed to identify a contract with the
22 Moving Defendants that could sustain the declaratory relief claim.

23 The Court should grant the Motion and dismiss the FAC in its entirety and with prejudice.
24 The Court should also award the Moving Defendants their attorneys' fees and costs.

25 **II. SUMMARY OF CLAIMS AND PARTIES DISMISSED.**

26 Plaintiffs have agreed to dismiss the following defendants and claims (Opp. at 10):

- All claims against each of the Individual Defendants (Defendants Andrew Bowden, Douglas Bowden, Jeffrey Rassas, Bryce Skalla, and Chase Herschman);
- The alter ego claim against all Moving Defendants, (FAC ¶¶ 189-192);
- The intentional interference against all Moving Defendants, (FAC ¶¶ 200-213); and
- The equitable relief claim against all Moving Defendants (FAC ¶¶ 214-222).¹

Accordingly, the only remaining claims and Moving Defendants are:

- Remaining Defendants: Item 9 Labs, Item 9 Properties, Strive Management, Viridis Capital, Viridis Holdings; and
- Remaining Claims: unjust enrichment (FAC ¶¶ 119-124), civil conspiracy (FAC ¶¶ 182-188), aiding and abetting breach of fiduciary duties (FAC ¶¶ 193-199), and declaratory relief (FAC ¶¶ 240-244).

III. PLAINTIFFS HAVE NOT ESTABLISHED PERSONAL JURISDICTION OVER THE REMAINING NON-RESIDENT DEFENDANTS.

The Individual Defendants, Viridis Capital, and Viridis Holdings moved to dismiss the FAC for lack of personal jurisdiction. Plaintiffs have agreed to dismiss their claims against the Individual Defendants, leaving only Viridis Capital and Viridis Holdings (collectively, “Viridis”) as the remaining non-resident defendants. As demonstrated below, this Court lacks personal jurisdiction over Viridis, and Plaintiffs failed to come forward with any evidence to rebut the testimony in the Viridis Declarations or otherwise support their allegations of personal jurisdiction.

A. Plaintiffs Have Not and Cannot Prove General Jurisdiction.

For general personal jurisdiction, Plaintiffs must prove that Viridis has “substantial” or “continuous and systematic” contacts with Nevada. *Easter v. Am. W. Fin.*, 381 F.3d 948, 960 (9th

¹ Although Plaintiffs concede only that the claims and defendants should be dismissed without prejudice, the Court should dismiss these claims and the Individual Moving Defendants *with prejudice*. As evidenced in the Motion and in this Reply, the Court lacks jurisdiction over them and the claims asserted against them are so far-fetched that any amendment would be futile. *See* Mot. at 12-13; *see also Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289 (App. 2015) (“[L]eave to amend, even if timely sought, need not be granted if the proposed amendment would be ‘futile.’ A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim, such as one which would not survive a motion to dismiss under NRCP 12(b)(5) . . .”).

1 Cir. 2004). The standard is high, and requires that the defendant's contacts be of the sort that
2 approximates physical presence. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082,
3 1086 (9th Cir. 2000).

4 Plaintiffs do not expressly argue that there is general personal jurisdiction in Nevada over
5 Viridis – and therefore concede this point, for good reason. The Viridis Declarations demonstrate
6 that Viridis does not have contacts with Nevada, which even approximate a physical presence.

7 **B. Plaintiffs Have Not and Cannot Prove Specific Jurisdiction.**

8 Viridis submitted Declarations with the Motion to Dismiss that clearly demonstrate, *inter*
9 *alia*, that both Viridis entities are Arizona limited liability companies that (1) have no property in
10 Nevada, (2) conduct no business in Nevada, (3) have no members who are residents of Nevada, (4)
11 have no ownership interest in any Nevada companies, (5) have no involvement in the alleged facts
12 or events between Plaintiffs and Defendants Lemons and Burton, and (6) have no knowledge (other
13 than from this litigation) of Plaintiffs. *See* Mot., Exs. 5 & 6.

14 Under Nevada law, “when a defendant challenges the personal jurisdiction of the Nevada
15 courts, *the plaintiff must introduce competent evidence of essential facts establishing a prima*
16 *facie showing of jurisdiction.*” *Levinson v. Second Judicial Dist. Court of State*, 103 Nev. 404
17 (1987) (emphasis added). “In determining whether a *prima facie* showing has been made, the
18 district court is not acting as a fact finder. It accepts properly supported proffers of evidence by a
19 plaintiff as true. However, *the plaintiff must introduce some evidence and may not simply rely*
20 *on the allegations of the complaint to establish personal jurisdiction.*” *Trump v. Eighth Judicial*
21 *Dist. Court*, 109 Nev. 687, 693 (1993) (internal quotations and citations omitted) (emphasis added).

22 Because Viridis submitted the Declarations with its Motion, Plaintiffs could not merely rely
23 on the allegations in the FAC to meet their burden of showing that Viridis is subject to specific
24 personal jurisdiction in Nevada. Yet, that is precisely what Plaintiffs did in their Opposition –
25 Plaintiffs relied solely on allegations in the FAC (i.e., that Viridis entered into transactions and
26 engaged in tortious conduct “directed at companies in Nevada”) to argue specific jurisdiction.

1 Plaintiff did not produce *any* evidence with the Opposition which rebuts the Declarations or
2 otherwise establishes a *prima facie* showing of jurisdiction. Accordingly, Plaintiffs failed to satisfy
3 their burden of demonstrating specific personal jurisdiction, and the Court should dismiss the
4 claims against Viridis for lack of jurisdiction. See *Caledonian Swiss Inves. v. SPTL Ventures, LLC*,
5 2006 WL 845849, at *2 (D. Nev. Mar. 31, 2006) (granting motion to dismiss because plaintiffs
6 “failed to produce any authenticated evidence that would support a finding of personal jurisdiction
7 over [the defendant]”); *Desert Sales v. Paul D. Cummings World Wide Enters., Inc.*, 2009 WL
8 10708974, at *3 (D. Nev. July 9, 2009).

9 By way of footnote, devoid of any legal or factual support, Plaintiffs request an “opportunity
10 to complete jurisdictional discovery”. Opp. at 13 n.2. The Court should deny this footnote request
11 because Plaintiffs’ purported bases for establishing personal jurisdiction over Viridis Capital and
12 Viridis Holdings is so attenuated to the point of implausibility that “jurisdictional discovery [is]
13 unlikely to lead to evidence establishing jurisdiction.” See *Tricarichi v. Coop. Rabobank, U.A.*,
14 135 Nev. 87, 98 n.15 (2019) (citing *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 380
15 (2014)).

16 **IV. THERE IS NO JUSTICIABLE CONTROVERSY AND PLAINTIFFS LACK**
STANDING.

17 Plaintiffs’ Opposition merely incorporates by reference their opposition to Defendant
18 MariMed’s motion to dismiss.² Opp. at 13. Plaintiffs’ opposition to MariMed does not address the
19 Moving Defendants’ specific arguments. Regardless, none of the arguments Plaintiffs made in
20 opposition to MariMed’s motion warrant the denial of the Moving Defendants’ Motion.

21 First, the Moving Defendants demonstrated in the Motion that Plaintiffs lack standing and
22 there is no justiciable controversy because any transfer of ownership in a marijuana establishment
23 requires approval by the Department under N.A.C. § 453D.315, and Plaintiffs failed to allege
24 (because they cannot allege) that the Department has approved a transfer of interest in the Harvest
25

26 ² To avoid confusion, Moving Defendants will cite to Plaintiffs’ opposition to the MariMed motion
to dismiss as “MariMed Opp.”. Any other citation to an “Opp.” refers to Plaintiffs’ opposition to
Moving Defendants’ Motion.

1 Foundation to Plaintiffs. Absent such approval, Plaintiffs have no valid interest in Harvest. And
2 because each of their claims against the Moving Defendants is predicated on a valid ownership
3 interest in Harvest, Plaintiffs' claims fail.

4 Plaintiffs do not deny – and therefore concede – in the Opposition that the Department has
5 failed to approve any transfer of ownership in Harvest Foundation to Plaintiffs. That concession
6 alone renders *each* of Plaintiffs' claims subject to dismissal.

7 Plaintiffs attempt to sidestep this fatal flaw in the FAC by claiming that any challenge to
8 Plaintiffs' ownership interest in Harvest is premature because “whether Plaintiffs *actually* have the
9 ownership interests and other rights they allege, and whether they are actually entitled to relief
10 against the . . . Defendants—is a separate issue, not a question of standing.” MariMed Opp. at 9
11 (emphasis in original). Plaintiffs are wrong.

12 Under Nevada law, a “justiciable controversy” exists *only if* a plaintiff can state a viable
13 legal claim for relief, pursuant to which the plaintiff can show “that the action caused or threatened
14 to cause the claimant’s injury-in-fact, and that the relief sought will remedy the injury.” *See*
15 *Israyelyan v. Chavez*, 466 P.3d 939, at *2 (Nev. July 1, 2020) (mem.); *see also Stockmeier v. Nev.*
16 *Dep’t of Corr. Psych. Review Panel*, 122 Nev. 385, 392 (2006) (noting that, to demonstrate an
17 actual controversy, a litigant must satisfy the “standing requirements of injury, causation, and
18 redressability”).

19 As demonstrated in the Motion, each and every claim Plaintiffs allege against Moving
20 Defendants necessarily hinges on Plaintiffs' purported ownership interest in Harvest. Absent a
21 valid ownership interest (which Plaintiffs apparently concede has not been approved by the
22 Department), each of Plaintiffs' claims fail.

23 Nevertheless, even if Plaintiffs could somehow allege a valid ownership interest in Harvest
24 (they cannot), each of Plaintiffs claims is predicated on the alleged existence of one or more *valid*
25 contracts between Plaintiffs and Defendants Lemons and Burton concerning Defendant Harvest.
26 *See* Mot. at 10. Absent such a contract, Plaintiffs suffered no injuries resulting from Defendant

1 Burton's and Lemons' subsequent actions, have no interest in Defendant Harvest, and by extension
2 have no viable claim against the Moving Defendants. Indeed, absent such a contract, Plaintiffs'
3 claims are simply hypothetical. *See Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 38 n.1
4 (2008) (noting that a case is not ripe for review if the harm alleged is "remote or hypothetical").

5 Second, Plaintiffs argue that they have standing to bring their declaratory relief claim
6 because they "seek to ascertain their and the MariMed Defendants' respective rights under the TCS
7 Agreement, the JDD Agreement, and the MariMed Purchase Agreement." MariMed Opp. at 10.
8 Of course, that does not warrant denial of the Moving Defendants' Motion. Plaintiffs have not
9 alleged that Moving Defendants were a party to any of those agreements, thus Plaintiffs have no
10 standing to seek declaratory relief against Moving Defendants. *See also supra*, Section VIII.

11 Finally, Plaintiffs fail to address *any* portion of Moving Defendants' argument that
12 Plaintiffs cannot establish *any* connection to Moving Defendants sufficient to state a claim against
13 them. *See Mot.* at 11.

14 Plaintiffs have not and cannot allege "an actual justiciable controversy," and Plaintiffs lack
15 standing to pursue their claims against Moving Defendants. The court should grant the Motion and
16 dismiss each of the remaining claims.

17 **V. THE FAC FAILS TO STATE A CLAIM FOR UNJUST ENRICHMENT.**

18 Plaintiffs argue that they pled a viable claim for unjust enrichment because the money they
19 purportedly invested in Harvest "undoubtedly helped Harvest continue its operations and grow into
20 an attractive investment opportunity *for MariMed*," which inexplicably "conferred a benefit on all
21 Defendants, who by way of their intermingled business interests collectively benefited from *the*
22 *MariMed transaction*." Opp. at 13 (emphasis added). Plaintiffs are wrong.

23 There is no legitimate dispute that to state a claim for unjust enrichment Plaintiffs were
24 required to identify a "benefit" received by each of the Moving Defendants. Plaintiffs have not
25 pled or identified (because they cannot) a single benefit *they* conferred on any of the Moving
26 Defendants or that the Moving Defendants unjustly retained any such theoretical benefit. At best,
Plaintiffs claim that some nebulous benefit was generally conferred on the Moving Defendants (but

1 none specifically) by virtue of Plaintiffs investing in Harvest, which in turn made Harvest “an
2 attractive investment opportunity for MariMed.” Again, that does not establish any connection to
3 or benefit conferred on the Moving Defendants. In fact, the FAC does not allege that any of the
4 Moving Defendants had any connection to MariMed or were parties to the MariMed transaction.
5 And Plaintiffs certainly did not cite to any such theoretical “benefit” sufficient to satisfy the
6 elements of an unjust enrichment claim.

7 Moreover, to the extent Plaintiffs suggest that “Plaintiffs’ unjust enrichment claim would
8 fail as to the Item 9 Defendants *only if* Plaintiffs had a written contract with the Item 9 Defendants”
9 (Opp. at 14 (emphasis added)), such assertion is demonstrably false. Plaintiffs’ unjust enrichment
10 claim fails for the reason stated above – i.e., Plaintiffs’ abject failure to allege sufficient facts to
11 satisfy the basic elements of an unjust enrichment claim. *See Certified Fire Prot., Inc. v. Precision*
12 *Constr., Inc.*, 128 Nev. 371, 381 (2012).

13 **VI. THE FAC FAILS TO STATE A CLAIM FOR CIVIL CONSPIRACY.**

14 Plaintiffs claim that they pled a viable claim for civil conspiracy based on only two
15 allegations: (1) the Moving Defendants conspired with the other Defendants to enter into the Item
16 9 Agreements, and (2) the Moving Defendants had “actual or constructive knowledge that, by
17 entering the Item 9 Agreements, Defendants Burton and Lemons . . . were . . . [breaching] their
18 fiduciary duties to Plaintiffs.” Opp. at 14.³ These conclusory allegations are woefully insufficient
19 and do not salvage the FAC from dismissal.

20 As noted in the Motion (at 15), Plaintiffs failed to allege several key elements of a civil
21 conspiracy claim, namely that the Moving Defendants entered into the Item 9 Agreements “*to*
22 *accomplish* an unlawful objective” and “for the *purpose* of” harming Plaintiffs. *See Guilfoyle v.*
23 *Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813 (2014) (emphasis added). Plaintiffs did

24 ³ Although Plaintiffs cite to over twenty paragraphs in the FAC to “support” their civil conspiracy
25 claim, only three of those paragraphs have any direct bearing on Plaintiffs’ civil conspiracy
26 allegations. *See* FAC ¶ 98 (conclusory allegation that “all named Defendants had actual or
constructive knowledge of Plaintiffs’ membership interest in Harvest and the associated Exclusive
Authorization Rights”); ¶¶ 183-84 (conclusory allegation that “Defendants [acted in concert and]
intended to work together as part of a conspiracy to commit the unlawful and improper conduct
described herein”).

1 not dispute, let alone address, these deficiencies in the Opposition.

2 Moreover, Plaintiffs did not (because they cannot) allege that Moving Defendants had *ever*
3 *even heard of* Plaintiffs before they entered into the Item 9 Agreements. Likewise, Plaintiffs have
4 not alleged (because they cannot allege) that the Moving Defendants entered into the Item 9
5 Agreements *to accomplish an unlawful objective and for the purpose of harming Plaintiffs*.
6 Absent such an allegation, Plaintiffs' civil conspiracy claim fails, and the Motion should be granted.

7 **VII. THE FAC FAILS TO STATE A CLAIM FOR AIDING & ABETTING.**

8 Plaintiffs claim that they pled a viable claim for aiding and abetting a breach of fiduciary
9 duties because (1) the Moving Defendants purportedly do not dispute three of the four elements of
10 the claim, and (2) Plaintiffs alleged "that Defendants knew of Plaintiffs' ownership interests and
11 Equal Authorizations Rights, which provides a basis to reasonably infer that Defendants knew that
12 they were aiding and abetting Burton's and Lemons' breaches of their fiduciary duties when they
13 entered the Item 9 Agreements." Opp. at 15-16.

14 First, contrary to Plaintiffs' assertion, the Moving Defendants *expressly disputed* that
15 Plaintiffs had sufficiently alleged the first element of the claim (i.e., existence of a fiduciary
16 relationship), which necessarily means that Plaintiffs did not allege the other elements. *See* Mot.
17 at 16. Absent a fiduciary relationship, there could obviously be no breach of that relationship or
18 damages resulting from said breach.

19 Second, Plaintiffs' suggestion that its conclusory allegations are sufficient is disingenuous
20 and completely contradicted by applicable law.⁴ Plaintiffs admit that the only allegations in the
21 FAC regarding their aiding and abetting claim are (1) that "[e]ach Defendant . . . knowingly
22 participated in or facilitated these breaches" (FAC ¶ 196), and (2) "all named Defendants had actual
23 or constructive knowledge of Plaintiffs membership interests in Harvest and the associated
24 Exclusive Authorization Rights" (FAC ¶ 98). And even after acknowledging that applicable law
25 requires "factual allegations . . . from which knowing participation can be reasonably inferred,"

26 ⁴ Plaintiffs suggest that Delaware law would not be persuasive to this Court. However, the Moving Defendants explicitly noted in the Motion that Nevada has adopted Delaware law on aiding and abetting. *See* Mot. at 16 n.4.

1 Plaintiffs do no more than refer back to their *conclusory, non-factual allegations* to declare those
2 allegations create such a reasonable inference. They do not.

3 Third, Plaintiffs fail to address – and thereby concede – that they failed to allege “that the
4 Moving Defendants substantially assisted or encouraged Lemons or Burton to breach any fiduciary
5 duty owed to Plaintiffs” (i.e., one of the necessary elements of an aiding and abetting claim). *See*
6 *Mot. at 16; see also Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1490 (1998), *overruled in part on*
7 *other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265 (2001) (alleged aider and abettor must
8 “knowingly and substantially assist[]” the primary violator’s breach).

9 For these reasons, the aiding and abetting claim fails, and the Motion should be granted.

10 **VIII. THE FAC FAILS TO STATE A CLAIM FOR DECLARATORY RELIEF.**

11 Plaintiffs claim that they are entitled to declaratory judgment “with respect to a contract or
12 instrument” under N.R.S. 30.040. *Opp. at 16.* Plaintiffs assert that they pled a viable declaratory
13 judgment claim because “a justiciable controversy exists between Plaintiffs and Defendants, who
14 collectively engaged in a series of interconnected transactions that erased Plaintiffs’ interest in
15 Harvest and shut them out of the cannabis industry in Nevada.” *Opp. at 16-17.*

16 But as demonstrated in the Motion – which Plaintiffs completely ignore – “Plaintiffs do not
17 allege (and cannot allege) that they were parties to the Item 9 Agreements or have any rights in or
18 to the subject matter of those agreements or any ‘legally protectable’ interest therein.” *Mot. at 18.*
19 Plaintiffs cannot seek declaratory relief relating to contracts to which they were not parties.
20 Moreover, common sense alone dictates that a vague “series of interconnected transactions” cannot
21 provide a viable basis for a declaratory judgment claim.

22 **IX. THE COURT SHOULD AWARD THE MOVING DEFENDANTS THEIR ATTORNEYS’ FEES AND COSTS.**

23 The Moving Defendants sought an award of attorneys’ fees and costs in their Motion. *Mot.*
24 *at 19.* Plaintiffs argue that fees should not be granted because they never *technically* admitted that
25 the claims against the Moving Defendants were improper and did not enter into any binding
26 agreement to dismiss the claims against them. *Opp. at 17.* Plaintiffs’ arguments are unavailing.

1 Under N.R.S. § 18.010(2)(b), courts are encouraged to award a prevailing party its
2 attorneys' fees "when the court finds that the claim . . . of the opposing party was brought or
3 maintained without reasonable ground or to harass the prevailing party." The purpose of such an
4 award is to "deter frivolous or vexatious claims and defenses because such claims and defenses
5 overburden limited judicial resources, hinder the timely resolution of meritorious claims and
6 increase the costs of engaging in business and providing professional services to the public."
7 N.R.S. § 18.010(2)(b); *see also* ECDR 760.

8 Plaintiffs engaged in precisely the type of behavior that § 18.010(2)(b) and ECDR 7.60 is
9 intended to deter:

- 10 • Plaintiffs do not dispute that they were told more than a month before the Motion
11 was filed that their claims against the Moving Defendants were not based on
12 legitimate or reasonable grounds.
- 13 • Plaintiffs do not dispute that they agreed to dismiss all claims against the Moving
14 Defendants (except Strive Management).
- 15 • Plaintiffs acknowledge that they later refused to dismiss their claims against the
16 Moving Defendants.
- 17 • The Moving Defendants were then forced to incur substantial attorneys' fees and
18 costs in preparing and filing the Motion and this Reply.
- 19 • Plaintiffs have now (in their Opposition) agreed to dismiss each of the Individual
20 Defendants and many of the claims pled against the remaining Moving Defendants.

21 Plaintiffs' claims were frivolous and meritless to begin with. They were informed of such
22 facts early on. Yet they forced the Moving Defendants to spend significant resources preparing
23 and filing the Motion, only to dismiss many of the claims and Individual Defendants that they
24 should have dismissed (and agreed to dismiss) early on. This Court should not countenance such
25 improper tactics, and should award fees under § 18.010(2)(b) and ECDR 7.60.

26 . . .

1 **X. CONCLUSION.**

2 For the foregoing reasons, this court should dismiss the FAC against each of the Moving
3 Defendants with prejudice and award Moving Defendants their attorneys' fees and costs pursuant
4 to N.R.S. §§ 18.010 and 18.020.

5 DATED this 17th day of February, 2021.

6 SMITH LARSEN & WIXOM

7
8 /s/ Karl L. Nielson

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26 *and Chase Herschman*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 17, 2021 a true copy of the foregoing **DEFENDANTS ITEM 9 LABS CORP., VIRIDIS GROUP 19 CAPITAL LLC, VIRIDIS GROUP HOLDINGS, LLC, ANDREW BOWDEN, DOUGLAS BOWDEN, BRYCE SKALLA, JEFFREY RASSAS, AND CHASE HERSCHMAN'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS** was sent via electronic means to the following at their last known email addresses, pursuant to EDCR 8.05(a):

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1 CASE NO. A-20-811232-B

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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JDD, LLC,

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Plaintiff,

)

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vs.

)

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LARRY LEMONS,

)

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Defendant.

)

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REPORTER'S TRANSCRIPT

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OF

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MOTION TO DISMISS

(TELEPHONIC HEARING)

18

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED WEDNESDAY, FEBRUARY 24, 2021

23

24

25

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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Pursuant to NRS 239.053, illegal to copy without payment.

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* * * * *

1 LAS VEGAS, NEVADA; WEDNESDAY, FEBRUARY 24, 2021

2 1:23 P.M.

3 P R O C E E D I N G S

4 * * * * *

01:23:03

5
6 THE COURT: Yeah. Let's start with the
7 plaintiff.

8 MR. IGLODY: Lee Iglody for the plaintiff.
9 Yes. Good afternoon. Lee Iglody for the plaintiffs.

01:23:39

10 MS. HERLING: Good afternoon, your Honor.
11 This is Candace Herling for Snowell Holdings, Larry
12 Lemons, and Donald Burton.

01:24:00

13 MR. SHANBHAG: This is Mukunda Shanbhag. I am
14 an Arizona counsel for Larry Lemons, Donald Burton, and
15 Snowell Holdings LLC. We were -- I'm joined by my
16 colleague Mr. Justin Brandt. We were admitted
17 pro hac vice recently. I'll be arguing on behalf of
18 these defendants today specifically concerning
19 Snowell's motion to dismiss.

01:24:19

20 MR. GABROY: Good afternoon, your Honor. This
21 is Christian Gabroy, 8805, on behalf of defendant Sara
22 Gullickson.

23 MR. WRIGHT: This is John Wright for
24 defendants Marimed, Levine, and Fireman.

01:24:46

25 MR. NIELSON: Good afternoon, your Honor.

01:24:46 1 This is Karl Nielson. Lauren Stine and I represent
2 defendants ITEM 9 Labs Corp, ITEM 9 Properties LLC,
3 Strive Management LLC, Viridis Group I9 Capital LLC,
4 Viridis Group Holdings LLC, Andrew Bowden, Douglas
01:25:03 5 Bowden, Bryce Skalla, Jeffrey Rassas, and Chase
6 Herschman.

7 MR. BARRETT: Good afternoon, your Honor.
8 This is Kevin Barrett. I represent Harvest Foundation.

9 THE COURT: All right. Does that cover all
01:25:24 10 appearances? I guess, we'll take that as a yes.

11 (Multiple speaker cross-talk)

12 Anyway, we have a series --

13 I'm sorry, go ahead.

14 MS. HERLING: Sounds like it, the silence.

01:25:45 15 THE COURT: Yes. Anyway, we do have a series
16 of motions, motions to dismiss in this matter. Let me
17 look here at the calendar again.

18 Where should we start? I mean, the first one
19 up is defendant's Marimed Inc, Robert Fireman, and Jon
01:26:01 20 Levine's motion to dismiss the first amended complaint.
21 Can we just proceed in order?

22 MR. WRIGHT: That's fine, Judge. This is John
23 Wright. It's my motion.

24 THE COURT: All right. Well, Mr. Wright, you
01:26:16 25 have the floor, sir.

01:26:18 1 MR. WRIGHT: Thank you, Judge. And I'm going
2 to be brief. I know all the other ones are pretty
3 complicated. Mine's fairly simple.

4 It's essentially that the complaint with
01:26:34 5 respect to Marimed, Levine, and Fireman is so feather
6 light on facts, it's just an impossible leap to draw
7 the conclusions that are contained in there.

8 It's one thing if the plaintiff is alleging
9 that my clients may be interested parties, and,
01:27:00 10 therefore, their involvement in the case is necessary
11 because there's maybe a competing interest they claim
12 for these shares.

13 However, it's quite another thing to say -- to
14 base your entire case on the allegation that my clients
01:27:18 15 ran into the plaintiffs at a convention, 2016. And
16 then extrapolate that into a conspiracy to deprive them
17 of an interest in a company that by law is required to
18 be registered with the state. And it's not.

19 There is -- whatever interest they're
01:27:46 20 claiming, it's not registered with the state. You
21 don't have an interest in the company until there is
22 such registration or approval by the state.

23 And the public record, as alleged by plaintiff
24 in its original complaint, indicates that the
01:28:03 25 plaintiffs have no interest in the company. My clients

01:28:06 1 are allowed to rely upon publicly recorded documents.
2 Everybody else is. The whole purpose behind that is so
3 the public being rely on them.

4 If they are claiming that there is some other
01:28:23 5 source of information which lead them -- which would
6 have lead my clients to believe that the plaintiffs
7 were being deprived of some interest in this company,
8 it's certainly not alleged in the complaint anywhere.

9 You know, if -- if there was some allegation
01:28:45 10 that, Well, gee, in the process of due diligence,
11 certain documents were revealed to my clients, and as a
12 result of that they would have known about this
13 interest, or claimed interest, that might be one thing,
14 but they're not there yet. It's too early to simply,
01:29:07 15 in a shotgun approach, say all of these people are
16 conspiring amongst themselves to deprive them of an
17 interest which is not reduced to writing, there's no
18 indication that it was ever brought to my client's
19 attention other than this mere allegation that four
01:29:24 20 years ago they bumped into each other at a convention
21 and somehow we're supposed to extrapolate four years
22 later that they still have some interest and that it's
23 not -- and that it's not inchoate but rather solidified
24 by the state.

01:29:42 25 Judge, I apologize. I'm a little bit -- the

01:29:43 1 COVID vaccine is kicking me in the butt right now. I'm
2 a little off.

3 But in any event that's essentially where
4 we're at. And we can go through each of the causes of
01:29:58 5 action, but you have to realize is that when you get to
6 each one of these causes, all you have essentially is a
7 conclusion that either my client conspired with them,
8 or they've been unjustly enriched in some impossible
9 fashion. But there's no factual basis in the
01:30:15 10 complaint, or the amended complaint rather, to
11 establish any of this. And I understand, you know, the
12 standard is quite low, of course, at this stage of the
13 game.

14 And, but you're supposed to have some basis
01:30:32 15 for the lawsuit before you file the lawsuit. You're
16 not supposed to use the discovery process to discover a
17 cause of action, which appears to be what they're going
18 for.

19 There very may well be -- there's, obviously,
01:30:47 20 some dispute between them and Harvest. That doesn't
21 involve my client whatsoever. If during the course of
22 discovery of the dispute with Harvest they find some
23 facts which would actually support any of the
24 allegations in the complaint, then certainly they could
01:31:03 25 join them at that time.

01:31:05 1 But there's absolutely nothing in there other
2 than, you know, just meeting somebody at a convention
3 for a couple minutes and then somehow four years later
4 you're supposed to connect that with them having an
01:31:20 5 interest, which is contrary to publicly available
6 information that is issued by the state.

7 And so in a nutshell that's it unless you've
8 got specific questions. You know, we covered this
9 pretty well in the briefs.

01:31:41 10 THE COURT: Thank you, sir. We'll hear from
11 the opposition.

12 MR. IGLODY: Thank you, your Honor. Once
13 again it's Lee Iglody for the plaintiffs. Let me just
14 start by saying, of course, the standard is very high
01:31:54 15 precisely because the Nevada Supreme Court recognizes
16 that when you file a complaint, you have to make
17 allegations that you believe to be true that if are
18 proven true would give rise to a claim for relief under
19 Nevada law.

01:32:06 20 Our argument is we have in our opposition and
21 all the oppositions is that in this case, focusing on
22 Marimed, that we have, in fact, made sufficient
23 allegations that, if proven true, and more facts will
24 come to light during discovery, obviously, that we
01:32:21 25 would be entitled to the relief that we asked for.

01:32:24 1 Now, it's important to remember -- this will
2 be more relevant for one of the later motions -- we're
3 talking about the cannabis industry in the state of
4 Nevada, which at the earlier part, all right,
01:32:36 5 everything was confidential. As the Court may be
6 aware, you know, over time both the regulatory
7 structure has changed. So it's gone from public --
8 Department of Public Health to Department of Taxation
9 and now the Cannabis Compliance Board.

01:32:51 10 The Cannabis Compliance Board, thank goodness,
11 partial mandate of the state legislature has become
12 more forthcoming and open with books and records. Why
13 is that relevant? It's relevant because if I'm stuck
14 to my complaint, which alleges all that we have at the
01:33:09 15 moment, right, because unlike a normal business where I
16 can just go out there and try to put together what's
17 happening, the confidential nature of the records here,
18 all right, makes it difficult to do.

19 So all we have is this. My clients, Nevada
01:33:22 20 residents, investing in a Nevada licensed cannabis
21 business, right, discover after years of, frankly,
22 getting the run around, it's alleged in the complaint,
23 that Marimed had some interest. I don't know what
24 interest. They have some interest.

01:33:36 25 I mean, they reported paying, I think it was

01:33:38 1 \$1.2 million, and there being assorted agreements. And
2 so the question is if Marimed purchased my client's
3 interest, then the question arises what remedies were
4 accrued to my client.

01:33:50 5 We allege in the complaint that they had
6 knowledge. And we allege, because it's all we have, is
7 that they had actual knowledge, not implied knowledge
8 because one would think any large corporate transaction
9 during due diligence you would discover someone else
01:34:02 10 had an interest in the same asset you were purchasing.

11 But the Court doesn't even have to infer that
12 because in the complaint as stated we're stating
13 enough. We met these guys. They knew who we were.
14 And they went around us. If that's the case, and if
01:34:14 15 it's the early stage of the case, it is to be accepted
16 by the Court with all reasonable inferences as true, we
17 would argue that their motion to dismiss should be
18 denied.

19 Thank you.

01:34:29 20 THE COURT: Here's my question: From a
21 factual perspective, what specifically did these three
22 defendants -- and I'm focusing on Mr. Fireman,
23 Mr. Levine, and then, of course, Marimed -- do that
24 would be the basis for a claim for relief?

01:34:54 25 MR. IGLODY: As stated in the complaint -- oh,

01:34:55 1 go ahead. I'm sorry, your Honor.

2 THE COURT: No, no. Go ahead.

3 Because it's my understanding eight paragraphs
4 in the complaint pertain specifically to these specific
01:35:06 5 individuals; is that correct?

6 MR. IGLODY: I think so. I mean, I have my
7 outline in front of me. I have to count how many
8 paragraphs, but I think that's correct.

9 MR. WRIGHT: Judge, I think you're correct. I
01:35:20 10 put that in my reply.

11 THE COURT: And the reason why I point that
12 out, I mean, potentially there might be some basis
13 factually for a claim for relief at some point. But
14 when you file the lawsuit, you have to those facts in
01:35:47 15 your possession. And maybe in the course of discovery
16 as to other individuals you might find out more. But I
17 think as a minimum threshold, you have to pled facts as
18 to their involvement somehow in this transaction,
19 scheme, or whatever you want to call it. And that is
01:36:10 20 my point.

21 MR. IGLODY: This is Lee Iglody. May I
22 address that briefly?

23 THE COURT: Absolutely, sir.

24 MR. IGLODY: Oh, thank you.

01:36:17 25 As I stated at the outset, part of the

01:36:20 1 problem, of course, is that, of course, dealing with
2 the cannabis industry the ability to ascertain facts
3 independently prior to litigation is far more
4 constrained than it would be in any other industries.

01:36:32 5 So what we have to go off of is what you have in the
6 complaint.

7 And my position is not that our facts are
8 super awesome; right? My position simply is that under
9 the heightened standard for motions to dismiss if it is
01:36:44 10 true that these gentlemen and Marimed knew of the
11 competing ownership interest for that which they
12 alleged to have purchased or might have purchased, had
13 a contingent right to purchase. I don't know.

14 We do know they gave 1.2 million followed up,
01:36:57 15 I think it was by another 2 million investment. We
16 have a right to assume in the complaint that something
17 went amiss because they now apparently have either
18 interest in or contingent interest in our ownership
19 interest we paid for a few years before in the entity.

01:37:13 20 And so the argument here is, yes, it could be
21 we do discovery and we find out, oh, it turns that
22 "X" -- I don't know what the "X" is, by the way. And
23 from the complaint you can tell the frustration is we
24 don't know what the "X" is. We just know that our guys
01:37:25 25 paid for the ownership interest in this entity. And

01:37:26 1 now other people are claiming to own that ownership
2 interest. And we'd just like to find out how that
3 happened.

4 And so the argument would be, again, not that
01:37:35 5 we have the super spectacular facts, your Honor. It's
6 that under the heightened standard, we got enough in
7 there if only those bare facts prove true, we, at
8 least, have tenable claims as plead in the first
9 amended complaint. Thank you.

01:37:48 10 THE COURT: And what would be the claims as it
11 relates to Fireman, Levine, and Marimed Inc?

12 MR. IGLODY: Do you want me to address the
13 individual ones like the unjust enrichment, conversion,
14 conspiracy, breach of fiduciary duty, and alter ego and
01:38:06 15 declaratory relief claims? Or did you want me just to
16 give you a general description?

17 THE COURT: No. I mean, I just want to
18 understand from the factual perspective what would be
19 the basis for the claims? Because I have to look at it
01:38:18 20 from an individual perspective. For example, we have
21 two individuals, Mr. Fireman and Mr. Levine. And then
22 we have Marimen Inc -- Marimed Inc.

23 MR. IGLODY: Yes. Thank you, your Honor.

24 So, I mean, starting from the last claim. You
01:38:31 25 know, it would be imminently justifiable to name

01:38:36 1 Marimed and its chief executives who have actual
2 firsthand knowledge of our existence prior to engaging
3 in whatever transactions they engaged in with Harvest
4 to ask this Court to declare for a declaratory relief
01:38:49 5 claim who owns what.

6 So in other words if we are supposed to have
7 approximately 20 percent of Harvest, and now Marimed
8 apparently or with some mix of Marimed, Strive, and I9,
9 I don't know the answer to that, okay, are claiming an
01:39:01 10 ownership interest in that same 20 percent that we are
11 claiming ownership interest in, our argument would be,
12 yes, we do have a right to bring this to a court of
13 law. And the Court of law would have to exercise its
14 jurisdiction over these defendants in order to issue
01:39:14 15 some declaratory relief regarding the ownership of a
16 Nevada cannabis company in Nevada, by mostly Nevada
17 residents, or at least from the plaintiffs' side,
18 Nevada residents. So our argument would be, yes.

19 And if we get declaratory relief, and we
01:39:27 20 discover, oh, they're claiming an ownership interest
21 that they knew they actually didn't have a right to and
22 that they cut my clients out potentially or,
23 essentially, we don't know, then the argument is, yes.
24 We would have a claim for relief for conversion and
01:39:40 25 unjust enrichment. After all that belongs to us. And

01:39:43 1 now you have it, and you're being enriched and taking
2 it away.

3 And the argument then would be, Well, if that
4 all happened, it would give inference to -- which is
01:39:51 5 all we're asking because I got nothing except what I
6 gave you in my complaint -- but inference that there
7 was a conspiracy or potentially conspiracy to do
8 something that deprived my client and harvest the
9 fruits of whatever they invested.

01:40:03 10 And so the argument would be, your Honor, yes.
11 I mean, again, I'm not sitting here arguing we would
12 have a super strict factual complaint. Far from it.
13 But considering our limitations, we had enough to make
14 the claim. And I might be sitting here, you know,
01:40:14 15 eating may bowl of humility here in two months or
16 whatever it is after we put everything together and
17 figure out what actually happened and how those people
18 actually ended up with my clients' interest in the
19 company. But in the meantime, we're just asking for an
01:40:26 20 opportunity to proceed forward as pled.

21 Thank you.

22 THE COURT: All right. Thank you, sir.

23 Mr. Wright.

24 MR. WRIGHT: Yes, Judge. All I heard there
01:40:36 25 was a lot of speculation on what might happen if

01:40:39 1 they're allowed to drag my clients through the
2 discovery process on a case where you're going to have
3 a dozen lawyers at every deposition. It's just not --
4 it's just not -- it's just not right.

01:40:50 5 I mean, here they're not asking for merely a
6 declaratory relief action to find out what my client's
7 interest is. They're suing them for conversion, for
8 conspiracy, alter ego trying to pierce the corporate
9 veil against these individuals. Which, of course, you
01:41:08 10 know, is -- you know, Nevada constitution actually
11 controls that. And says, no, they're not responsible.
12 And you got to prove something. They don't have
13 anything today to support any of this.

14 Aiding and abetting the breach of a fiduciary
01:41:23 15 duty. Intentional interference with a contract. What
16 contract? You know, it goes on and on. And what he's
17 just saying is is that essentially there is no standard
18 when you're at this stage of the game. I can allege
19 anything, and I can sort it out later on in discovery
01:41:44 20 at your expense.

21 No. Look, the case is going to go forward, I
22 would assume, against Harvest. They've got some
23 dispute with them. They may find additional facts at
24 some point. But that's when you bring it. You don't
01:41:58 25 assume first, find the facts later, and then try to get

01:42:02 1 releases. What are they going to do? How are they
2 going to compensate us from this once they figure out
3 we have no involvement in whatever they're claiming?
4 It's completely backwards, Judge.

01:42:13 5 And I think you hit the nail on the head.
6 Which is where are the facts that support these causes
7 of action? It's not enough that you make a conclusion
8 that somebody conspired. You got to -- you got to lay
9 the foundation for that. And it's not there. And this
01:42:26 10 is really unfortunate because you've got all of these
11 people being dragged into this so that they can try to
12 figure it out somewhere down the line in their own
13 time, but on our dime.

14 It's not appropriate, Judge, and I ask you to
01:42:43 15 grant our motion.

16 THE COURT: Okay. And I just want to make
17 sure the record is clear. I mean, I do understand what
18 the pleading requirements are as it relates to
19 NRCP Rule 8(a), 9(b), and specifically what the
01:43:05 20 standards are as it pertains to a motion to dismiss.
21 But I want to point out at a very minimum you do have
22 to have -- and I should say notwithstanding the fact
23 that Nevada is a notice pleading state, you do have to
24 have facts set forth in the complaint to support each
01:43:24 25 and every claim for relief in this case.

01:43:31 1 To me a really good example potentially might
2 be breach of fiduciary duty. And I can't think of any
3 set of facts based upon the way the case currently sets
4 that the two individual defendants in this case, for
01:43:49 5 example, Mr. Fireman and Mr. Levine would be
6 fiduciaries to the plaintiff. And that's really just a
7 good example. We have to have facts to support that.

8 And so this is what I'm going to do. As far
9 as the motion to dismiss is concerned, I'm going to
01:44:11 10 grant it. It will be -- as far as the dismissal, it
11 will be without prejudice. But if there's a motion to
12 amend down the road, it's going to have to be based
13 upon facts that are learned during the course and scope
14 of discovery.

01:44:26 15 And just as important too, that's not the
16 purpose of discovery to create your facts. You should
17 have the facts before you file the lawsuit. And that's
18 my point.

19 And so what we're going to do, Mr. Wright,
01:44:46 20 we're going to have you prepare an order. And have
21 specific findings in the order, sir, with conclusions
22 of law. Make sure you circulate that with plaintiffs'
23 counsel.

24 If you can't agree on the contents, each of
01:44:57 25 you are free to submit competing orders. Don't let the

01:45:02 1 orders sit too long. Once it's circulated from
2 Mr. Wright, I think 72 hours, three days or so would be
3 a reasonable period of time to review it. And I'm not
4 saying you have to sign off, but that would be to
01:45:14 5 prepare your competing order. And so that's what we'll
6 do with that one.

7 And then I move on.

8 MR. IGLODY: Your Honor, may I? Real quick,
9 your Honor. Sorry to interrupt. Lee Iglody again for
01:45:27 10 the plaintiffs.

11 Since we're ordering the transcript, would it
12 be okay to say contingent upon at least having 24 hours
13 to look at the transcript?

14 THE COURT: You can look at --

01:45:37 15 MR. IGLODY: Or if not, I could go, you know.

16 THE COURT: Yeah.

17 MR. IGLODY: Just because I expect it's going
18 to be a bunch of orders at the end of this. And that's
19 why I ordered it, so I can make sure I can get it
01:45:47 20 right, basically.

21 THE COURT: I understand. And sometimes if
22 you don't get it right, there's always Rule 60(a), you
23 know, as far as relief from an order. But, anyway,
24 that's what we'll do.

01:46:00 25 And any other -- any comment on that issue,

01:46:04 1 Mr. Wright, as far as it relates to the transcript?

2 MR. WRIGHT: No, Judge. Not a problem.

3 THE COURT: All right. So, anyway, let's go

4 ahead and move on. I think next up, is that defendants

01:46:18 5 Snowell Holdings' motion to dismiss pursuant to Nevada

6 Rules of Civil Procedure 12(b)(2); is that correct?

7 MR. SHANBHAG: Yes, your Honor. This is

8 Mukunda Shanbhag, Arizona counsel for Snowell Holdings.

9 I was recently admitted pro hac vice. I'll be arguing

01:46:39 10 on behalf of Snowell.

11 THE COURT: Okay. Sir, you have the floor.

12 MR. SHANBHAG: Thank you, your Honor. The

13 motion to dismiss, it's a pretty simple motion. It's

14 that there's no specific or general jurisdiction over

01:46:56 15 Snowell Holdings LLC. And in the opposition, the

16 plaintiffs, they admit that there's no general

17 jurisdiction, so the only issue remaining is specific

18 personal jurisdiction.

19 And the law concerning that is that the

01:47:12 20 defendant has to purposefully direct their activities

21 towards the state, the causes of action allegedly need

22 to arise from the contact, and it should be reasonable

23 to exercise jurisdiction over that defendant.

24 Now, here, and as outlined in our motion, your

01:47:31 25 Honor, there are no contacts between Snowell Holdings

01:47:34 1 and Nevada. And we submitted a declaration by Larry
2 Lemons who's the sole member and owner of Snowell
3 Holdings. Mr. Lemons is an Ohio resident. Snowell
4 Holdings is an Ohio entity. Snowell doesn't do
01:47:50 5 business in Nevada, doesn't have any representatives in
6 Nevada. There is no advertising or soliciting going on
7 in Nevada on behalf of Snowell. And Snowell doesn't
8 have any interest in any Nevada companies, including
9 Harvest, which plaintiff alleges in their opposition
01:48:06 10 that Mr. Lemons's interest in Harvest may be
11 100 percent through his interest in Snowell Holdings.
12 But as Mr. Iglody, you know, alluded this is concerning
13 marijuana law and marijuana companies in Nevada.
14 And at the time that, you know, these alleged
01:48:25 15 actions happened, an entity couldn't even hold as a
16 membership interest or an ownership interest in a
17 marijuana license holding entity. So it's -- it --
18 essentially it would have been illegal for Snowell
19 Holdings to be the vehicle to which Mr. Lemons had his
01:48:45 20 interest in Harvest.
21 And at this point, it's also helpful to kind
22 of just to discuss the context of this, your Honor.
23 Because, as you know, the plaintiffs are represented by
24 different counsel previously. And we have this
01:49:00 25 discussion with them where we went through each of

01:49:03 1 these facts. The representations from Mr. Lemons, the
2 fact that Snowell Holdings doesn't have any contacts in
3 Nevada. And we came to the agreement that plaintiffs
4 would dismiss Snowell Holdings from the case.

01:49:15 5 Now, just five days later they came back and
6 said that they had to renege on their promise, that
7 they could no longer dismiss, and the previous counsel
8 would be withdrawing.

9 And after that it's just been, you know,
01:49:30 10 Snowell is forced to file this motion on something that
11 we had even agreed needed to be dismissed.

12 So, and that's -- and that leads into our
13 request for fees. Which is we've been put in the
14 position where we're filing this motion. The facts are
01:49:47 15 certainly -- you know, there are essentially no
16 contacts with Snowell Holdings that has to justify
17 specific personal jurisdiction.

18 And, again, going back to what plaintiff's
19 counsel argued against the Marimed motion, that's
01:50:02 20 essentially their argument in their opposition. Which
21 is that they should just be given leeway to avoid the
22 standards that they need to meet.

23 And here the standard is that they have the
24 evidentiary burden of making a prima facie showing that
01:50:17 25 there's specific personal jurisdiction over Snowell.

01:50:21 1 Instead, what they're arguing is that there's
2 some conjecture that Snowell may own some part, some
3 companies in Nevada that are related to this litigation
4 which is the fact that the declaration of Larry Lemons
01:50:35 5 refutes 100 percent. But the -- based on that
6 conjecture the Court should exercise jurisdiction, and
7 that's just not the standard. It doesn't meet their
8 evidentiary burden, and there are just no contacts that
9 Snowell has in Nevada to justify exercising
01:50:52 10 jurisdiction over the entity.

11 That's it from us, your Honor. At least --

12 THE COURT: Okay.

13 MR. IGLODY: -- until we hear from plaintiff's
14 counsel.

01:51:03 15 THE COURT: All right. And thank you, sir.

16 We'll hear from plaintiff's counsel.

17 MR. IGLODY: Thank you, your Honor. Let's
18 start off with the proposition that the defendant who
19 took my client's money and then led them around for
01:51:19 20 five years submitted a declaration saying he swears
21 under penalty of perjury his mother ship entity in Ohio
22 had nothing to do with it. And based on that evidence
23 they're asking you to shift the burden to me without me
24 having the benefit of one shred of discovery regarding
01:51:38 25 Mr. Lemons, the money that he took from my clients, ran

01:51:41 1 through I don't even know how many entities. That's
2 one of my frustrations. I don't know. I'll find out,
3 but I don't know right now.

4 And somehow the Court is supposed to accept
01:51:49 5 without any discovery, even after jurisdiction, tight
6 little jurisdictional discovery, right, that his
7 entity, which apparently is important for him to hire
8 two law firms, right, to seek dismissal of, should be
9 out of this case when he's the sole member of the
01:52:04 10 entity; right? And his argument is, Well, all the
11 money I stole from your guys has nothing to do with
12 Snowell. Okay.

13 Well, let's find out. And maybe you're right.
14 People can own different companies. I don't know that.
01:52:15 15 But if what I alleged in the complaint is true, right,
16 where I say that -- well, I -- the complaint says that
17 Snowell figures into this cascading, you know,
18 merry-go-round of entities that we would have a claim
19 against them.

01:52:29 20 And again, the frustration. And I apologize.
21 Normally, you know, my complaint is a little different.
22 But here we are. The problem is, again, all I know is
23 Snowell's in the mix as alleged in the complaint. I'm
24 stuck to the four corners of the complaint. And the
01:52:43 25 argument I would make, respectfully, your Honor, is

01:52:44 1 that if the Court makes reasonable inferences from the
2 allegations as stated in the complaint, Snowell can and
3 should, in fact, be a defendant. And the Court does
4 have specific jurisdiction.

01:52:54 5 And if the Court decides it doesn't want to
6 make that decision that it would rather do a little bit
7 of jurisdictional discovery to come back to you, that's
8 fine too. But thank you so much, your Honor.

9 THE COURT: Thank you, sir.

01:53:10 10 MR. SHANBHAG: Your Honor, this is -- sorry.
11 Your Honor, if I may.

12 THE COURT: Absolutely.

13 MR. SHANBHAG: Your Honor, again, Mr. Iglody's
14 argument is that they should be allowed discovery to
01:53:27 15 drag Snowell Holdings through this based entirely on
16 speculation that Mr. Lemons somehow diverted money
17 there. At the same time, yes, Snowell Holdings is
18 mentioned a number of times in the complaint, but there
19 isn't any allegations, specific allegation that Lemons
01:53:46 20 diverted money into Snowell Holdings specifically.

21 Just that Snowell Holdings owns certain Nevada entities
22 and that Mr. Lemons may have, through Snowell Holdings,
23 purchased an interest in Harvest.

24 But as we pointed out, your Honor, that is
01:54:03 25 impossible. I understand Mr. Iglody's argument. And,

01:54:06 1 again, not something that we can contest that "yes"
2 this is Mr. Lemons's declaration. But looking at the
3 fact that this is a marijuana entity and at the time
4 could not have been owned by another entity, that
01:54:19 5 allegation just simply is not true.

6 The second part, your Honor, is that the law
7 puts the burden on the plaintiff to show specific
8 jurisdiction when jurisdiction is challenged.

9 So it's not a matter of us shifting the burden
01:54:36 10 on to the plaintiffs. It's that the defendants have
11 that burden when it's challenged, and they just haven't
12 met it, your Honor.

13 That's all from me unless you have any
14 questions.

01:54:55 15 THE COURT: Sir, I don't have any. And I did
16 get a chance to review the points and authorities, and
17 I have a pretty good understanding as to what the
18 allegations are in this case. And specifically as it
19 relates to specific personal jurisdiction in this
01:55:11 20 matter, and I'm focusing on the Snowell Holdings
21 defendant. And under the facts of this case,
22 especially in light of the holding of our Nevada
23 Supreme Court in the Trump versus Eighth Judicial
24 District Court, the evidentiary burden has not been met
01:55:35 25 in this case from the plaintiff's perspective. And I

01:55:38 1 feel I have no choice but to grant the motion, sir.

2 The dismissal will be without prejudice, and
3 if something happens down the road. But for the
4 purposes of today, I'm going to grant the motion.

01:55:54 5 As far as fees are concerned and costs are, I
6 think it would be prudent to go ahead -- if you feel
7 you want to do that, you're more than welcome to
8 entertain a motion as it pertains to that specific
9 issue.

01:56:14 10 MR. SHANBHAG: Thank you, your Honor. We
11 intend to file one.

12 THE COURT: I understand.

13 Okay. So we're moving on. We're actually
14 going quicker than I anticipated; although, that might
01:56:25 15 slow down with the next motion.

16 Next up we have, I guess it would be
17 defendant's ITEM 9 Labs Corporation, ITEM 9 Properties,
18 Strive Management, et cetera, et cetera, a motion to
19 dismiss for failure to state a claim upon which relief
01:56:49 20 may be granted and lack of personal jurisdiction.

21 And let's go ahead, and we will continue on
22 with the moving party.

23 MS. STINE: Good afternoon, your Honor. This
24 is Lauren Stine counsel for what I'll refer to as the
01:57:06 25 ITEM 9 defendants. You listed them all, your Honor.

01:57:08 1 But if it's okay for us, we'll just refer to them as
2 the ITEM 9 defendants collectively.

3 Your Honor, you've already heard from a couple
4 of different groups or constituencies in this case.
01:57:19 5 The ITEM 9 defendants consist of individuals and
6 entities that operate in the cannabis based, or own
7 real estate, or simply engage in investment activities.
8 Many of them are based solely in Arizona.

9 Now the points that you already heard made by
01:57:35 10 Marimed's counsel, Mr. Wright, I think apply equally to
11 my client constituency if not, in fact, in reality to a
12 much greater extent. At bottom my clients simply have
13 no connection to the plaintiffs in this case and many
14 of the other players that are actually named as
01:57:53 15 defendants. And they simply don't have a dog in this
16 fight.

17 And now, your Honor, while the complaint is
18 pretty lengthy, at bottom, you know, it spans 244-plus
19 paragraphs, at best only ten of them pertain to the
01:58:07 20 ITEM 9 defendants. And none of those ten actually
21 identify with any specifics what any of my clients
22 supposedly did wrong that has subjected them to some
23 pretty serious claims in this particular lawsuit.

24 Distilling the whole thing down though, your
01:58:19 25 Honor, at best, from what we can discern, plaintiff's

01:58:22 1 entire case against my client hinges on the -- on this
2 assertion that plaintiffs on the one hand and my
3 clients on the other hand just happen to enter into
4 business, separate business transactions albeit on
01:58:35 5 totally separate companies regarding separate assets,
6 with the same two individuals, Mr. Lemons and
7 Mr. Burton.

8 Now, your Honor, I'm happy to delve certainly
9 to the details of each of the different agreements and
01:58:49 10 what the allegations are in the complaint, but at
11 bottom, plaintiffs don't allege nor can they allege in
12 the first amended complaint that my clients are parties
13 to any agreements with the plaintiff that could give
14 rise to a claim, that they're parties to any
01:59:03 15 transactions with the Harvest Foundation, that they
16 have an interest in the Harvest Foundation or the
17 assets it holds, or that they have any interest in this
18 exclusive authorization rights agreement that forms the
19 basis of the complaint.

01:59:16 20 And instead what my clients happened to do is
21 enter into totally separate business arrangements with
22 the defendants Larry Lemons and Donnie Burton
23 concerning a company called Strive Wellness. But
24 plaintiffs don't claim an interest in that entity.
01:59:31 25 They don't claim to have any agreements with that

01:59:34 1 entity. And they don't allege that they were parties
2 to any of the ostensible agreements between my clients
3 and Mr. Lemons and Mr. Burton which were referred to as
4 the ITEM 9 agreement.

01:59:44 5 So again, your Honor, at bottom the only
6 connection between the plaintiff on the one hand and my
7 clients is this alleged assertion that they both
8 entered into agreements with Lemons and Burton on
9 totally separate and distinct entities with separate
01:59:57 10 and distinct terms. That's it.

11 And based on that alone, your Honor, they've
12 asserted a host of claims against my client that they
13 had to incur significant cost and expense in defending
14 up to this point.

02:00:09 15 Now, in the opposition plaintiffs have agreed
16 to dismiss each of the individual defendants and a
17 number of the claims against the entity defendants.

18 But the handful of claims that do remain still
19 fail and are defective for a number of different
02:00:24 20 reasons. We have issues with personal jurisdiction.
21 We have issues withstanding, which Marimed's counsel
22 Mr. Wright had already alluded to. And there's defects
23 with each of the individual claims, your Honor.

24 And I'm prepared and I'm happy to speak to the
02:00:36 25 defects with respect to each of those if that's

02:00:38 1 something that the Court would like to do. And so at
2 that point I'll ask. Would you like me, your Honor, to
3 go through the defects of each of the claims?

4 THE COURT: You can.

02:00:48 5 MS. STINE: Go ahead.

6 THE COURT: As to the remaining parties, it's
7 my understanding that the remaining parties after
8 the -- I'm just looking at my notes here. After the
9 opposition was filed and there was agreement to let out
02:01:03 10 some of the individual defendants. I guess, left would
11 be ITEM 9 Labs Corp, ITEM 9 Properties, Strive
12 Management, Viridis Group Holdings, and Viridis Group
13 I9 Capital and -- Capital LLC.

14 That's just my scrivener's notes. But
02:01:27 15 sometimes I wonder if I can read them after I go back
16 to it. But those are the five entities we're talking
17 about; is that correct? Or --

18 MS. STINE: That's what I have on my list as
19 well, your Honor. I'm happy to go through the reasons
02:01:37 20 why the claims that have been articulated against each
21 of those defendants that still remain defective based
22 on the allegations in the complaint if that's something
23 you would like me to do.

24 THE COURT: Yeah, ma'am. For the record it's
02:01:48 25 probably important to hit the high points.

CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 9th day of August, 2021,
I caused service of a true and correct copy of the foregoing **APPENDIX TO
PETITIONERS' WRIT OF MANDAMUS** by the following means:

X BY MAIL: I placed a true copy thereof enclosed in a sealed envelope
addressed as follows:

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Eighth Judicial District Court
Civil Dept. XVI
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Las Vegas, Nevada 89155
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An Employee of Fennemore Craig

IN THE SUPREME COURT OF THE STATE OF NEVADA

JDD, LLC; TCS PARTNERS, LLC; JOHN
SAUNDERS; and TREVOR SCHMIDT,

Petitioners,

vs.

THE HONORABLE TIMOTHY C.
WILLIAMS, EIGHTH JUDICIAL DISTRICT
COURT IN AND FOR THE COUNTY OF
CLARK,

Respondent,

-and-

ITEM 9 LABS CORP. f/k/a Airware Labs
Corp. and Crown Dynamics Corp.; ITEM 9
PROPERTIES, LLC; STRIVE
MANAGEMENT, LLC f/k/a Strive Life;
VIRIDIS GROUP I9 CAPITAL, LLC;
VIRIDIS GROUP HOLDINGS, LLC;
SNOWELL HOLDINGS, LLC; ANDREW
BOWDEN; DOUGLAS BOWDEN; BRYCE
SKALLA; and CHASE HERSCHMAN,

Real Parties in Interest.

Case No.:

District Court Case No.: A-20-
811232-C

APPENDIX TO PETITIONER'S WRIT OF MANDAMUS

Volume 1 (Part 3) of 4 – Pages PA_0201-0247

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APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
First Amended Complaint	09.09.2020	1	PA_0001-0063
Snowell Holdings, LLC's Motion to Dismiss	12.01.2020	1	PA_0064-0077
Item 9 Labs Corp.'s et al. Motion to Dismiss	12.18.2020	1	PA_0078-0123
Plaintiff's Opposition to Snowell Holdings, LLC's Motion to Dismiss	01.18.2021	1	PA_0124-0127
Snowell Holdings, LLC's Reply In Support of Motion to Dismiss	01.20.2021	1	PA_0128-0133
Plaintiff's Opposition to Item 9 Labs Corp.'s et al. Motion to Dismiss	01.26.2021	1	PA_0134-0151
Item 9 Labs Corp.'s et al. Reply in Support of Motion to Dismiss	02.17.2021	1	PA_0152-0166
Transcript – Motion to Dismiss	02.24.2021	1	PA_0167-0247
Snowell Holdings, LLC Motion for Attorneys' Fees	03.24.2021	2	PA_0248-0264
Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0265-0278
Notice of Entry of Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0279-0295
Plaintiff's Opposition to Snowell Holdings, LLC Motion for Fees	04.07.2021	2	PA_0296-0367
Order Granting Item 9 Labs Corp.'s et al. Motion to Dismiss	04.12.2021	2	PA_0368-0383
Notice of Entry of Order Granting Item 9 Labs Corp.'s et al. Motion to Dismiss	04.13.2021	2	PA_0384-0404
Snowell Holdings, LLC Reply in Support of Motion for Attorneys' Fees	04.22.2021	2	PA_0405-0409

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
Item 9 Labs Corp.'s et al. Motion for Attorneys' Fees and Costs	05.04.2021	2	PA_0410-0494
Minute Order Granting Snowell Holdings, LLC's Motion for Attorneys' Fees	05.12.2021	2	PA_0495
Plaintiff's Opposition to Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	05.19.2021	3	PA_0496-0882
Minute Order regarding Snowell Holdings, LLC's Motion for Attorneys' Fees (Issue of Work Performed)	05.26.2021	4	PA_0883
Item 9 Lab Corp.'s Reply in Support of Motion for Attorneys' Fees and Costs	06.01.2021	4	PA_0884-0895
Minute Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	06.08.2021	4	PA_0896
Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	07.07.2021	4	PA_0897-0911
Notice of Entry of Order Granting Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	07.07.2021	4	PA_0912-0930

APPENDIX – ALPHABETICAL TABLE OF CONTENTS

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
First Amended Complaint	09.09.2020	1	PA_0001-0063
Item 9 Lab Corp.’s Reply in Support of Motion for Attorneys’ Fees and Costs	06.01.2021	4	PA_0884-0895
Item 9 Labs Corp.’s et al. Motion for Attorneys’ Fees and Costs	05.04.2021	2	PA_0410-0494
Item 9 Labs Corp.’s et al. Motion to Dismiss	12.18.2020	1	PA_0078-0123
Item 9 Labs Corp.’s et al. Reply in Support of Motion to Dismiss	02.17.2021	1	PA_0152-0166
Minute Order Granting Item 9 Labs Corp.’s Motion for Attorneys’ Fees and Costs	06.08.2021	4	PA_0896
Minute Order Granting Snowell Holdings, LLC’s Motion for Attorneys’ Fees	05.12.2021	2	PA_0495
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Notice of Entry of Order Granting Item 9 Labs Corp.’s et al. Motion to Dismiss	04.13.2021	2	PA_0384-0404
Notice of Entry of Order Granting Item 9 Labs Corp.’s Motion for Attorneys’ Fees and Costs	07.07.2021	4	PA_0912-0930
Notice of Entry of Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0279-0295
Order Granting Item 9 Labs Corp.’s et al. Motion to Dismiss	04.12.2021	2	PA_0368-0383
Order Granting Item 9 Labs Corp.’s Motion for Attorneys’ Fees and Costs	07.07.2021	4	PA_0897-0911

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
Order Granting Snowell Holdings, LLC Motion to Dismiss	03.30.2021	2	PA_0265-0278
Plaintiff's Opposition to Item 9 Labs Corp.'s et al. Motion to Dismiss	01.26.2021	1	PA_0134-0151
Plaintiff's Opposition to Item 9 Labs Corp.'s Motion for Attorneys' Fees and Costs	05.19.2021	3	PA_0496-0882
Plaintiff's Opposition to Snowell Holdings, LLC Motion for Fees	04.07.2021	2	PA_0296-0367
Plaintiff's Opposition to Snowell Holdings, LLC's Motion to Dismiss	01.18.2021	1	PA_0124-0127
Snowell Holdings, LLC Motion for Attorneys' Fees	03.24.2021	2	PA_0248-0264
Snowell Holdings, LLC Reply in Support of Motion for Attorneys' Fees	04.22.2021	2	PA_0405-0409
Snowell Holdings, LLC's Motion to Dismiss	12.01.2020	1	PA_0064-0077
Snowell Holdings, LLC's Reply In Support of Motion to Dismiss	01.20.2021	1	PA_0128-0133
Transcript – Motion to Dismiss	02.24.2021	1	PA_0167-0247

02:01:52 1 MS. STINE: Sure. Your Honor, let's just take
2 Viridis first. Move for dismissal on the basis of
3 personal jurisdiction as to the two Viridis entities.
4 In the opposition the plaintiff has conceded that there
02:02:02 5 is no general jurisdiction against the Viridis
6 entities. They're focused solely on personal
7 jurisdiction.

8 Both of the Viridis entities, however,
9 submitted declarations with our motion which
02:02:14 10 demonstrated that they have no connection to the
11 plaintiffs, no knowledge in dealing or awareness of the
12 plaintiff. And no involvement in Nevada business
13 dealings that purportedly give rise to the claims
14 against them in this case.

02:02:26 15 In having submitted those declarations, the
16 burden is on the plaintiff to come forward with
17 admissible evidence to sustain the assertion that this
18 Court has personal jurisdiction.

19 As has been noted in the arguments a few
02:02:38 20 moments ago by counsel for Snowell, the opposition
21 simple doesn't do that. It resorts back to pointing at
22 different versus conclusory and threadbare allegations
23 in the complaint. And that's not sufficient under the
24 Trump case that the Court has referred to earlier.

02:02:53 25 So, your Honor, for those reasons the Court

02:02:55 1 should dismiss Viridis on the basis of lack of personal
2 jurisdiction.

3 Now, turning to an overarching argument I
4 think that's already been articulated very well by
02:03:06 5 Mr. Wright on behalf of Marimed, and this is -- this
6 affects each of my remaining clients and each of the
7 claims against them. It's the -- it's the assertion
8 that plaintiffs lack standing, and there isn't a
9 justiciable controversy because they don't allege and
02:03:20 10 can't allege at this point that they have any right, or
11 claim, or interest in the Harvest Foundation.

12 Now, there can't be really any legitimate
13 dispute. And I don't think this was denied in the
14 opposition that each and every one of the plaintiff's
02:03:32 15 claims in this case, especially those against my
16 clients, is founded on this fundamental assertion that
17 there's an ownership interest they have in the Harvest
18 Foundation and from that interest they were granted
19 certain rights.

02:03:45 20 But if they don't have an interest in the
21 company, each and every claim that they have against my
22 clients which is necessarily founded on that purported
23 interest fails as a matter of law. So for that reason,
24 your Honor, each of the claims against each of my
02:03:58 25 clients remaining should be dismissed.

02:04:00 1 With respect to the unjust enrichment claim,
2 there's a handful of claims, your Honor. I'll tick
3 through them relatively quickly. Unjust enrichment,
4 you'll see slightly different theories articulated in
02:04:10 5 the opposition from the first amended complaint.

6 The opposition theory goes something like
7 this. Plaintiffs invested in Harvest. That investment
8 benefited all of the defendants because everybody
9 benefited from the Marimed transaction.

02:04:24 10 The complaint, however, doesn't allege nor can
11 it allege that any of my clients which remain, or any
12 of them at all, had any interest in or right to or were
13 participants in the Marimed transaction.

14 So there's simply no unjust enrichment --
02:04:38 15 there was in no benefit conferred and no unjust benefit
16 retained under that theory.

17 The first amended complaint suggests that my
18 clients were somehow unjustly enriched because they
19 excluded plaintiffs from participating in what are
02:04:52 20 referred to as the ITEM 9 agreements. And those are
21 the separate agreements that my clients are alleged to
22 have entered into with Mr. Lemons and Mr. Burton
23 concerning the Strive Wellness entity.

24 Now, while plaintiffs may wish that they could
02:05:07 25 have been parties to those agreements, that doesn't

02:05:10 1 translate into a claim for unjust enrichment.

2 Excluding someone from a transaction that they
3 had no right to participate in in the first place
4 doesn't give rise to a claim for unjust enrichment.

02:05:21 5 And at any rate on its face it doesn't identify any
6 unjust benefit that my client received, or benefit that
7 my client received that flowed from the plaintiff, and
8 it was unjustly retained.

9 Now, with respect to the civil conspiracy
02:05:37 10 claim, that claim is founded on the theory that by
11 entering into the ITEM 9 agreements every defendant,
12 including my clients, somehow conspired with every
13 other defendant to violate the plaintiff's exclusive
14 authorization rights. And those are rights that they
02:05:55 15 claim derive from some sort of an unwritten agreement
16 with defendants Lemons and Burton pursuant to which the
17 parties would restrict or oppose parameters around how
18 the Harvest entity would operate.

19 Claim fails for a couple of the different
02:06:13 20 reasons with respect to my clients. The complaint
21 doesn't allege, nor can it, that the ITEM 9 agreements
22 somehow violate this exclusive authorization agreement.

23 That agreement only precluded, by virtue of
24 the allegations in the complaint, Harvest from entering
02:06:29 25 into certain types of transactions. Harvest is not a

02:06:32 1 party to the ITEM 9 agreements and any investments that
2 my clients, you know, purportedly made in the Strive
3 entities by virtue of the ITEM 9 agreements has no
4 bearing or impact on whatever they claim are their
02:06:43 5 exclusive rights in Harvest.

6 The claim also fails because there is no
7 unlawful objective. They can't allege, and they
8 haven't, that the ITEM 9 agreements are somehow illegal
9 or improper. They have alleged that my clients having
02:06:56 10 the intent in entering into those ITEM 9 agreements do
11 somehow harm the plaintiff. In fact, the first amended
12 complaint doesn't include any specific allegations
13 whatsoever that would suggest that my clients even knew
14 anything about the plaintiffs or anything about their
02:07:12 15 purported interest in the Harvest Foundation or their
16 agreements with Lemons and Burton.

17 In fact, you can see, Judge, in the
18 declarations that we submitted in the motion are in
19 connection with the personal jurisdiction argument that
02:07:24 20 my clients have indicated that had no knowledge of
21 these particular plaintiffs until this litigation.

22 With respect to the aiding and abetting claim
23 which remains, your Honor, and there's two -- there's
24 two more left. Aiding and abetting, this one is founded
02:07:38 25 on the theory that Lemons and Burton breached fiduciary

02:07:43 1 duties to the plaintiff and breached their exclusive
2 rights by entering into the ITEM 9 agreements.

3 Again, however there's no fiduciary
4 relationship as Marimed has argued as well. If there's
02:07:53 5 no legal interest in Harvest, there can't be any
6 fiduciary relationship that would form the basis of the
7 claim, or a fiduciary duty. Let alone one that could
8 form the basis of an aiding and abetting claim.

9 But the allegation with respect to assistance
02:08:06 10 in the breach, or the breach of the duty, those simply
11 aren't there. Any interest or right that they have in
12 Harvest and these exclusive rights don't preclude on
13 their face other folks from entering into separate
14 business transactions regarding separate -- separate
02:08:23 15 companies and separate assets.

16 The scienter allegation is also missing, your
17 Honor. They haven't alleged any knowledge of scienter
18 on behalf of my client. There is a generic assertion
19 that everybody kind of knew about everything that was
02:08:37 20 going on. But that's not -- that's not sufficient to
21 state a claim for relief.

22 And finally, your Honor, on the declaratory
23 judgment claim, this is another one where they are
24 shifting theories between the complaint and what you
02:08:49 25 see in the response. The theory in the complaint is do

02:08:53 1 you want a declaration with respect to the ITEM 9
2 agreements. But they're admittedly not parties to the
3 ITEM 9 agreements and have no right or interest in the
4 ITEM 9 agreements, and, therefore, they're not entitled
02:09:08 5 to any declarations with respect to those agreements.

6 Now, the response shifts a bit. And now
7 there's an assertion that, you know, there's generally
8 a controversy between everyone because there's all
9 these interconnected transactions that may have
02:09:25 10 eliminated Harvest.

11 But again, your Honor, the complaint doesn't
12 allege, because it can't, that my clients have alleged
13 any interest in Harvest or parties to any agreement
14 with Harvest.

02:09:38 15 Your Honor, I -- bottom line, I don't believe
16 my client should be in this case. The fact that the
17 claims have already been dismissed against them
18 demonstrates that there's merits to the motion.

19 And at this point, your Honor, I'll rest with
02:09:55 20 that. Unless you have any specific questions, then
21 I'll save the remainder of my comments for my rebuttal.

22 THE COURT: Okay. Ma'am. Thank you. I don't
23 have a question at this time.

24 We'll hear from the plaintiff.

02:10:08 25 MR. IGLODY: Thank you, your Honor. Lee

02:10:09 1 Iglogy for the plaintiffs.

2 Just to confirm in the complaint, paragraph
3 104, for example, actually more specifically generally
4 alleged in 299 and 104 that there was a joint venture
02:10:23 5 between I9 and, therefore, all the other entities
6 involved in this motion to dismiss and Harvest.

7 And also as alleged in the complaint, again,
8 we're from the outside looking in, what happened to our
9 ownership interest. Lemons and Burton are officers of
02:10:42 10 Strive. At the time they're making a deal with the
11 joint venture with Harvest, which we're alleging at the
12 end of the day deprives us of our owner interest and
13 other rights in Harvest.

14 Again, I'm not making an argument that this is
02:10:53 15 a super spectacular complaint. I am making the
16 argument, though, that if it is true that I9 Labs and,
17 therefore, Strive Wellness, Strive Management and
18 through cascading income participation Viridis Group
19 and the other Viridis entities are participating in the
02:11:10 20 operation of profit or taking the profits of the Nevada
21 cannabis industry that we allege that we own
22 approximately 20 percent of and that we've been
23 deprived of our ownership interest. We argue that that
24 with reasonable inferences from the Court would be
02:11:23 25 sufficient for us to maintain our claim.

02:11:25 1 And so addressing the individual arguments.
2 First off, jurisdictionally I'm in the same position.
3 Now with respect to the Tricarichi case, 135
4 Nevada 87, which is a more recent case, that the
02:11:38 5 argument here is if we had a prior opportunity to do
6 some kind of discovery of any kind to figure out why
7 did ITEM 9 have this joint venture with Harvest which
8 is cascading revenue with Strive and this and that.
9 Then it would be a different situation if I failed in
02:11:52 10 the complaint to allege something.
11 All I have now is what we're able to cobble
12 together from public statements filed from the 10K
13 statements, right, where there is a venture. And
14 Burton and Lemons, the same guys who took my client's
02:12:03 15 money, by the way, are officers of the entities
16 engaging in the transaction. Both sides by the way,
17 bilateral. And somehow at the end of the day the only
18 thing I know for sure is that my guys no longer have an
19 ownership interest, but these people do. It's
02:12:13 20 reasonable for me to name them in the complaint.
21 Again, as I said before, even just for the declaratory
22 relief. There's two people contending they own the
23 same thing. Somebody has got to resolve that dispute.
24 So the argument would be, your Honor, as we
02:12:26 25 state in our opposition, referencing strictly to the

02:12:29 1 four corners of the complaint as we're required to do,
2 that if our claims turn out to be true, then our rights
3 arise.

4 Going into the individual arguments. The
02:12:39 5 question is if our complaints turn out to be true, and
6 if it's true, and, again, I'm just staying in the four
7 corners of the complaint, that knowing that we had a
8 conflicting right to the same Harvest entity, its
9 operations, its engagement in third-party agreements,
02:12:57 10 20 percent ownership, and so on, and they went forward
11 with it anyway, could we say aiding and abetting? Yeah.
12 Could we say conspiracy? Yeah.

13 And then the argument would be do we have a
14 right to these -- do we have a conflicting right that
02:13:11 15 needs to be addressed? Yes, we do.

16 And if they assisted Larry Lemons and Don
17 Burton with their breach of fiduciary duty, breach of
18 contract, and so on, misrepresentation and what not,
19 then could they potentially be liable?

02:13:26 20 And remember, Lemons and Burton prior to the
21 time were actually officers of these entities. So it's
22 a little bit -- it's a little bit confusing here, but
23 if it's true that they did these things when we said in
24 the complaint that they did them, does it give rise to
02:13:39 25 our claims? And the short answer to that is, yeah, it

02:13:41 1 does. It absolutely does, your Honor.

2 And the question, of course, is, oh boy,
3 plaintiff doesn't have all the facts. Yeah, that's
4 exactly right. Typically you don't have the facts.

02:13:49 5 You show on the site. There is a car. There is a
6 couple injured people. You figure it out afterwards.
7 But everybody there gets to participate in the case
8 until we figure out who, what, when, where.

9 And so our argument, your Honor, is, unless
02:13:58 10 you want us specifically addressing individual claims,
11 is we have alleged enough to maintain the complaint for
12 now. Such as to what we find out when we do discovery
13 and we let the individuals out. Not because we don't
14 think that we have something but because at the end of
02:14:10 15 the day stuck to my four corners of the complaint --
16 okay, I'm not going -- I'm not going to waste time with
17 that. But we do absolutely believe the individual
18 entities should be in.

19 Thank you.

02:14:22 20 THE COURT: I just have a question for you,
21 sir. What about the Viridis defendants and the
22 personal jurisdiction argument?

23 MR. IGLODY: Thank you, your Honor. So as we
24 put in our opposition, the argument that we made in
02:14:36 25 regards to the jurisdiction is if Viridis -- I'm

02:14:40 1 mispronouncing. I apologize for that. If Viridis made
2 investments in Nevada operations, particular cannabis
3 operations, then it is reasonable to assert specific
4 jurisdiction because this dispute arises from that
02:14:55 5 investment.

6 It was foreseeable that they could get
7 involved in the dispute. And it's certainly reasonable
8 that if they are going to participate in the profits
9 generated from this highly regulated industry, in
02:15:05 10 whatever form, derivatively or cascading revenue share,
11 then it seems reasonable that we'd be able to exercise
12 jurisdiction in Nevada.

13 And Nevada, by the way, has a very specific
14 interest in making sure this particular industry, which
02:15:17 15 is going through a lot of changes right now, that the
16 Court has oversight into anybody who participates in it
17 even if they're separated by one or two shelter -- two
18 entities away from the transaction but they're still
19 participating based on public records.

02:15:34 20 THE COURT: Okay. But when you said that, I
21 think you prefaced your response with "if". We don't
22 know that; do we?

23 MR. IGLODY: Which part was "if"? I
24 apologize, your Honor.

02:15:45 25 THE COURT: We're talking about Viridis. The

02:15:47 1 Viridis Group Holding.

2 MR. IGLODY: Right. And again, if my -- if my
3 claim in the complaint is correct that they were
4 participating in the revenues of the operations of
02:15:57 5 Strive Wellness and Strive Management through I9 with
6 Harvest, is that what you're asking me?

7 THE COURT: Well, I think in a general sense
8 because the defendant, the Viridis entities they're
9 taking a position that they're based out of Arizona,
02:16:09 10 and they have no minimum contacts with Nevada at all
11 that would give rise to this Court exercising a general
12 personal jurisdiction over them. And that's my
13 recollection as to what their position is.

14 And our position is if you invest in Nevada
02:16:29 15 cannabis business, it is very reasonable to assert a
16 claim against them. Because it was -- it could be
17 anticipated that you would be hailed into a Nevada
18 court of law; right? In other words you -- they
19 established affirmative contacts. Cause of action
02:16:44 20 arises as a result derivatively from those contacts.

21 Again, this is under the umbrella of the I9
22 and Strive agreements. And so can they be named
23 because they have a somewhat separated attenuated
24 scale, but they have still have a direct interest in
02:16:59 25 the same -- basically the nucleus of common facts in

02:17:02 1 terms of revenue generation and the operating
2 agreements and the operations of Harvest? And the
3 answer to that is, "yes", your Honor.

4 THE COURT: But the question was "if". That's
02:17:12 5 why I brought that up. And the reason why I bring
6 that, I think it's important to point out, I was a tort
7 lawyer. And used in auto accident scenario. But I'm
8 not going to sue an individual based upon an "if" they
9 ran the red light.

02:17:28 10 I'm going to want to make sure that an
11 investigation was conducted beforehand prior to filing
12 a lawsuit to establish, in fact, there's evidence to
13 support that they did run the red light potentially by
14 statements from independent witnesses, or fruits of a
02:17:47 15 police investigation where there's an admission against
16 interests contained in the police report. Like, I
17 mean, that's just kind of how things are. So I can't
18 let a case proceed forward on "if". We need to know
19 facts, for example, as to whether or not --

02:18:02 20 MR. IGLODY: Okay.

21 THE COURT: -- the Viridis entities did, in
22 fact, invest. And that's my point.

23 MR. IGLODY: And all I can do is refer you,
24 the Court, to, I guess, to paragraph 104. But they --
02:18:16 25 group together paragraphs 109 and 104. We say this is

02:18:18 1 public records. They have did an investment. And they
2 are participating in the profits and revenues.

3 That's our assertion in the complaint. And if
4 the Court has an issue of the admissibility of 10K
02:18:31 5 filings with the SEC, the argument would be they're
6 public records. And that's the only reason we were
7 able to piece this together that part of the equation
8 is because there were 10K filings.

9 So the argument would be if you're going to
02:18:42 10 participate, it's reasonable to hail you into court as
11 a result of that participation.

12 Now, I don't know the scope of the
13 participation as we put in the complaint. We just know
14 the part of it. We know that I9 is part of it. We
02:18:54 15 know the Strive Group is part of it. We know Viridis
16 is part of it.

17 Whether they're in Arizona or not -- I mean,
18 let's just say their declarations are absolutely true;
19 right? The question is if I'm an Arizona resident and,
02:19:04 20 of course, right, and I invest in Nevada business, is
21 it unreasonable that as a result of an investment I get
22 hailed into court in Nevada? Our argument would be,
23 No, it's not unreasonable.

24 I could be wrong, by the way, except in this
02:19:17 25 particular allegation, unlike the other ones, I mean, I

02:19:19 1 got a 10K filing.

2 THE COURT: Sir, I respect that. I do; right?

3 MR. IGLODY: Thank you, your Honor.

4 MS. STINE: Your Honor, that is Lauren Stine.

02:19:31 5 May I be heard?

6 Your Honor? Hello?

7 THE COURT CLERK: Ms. Stine, this is the

8 courtroom clerk. I can hear you. It looks like judge

9 is reconnecting possibly.

02:19:56 10 MS. STINE: Okay, thank you.

11 (brief pause in proceedings.)

12 THE COURT: All right. I think I'm back. I'm

13 sorry. I got dropped and that was at the end of

14 plaintiff's counsel's argument. I think he made a

02:20:43 15 comment I could be wrong on that, and I respect that.

16 And so, sir, I just want to make sure, are you

17 finished?

18 MR. IGLODY: Yes, your Honor.

19 THE COURT: Okay. All right. We'll hear the

02:20:56 20 reply.

21 MS. STINE: Thank you, your Honor.

22 You know, a lot of what we heard from counsel

23 for the plaintiff sounded eerily similar to what we

24 heard in connection with the Marimed argument.

02:21:08 25 If maybe when discovery, maybe some day shows

02:21:12 1 there's a claim, well, then we'll be proven right. But
2 that's -- you have to have facts. You have to allege
3 them in the complaint before you actually proceed
4 forward with claims.

02:21:22 5 You know, otherwise we're going to find
6 ourselves, however many months from now, standing here
7 spending a whole bunch of money on all sides around
8 this thing based on allegations that don't sustain
9 claims for relief.

02:21:35 10 Again, it does appear that plaintiffs do have
11 some beef with the Harvest Foundation. And in the
12 event that their lawsuit -- again, discovery in
13 connection with the Harvest Foundation might reveal
14 some facts against some of the other individuals and
02:21:51 15 entities, then maybe that's the day that some of those
16 get brought in. But not at this point, your Honor.
17 Not based on the kind of allegation that we have here
18 which are maybe Viridis made a capital contribution
19 into Strive's management. And there's no connection
02:22:06 20 between Strive Management and the plaintiffs and
21 Harvest.

22 The lack of any connection here or theory that
23 ties anything together is really fatal to all the
24 claims, your Honor.

02:22:22 25 THE COURT: Okay. Ma'am, and are you

02:22:25 1 finished? I just want to make sure.

2 MS. STINE: Unless you have anything specific
3 you'd like me to weigh in on.

4 THE COURT: No, ma'am. I think we have a
02:22:33 5 fairly thorough record. I just have a few minor
6 comments. And I'll just group them.

7 As far as the Viridis defendants are concerned
8 and that includes Viridis Group Holdings and also
9 Viridis Group 19 Capital LLC, and as it pertains to
02:22:55 10 personal jurisdiction in this matter, I'm going to
11 grant the motion as in regards to that issue.

12 And then we move on to the, I guess, what has
13 been referred to collectively as the ITEM 9 defendants.
14 And that would be ITEM 9 Lab Corporation, ITEM 9
02:23:15 15 Properties, and Strive Management. Based upon the
16 current status of the pleadings as it relates to the
17 claims for relief that have been set forth on the
18 record here, I guess, for example, would be unjust
19 enrichment, civil conspiracy, aiding and abetting,
02:23:36 20 breach of fiduciary duty, declaratory judgment, I think
21 I overlooked the first one. But under the facts as
22 currently pled, it appears to me there could be no
23 factual basis as set forth in the complaint as to
24 claims for relief against the ITEM 9 defendants
02:23:53 25 collectively.

02:23:54 1 And so, ma'am, what I'm going to do as far as
2 the motion is concerned, I'm going to grant that. I'm
3 going to have you prepare -- just like I said in the
4 prior matters, a detailed findings of facts conclusions
02:24:05 5 of law.

6 I would request that you get a copy of the
7 transcript. And take your time on that. And just as
8 important, we're going to make sure plaintiff's counsel
9 gets an opportunity to get the transcript. And then
02:24:16 10 you can prepare an order with findings. And you can
11 also reference the transcript if you wish.

12 And just as important, plaintiff's counsel
13 will get a chance to also do the same.

14 Last, but not least, the dismissal at this
02:24:31 15 stage will be without prejudice.

16 MS. STINE: Thank you, your Honor.

17 THE COURT: All right.

18 I think next up is defendants Sara
19 Gullickson's motion to dismiss plaintiff's complaint;
02:24:58 20 is that correct?

21 MR. GABROY: Yes, your Honor. This is
22 Christian Gabroy. Good afternoon.

23 THE COURT: Good afternoon, sir.

24 MR. GABROY: As part of our motion as well,
02:25:06 25 your Honor, we filed notices of joinder to Marimed's

02:25:11 1 and Snowell's motion to dismiss, which have been
2 granted previously today by this Court. The Court has
3 entertained a lot of argument regarding the individual
4 defendants and the allegations as pled.

02:25:22 5 What I think is important when Mr. Wright
6 first stepped up and your Honor asked, Well, where are
7 the facts? What is required by the Nevada Supreme
8 Court to base your allegation in this nine counts that
9 are brought against an individual who was transport
02:25:42 10 manager of a company in 2018?

11 And in no way did she sign any of these
12 agreements. In no way did she execute any of these
13 agreements. And no way was she even knowledgeable of
14 these agreements in 2015, which the first amended
02:25:59 15 complaint, 244 paragraphs 33 pages is based upon.

16 For all those previous reasons, your Honor,
17 that this Court has so well articulated in granting
18 these motions to dismiss, defendants Sara Gullickson
19 believes she should be dismissed from this case as
02:26:16 20 well.

21 Previously I discussed with plaintiff's
22 counsel about entering into a BDSM which was without
23 prejudice. She'll appear for a deposition even. But
24 that's how far, that representation wasn't honored.

02:26:29 25 So, your Honor, there are no facts, there can

02:26:31 1 be no facts involving her, involving these 2015
2 agreements. For those reasons already articulated so
3 well by previous counsel we believe that the individual
4 defendant Sara Gullickson, a resident, your Honor, of
02:26:46 5 Arizona should be dismissed from this action.

6 THE COURT: Thank you, sir.

7 We'll hear from the plaintiff.

8 MR. IGLODY: All right. Thank you, your
9 Honor.

02:26:57 10 So in regard to Gullickson, since we're kind
11 of coming to the tail end of the sequence of motions
12 I'll go ahead and focus on distinguishing Sara first.

13 We're distinguishing Sara from for example I9.
14 She was a managing member of Harvest, particularly when
02:27:12 15 Harvest entered into some of these agreements that we
16 complained of, again, some of which are supported by
17 public filings. So as a managing member can she be
18 liable for the actions of the company that she's a
19 managing member of if she personally participated in
02:27:26 20 them? And the argument is yes. As an officer at the
21 very least.

22 Also she happened to be a member of Strive
23 Management and Strive Wellness. Do we -- do we -- one
24 of the contested transactions which resulted in a joint
02:27:41 25 venture in Nevada with Harvest Foundation, and also the

02:27:46 1 argument here is that at the very least, as a managing
2 member of Harvest, she would have presumably had some
3 knowledge of the operations of Harvest, its previous
4 agreements. And that if, again, my -- the complaint is
02:28:02 5 looked at from the perspective of if what's stated in
6 the complaint turns out to be true, could Sara
7 Gullickson be held liable pursuant to the causes of
8 action in the complaint? And the argument would be
9 yes.

02:28:17 10 And the argument being especially if you are
11 in a position of authority over the entity that we
12 complained against, along with Burton and Lemons, and
13 we were harmed as a result, that unlike, for example,
14 the Viridis claim, oh, we never came to Nevada. We're
02:28:32 15 just spending the profits, but that's not enough to
16 bring us in. In this case, she's the actual managing
17 member approved by the State of Nevada by the way.
18 Jack is a managing member.

19 At the very least we would argue that we can
02:28:42 20 make the claim that she should be part of this case
21 whether or not she's a resident of Arizona or not.
22 Because when the action took place she was a managing
23 member of Nevada entities. And so the argument would
24 be, yes, Gullickson should be in this case. And as to
02:28:56 25 when discovery is concluded, we'll figure out what her

02:28:59 1 liability is, if any.

2 Thank you.

3 THE COURT: Thank you, sir.

4 We'll hear from the moving parties.

02:29:10 5 MR. SHANBHAG: Yes, your Honor. It's exactly
6 what you pointed out about the illustration that
7 Mr. Iglody offered about a car accident.

8 You don't show up at a scene of a car accident
9 as a tort lawyer and sue everybody that's at the scene
02:29:22 10 of the accident.

11 But your Honor pointed out there's no "ifs".
12 You have to have facts. You have to have knowledge.
13 She wasn't, at the time in 2015, as I said, not a party
14 to these agreements. And, in fact, the first time she
02:29:34 15 even heard of the plaintiffs is when she was served
16 with this lawsuit. You can't rely on presumptions.
17 You can't rely upon speculation. You can't rely upon
18 these ifs. You have to have some type of factual basis
19 of wrongdoing. There's no such thing as guilt by
02:29:50 20 association, especially with the nature of the claims
21 that have been brought against the defendant individual
22 Gullickson.

23 For that basis, your Honor, we believe that
24 they haven't even come close to the list of standards
02:30:00 25 which requires facts being alleged, your Honor, which

02:30:02 1 was solely missing in these 244 paragraphs.

2 THE COURT: Okay. And I want to make sure I
3 understand the timing. It's alleged, and I assume this
4 isn't an issue of fact, but she was a managing member
02:30:17 5 of Harvest. And when did that occur?

6 MR. GABROY: Your Honor, the way that -- this
7 is Christian Gabroy for the individual defendant
8 Gullickson.

9 The way that I understand it is that Harvest
02:30:29 10 has a portion where she was retained to try to get the
11 transportation license, as a transport manager.

12 She not there until 2018. This case is based
13 on 2015, your Honor.

14 THE COURT: Okay.

02:30:46 15 MR. GABROY: And staying to the four corners
16 of the complaint, we allege she was managing member
17 which has its own independent legal effects separate
18 from the factual allegations being made during this
19 proceeding.

02:30:58 20 And that as a managing member she has certain
21 responsibilities. And our claim as stated in the
22 complaint is that as a result of her actions, we were
23 deprived of the fruits of our investment. That's all
24 we have to do in a complaint to start.

02:31:14 25 Now, if I can't prove that at the end of the

02:31:16 1 case, that's my problem. That's on me.

2 But again, when we separate from hard you
3 cannot maintain claim of any kind to well she's
4 managing member, but she didn't know anything about
02:31:28 5 this, I'm sorry, your Honor, that's ripe for the
6 merits. We'll do a motion for summary judgment, let's
7 do to. But let me do some discovery first.

8 Thank you.

9 THE COURT: But here's my question. If she
02:31:35 10 didn't become a managing member of the LLC until three
11 years after this whole transaction and the facts and
12 circumstances leading up to the transaction occurred,
13 why would you want her in the case unless you had
14 specific facts to establish maybe three years later she
02:32:01 15 had some involvement?

16 Because and the reason why I bring that up
17 just because someone is a managing member of an LLC,
18 for example, doesn't mean they can be sued. And, for
19 example, I do agree with you. If she was potentially
02:32:16 20 part of the transaction or she was a managing member I
21 think in 2015, absolutely.

22 But -- and that's why I say facts are
23 important because one thing that wasn't asserted, and
24 this is important when it comes to all types of events
02:32:34 25 and transactions and setting forth or alleging facts as

02:32:39 1 set forth in the complaint, you have to discuss time.
2 When, you know, who, and so on.

3 And I'm not talking about pleading with
4 particularity under Rule 9(b). I'm just focusing on a
02:32:54 5 bare and salient fact in this case, I would think would
6 be time she was a managing member.

7 And the reason why I bring that up, I mean, I
8 do understand the frustration of plaintiff's counsel, I
9 do, and your client, potentially, because they invested
02:33:10 10 money, and lo and behold they didn't get the benefit
11 the bar again. And I get that.

12 But just as important too, I'm just trying to
13 figure out how, for example, under the facts of this
14 case, Gullickson, even though she was a managing
02:33:28 15 member, she became the managing member three years
16 later. And that's my point.

17 So shouldn't the complaint set forth that she
18 was a managing member at or around the time of the
19 transactions involved?

02:33:47 20 MR. IGLODY: I believe looking through the
21 plaintiff's, the Court's allowed to make reasonable
22 inferences. As we stated in the complaint, the primary
23 transaction that deprived my clients of their ownership
24 interest in the company took place when she was at the
02:34:01 25 helm.

02:34:01 1 And so if you're looking at 18 and 19, she was
2 there. And then also for awhile she is Strive too.
3 She's on both sides of some of these transactions.

4 And so the argument is, is it reasonable to
02:34:11 5 impute knowledge of the company's obligations and
6 membership structure to the managing member of the
7 company? And as we allege in the complaint, yes. It
8 is. And that's why we brought her in as a defendant.

9 Because at the end of the day it wasn't just
02:34:26 10 Larry Burton and Don -- I mean, Larry Lemons and Donnie
11 Burton who were in charge for the time period where the
12 major transactions of the third parties took place that
13 formally deprived us of our ownership interest, or my
14 clients of their ownership interest, while she was at
02:34:43 15 the helm.

16 So the question is, is it reasonable to impute
17 upon a managing member of a company knowledge that
18 should be imputed to that member, including especially
19 not -- the agreement with my clients and their
02:34:55 20 ownership interest? And the answer is, yes. It's not
21 unreasonable at all.

22 And probably any managing member would
23 probably take some time to figure out who the owners
24 are before engaging in third-party transactions would
02:35:09 25 be our argument. Thank you.

02:35:12 1 THE COURT: But I just want to make sure I
2 understand what specifically is set forth in the
3 complaint as it relates to actions or lack thereof
4 vis-à-vis Gullickson in 2018 and 2019 as it relates to
02:35:27 5 potential transactions or lack thereof that resulted in
6 some sort of harm be it in contract and/or tort to your
7 client?

8 MR. IGLODY: So, again, referring the Court to
9 paragraphs 94 through 104 of the complaint. And this
02:35:46 10 is where we go into the Harvest Foundation's
11 transactions with the I9 people in the Marimed Group.

12 If she was management at the time, the
13 argument is, and it's true that she had actual or
14 constructive knowledge of our conflicting interest and
02:36:04 15 our exclusive authorization rights, then what follows
16 under Nevada law is some cause of action, and we've
17 pled them in here.

18 And so if the Court is asking does this have
19 to do --

02:36:16 20 THE COURT: For the record what paragraphs are
21 you talking about? Sir, I don't want to cut you off.

22 MR. IGLODY: Yeah.

23 THE COURT: What paragraph are you saying,
24 sir? That's okay.

02:36:25 25 MR. IGLODY: Specifically 94 through 104. And

02:36:31 1 then if you wanted to go back to the other transaction,
2 92 would be a good summary paragraph.

3 THE COURT: Okay. Anything else, sir?

4 MR. IGLODY: On my side?

02:36:47 5 THE COURT: Yes.

6 MR. IGLODY: No. Thank you so much, your
7 Honor.

8 THE COURT: All right. Just I didn't want to
9 cut you off.

02:36:54 10 Okay. We'll hear from the moving party.

11 MR. GABROY: Your Honor, you hit the issue
12 correctly on its head. This relates to a time period
13 that has no relation whatsoever to the individual
14 defendant at this. And he has to allege these facts.

02:37:10 15 I just took a look at paragraphs 94 through 104.
16 Again, you have to allege facts against, especially
17 against, an individual defendant, as you pointed out,
18 with a cloak of an LLC.

19 There's no grounds here for these seven
02:37:25 20 scattershot complaints of unjust enrichment, civil
21 conspiracy. He agreed to drop the alter ego, and the
22 aiding and abetting, and intentional inference of
23 contractual relationships. Although she never even
24 entered into any contractual relationships as alleged
02:37:39 25 in the first amended complaint. For all these reasons

02:37:41 1 previously articulated, we respectfully request
2 Gullickson be dismissed.

3 THE COURT: Okay. This is what I'm going to
4 do. And, unfortunately, I work remote. And so I do
02:37:52 5 have my laptop. And I don't have all the accouterments
6 I would have if I was in the courthouse. And trust me,
7 I do miss that. In fact, I'm hoping to get back in the
8 courthouse within the next two weeks or so since I just
9 had my second vaccine done.

02:38:09 10 But what I'm going to do today, I'm not going
11 to waste a lot of time on it, gentlemen. I don't mind
12 telling you this. I'm going to have to -- I have to
13 get on another database which is a little bit different
14 than the one I'm on right now. And I'll get on
02:38:21 15 Odyssey. And I will go ahead and look at paragraphs 94
16 through 104 and also paragraph 92 just for clarity to
17 say I looked at that. Then I'll issue a real quick
18 minute order. And I'll probably do it today.

19 MR. GABROY: Perfect. Thank you, your Honor.

02:38:38 20 THE COURT: Okay.

21 MR. IGLODY: Thank you, your Honor.

22 THE COURT: And that covered all issues;
23 right? There is nothing else, left?

24 MR. GABROY: Correct, your Honor, on behalf of
02:38:47 25 defendant Gullickson.

02:38:48 1 THE COURT: Okay. All right. And that covers
2 all motions; is that true too?

3 MR. GABROY: Correct, your Honor. On behalf
4 of the defendant Gullickson.

02:38:56 5 THE COURT: Okay. The only reason I asked
6 that question I think we got done a lot quicker than I
7 anticipated when I was reading the motions. I don't
8 mind saying that.

9 But anyway, everyone enjoy your day. And I'm
02:39:07 10 going to go ahead this afternoon and try to go back and
11 read the complaint. And just as important I would
12 anticipate the minute order today, probably tomorrow.
13 Because I have to prepare it. Then my law clerk looks
14 at it. It might not get posted today, but it has to be
02:39:26 15 posted by our clerk. But it should be posted tomorrow.

16 MR. GABROY: Thank you, your Honor.

17 THE COURT: Okay. Enjoy your day.

18 MR. SHANBHAG: Okay.

19 MS. STINE: Thank you, your Honor. Bye-bye.

02:39:34 20 THE COURT: Bye.

21 MR. SHANBHAG: Thank you, your Honor.

22 THE COURT: You're welcome.

23 (Proceedings were concluded.)

24 * * * * *

25

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
8 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16
17 _____
18 PEGGY ISOM, RMR, CCR 541
19
20
21
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25

<p>MR. BARRETT: [1] 7/7 MR. GABROY: [10] 6/20 53/21 53/24 58/6 58/15 63/11 64/19 64/24 65/3 65/16 MR. IGLODY: [29] 6/8 11/12 13/25 14/6 14/21 14/24 16/12 16/23 22/8 22/15 22/17 26/13 26/17 41/25 45/23 46/23 47/2 48/20 48/23 50/3 50/18 55/8 60/20 62/8 62/22 62/25 63/4 63/6 64/21 MR. NIELSON: [1] 6/25 MR. SHANBHAG: [9] 6/13 23/7 23/12 28/10 28/13 30/10 57/5 65/18 65/21 MR. WRIGHT: [6] 6/23 7/22 8/1 14/9 18/24 23/2 MS. HERLING: [2] 6/10 7/14 MS. STINE: [10] 30/23 34/5 34/18 35/1 50/4 50/10 50/21 52/2 53/16 65/19 THE COURT CLERK: [1] 50/7 THE COURT: [60] 6/6 7/9 7/15 7/24 11/10 13/20 14/2 14/11 14/23 16/10 16/17 18/22 20/16 22/14 22/16 22/21 23/3 23/11 26/12 26/15 28/9 28/12 29/15 30/12 34/4 34/6 34/24 41/22 45/20 46/20 46/25 47/7 48/4 48/21 50/2 50/12 50/19 51/25 52/4 53/17 53/23 55/6 57/3 58/2 58/14 59/9 62/1 62/20 62/23 63/3 63/5 63/8 64/3 64/20 64/22 65/1 65/5 65/17 65/20</p>	<p>65/22 \$ \$1.2 [1] 13/1 \$1.2 million [1] 13/1 0 0001 [1] 4/21 1 1.2 million [1] 15/14 100 percent [2] 24/11 26/5 1033 [1] 5/10 104 [8] 42/3 42/4 48/24 48/25 62/9 62/25 63/15 64/16 109 [1] 48/25 10K [4] 43/12 49/4 49/8 50/1 12 [1] 23/6 135 [1] 43/3 150C [1] 5/8 16 [1] 2/2 170 [1] 4/7 18 [1] 61/1 1800 [1] 2/22 19 [2] 52/9 61/1 1935 [1] 3/9 1:23 [1] 6/2 2 2 million [1] 15/15 20 percent [4] 17/7 17/10 42/22 44/10 20-24 [1] 2/2 2015 [5] 54/14 55/1 57/13 58/13 59/21 2016 [1] 8/15 2018 [3] 54/10 58/12 62/4 2019 [1] 62/4 2021 [2] 1/22 6/1 210 [1] 2/20 229-5474 [1] 3/21 2300 [1] 2/8 2340 [1] 4/18 24 [4] 1/22 2/2 6/1 22/12 244 [2] 54/15 58/1 244-plus [1] 31/18 252-5002 [1] 3/11 252-5006 [1] 3/12 259-7704 [1] 4/11 259-7777 [1] 4/10</p>	<p>280 [1] 4/8 299 [1] 42/4 3 300 [1] 5/20 33 [1] 54/15 350 [1] 4/19 363-5100 [1] 5/22 363-5101 [1] 5/23 4 405-0001 [1] 4/21 405-8454 [1] 4/22 420-5165 [1] 3/22 425-5366 [1] 2/11 480-531-1800 [1] 2/22 5 5002 [1] 3/11 5006 [1] 3/12 5100 [1] 5/22 5101 [1] 5/23 5165 [1] 3/22 5366 [1] 2/11 541 [2] 1/25 66/17 5474 [1] 3/21 5710 [1] 5/11 6 60 [1] 22/22 602 [3] 3/21 3/22 5/11 6710 [1] 2/19 7 702 [10] 2/11 3/11 3/12 4/10 4/11 4/21 4/22 5/10 5/22 5/23 72 [1] 22/2 7575 [1] 5/7 7704 [1] 4/11 7777 [1] 4/10 792-5710 [1] 5/11 8 833-1033 [1] 5/10 8454 [1] 4/22 85004 [1] 3/20 85253 [1] 2/21 87 [1] 43/4 8805 [1] 6/21 89012 [1] 4/9 89102 [2] 2/10 4/20 89128 [1] 5/9 89134 [1] 3/10 89148 [1] 5/21 8945 [1] 5/19</p>	<p>9 900 [1] 2/9 92 [2] 63/2 64/16 94 [4] 62/9 62/25 63/15 64/15 : :SS [1] 66/2 A abetting [5] 19/14 39/22 40/8 52/19 63/22 ability [2] 15/2 66/11 able [3] 43/11 46/11 49/7 about [14] 9/12 12/3 34/17 39/14 39/14 40/19 45/21 46/25 54/22 57/6 57/7 59/4 60/3 62/21 absolutely [7] 11/1 14/23 28/12 45/1 45/17 49/18 59/21 accept [1] 27/4 accepted [1] 13/15 accident [4] 48/7 57/7 57/8 57/10 accouterments [1] 64/5 accrued [1] 13/4 ACCURATE [1] 66/11 action [10] 10/5 10/17 19/6 20/7 23/21 47/19 55/5 56/8 56/22 62/16 actions [4] 24/15 55/18 58/22 62/3 activities [2] 23/20 31/7 actual [4] 13/7 17/1 56/16 62/13 actually [11] 10/23 17/21 18/17 18/18 19/10 30/13 31/14 31/20 42/3 44/21 51/3 additional [1] 19/23 address [2] 14/22 16/12 addressed [1] 44/15 addressing [2]</p>	<p>43/1 45/10 ADMINISTRATIVE [1] 2/2 admissibility [1] 49/4 admissible [1] 35/17 admission [1] 48/15 admit [1] 23/16 admitted [2] 6/16 23/9 admittedly [1] 41/2 advertising [1] 24/6 affects [1] 36/6 affirmative [1] 47/19 after [9] 12/21 17/25 18/16 25/9 27/5 34/7 34/8 34/15 59/11 afternoon [9] 6/9 6/10 6/20 6/25 7/7 30/23 53/22 53/23 65/10 afterwards [1] 45/6 again [27] 7/17 11/13 16/4 18/11 22/9 25/18 27/20 27/22 28/13 29/1 33/5 40/3 41/11 42/7 42/14 43/21 44/6 47/2 47/21 51/10 51/12 55/16 56/4 59/2 60/11 62/8 63/16 against [24] 19/9 19/22 25/19 27/19 32/1 33/12 33/17 34/20 35/5 35/14 36/7 36/15 36/21 36/24 41/17 47/16 48/15 51/14 52/24 54/9 56/12 57/21 63/16 63/17 ago [2] 9/20 35/20 agree [2] 21/24 59/19 agreed [3] 25/11 33/15 63/21 agreement [9] 25/3 32/18 33/4 34/9 38/15 38/22 38/23 41/13 61/19 agreements [31]</p>
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<p>A</p> <p>agreements... [31] 13/1 32/9 32/13 32/25 33/2 33/8 37/20 37/21 37/25 38/11 38/21 39/1 39/3 39/8 39/10 39/16 40/2 41/2 41/3 41/4 41/5 44/9 47/22 48/2 54/12 54/13 54/14 55/2 55/15 56/4 57/14</p> <p>ahead [10] 7/13 14/1 14/2 23/4 30/6 30/21 34/5 55/12 64/15 65/10</p> <p>aiding [7] 19/14 39/22 39/24 40/8 44/11 52/19 63/22</p> <p>albeit [1] 32/4</p> <p>all [51] 2/2 7/9 7/9 7/24 8/2 9/15 10/6 11/21 12/4 12/14 12/18 12/19 13/6 13/16 17/25 18/4 18/5 18/22 18/24 20/10 23/3 26/15 27/10 27/22 29/13 30/25 37/8 37/12 41/8 42/5 43/11 45/3 47/10 48/23 50/12 50/19 51/7 51/23 53/17 54/16 55/8 58/23 59/24 61/21 63/8 63/25 64/5 64/22 65/1 65/2 66/5</p> <p>allegation [10] 8/14 9/9 9/19 28/19 29/5 40/9 40/16 49/25 51/17 54/8</p> <p>allegations [14] 10/24 11/17 11/23 28/2 28/19 29/18 32/10 34/22 35/22 38/24 39/12 51/8 54/4 58/18</p> <p>allege [20] 13/5 13/6 19/18 32/11 32/11 33/1 36/9 36/10 37/10 37/11 38/21 39/7 41/12 42/21 43/10 51/2 58/16 61/7 63/14 63/16</p> <p>alleged [18] 8/23 9/8 12/22 15/12 24/14 27/15 27/23</p>	<p>33/7 37/21 39/9 40/17 41/12 42/4 42/7 45/11 57/25 58/3 63/24</p> <p>allegedly [1] 23/21</p> <p>alleges [2] 12/14 24/9</p> <p>alleging [3] 8/8 42/11 59/25</p> <p>allowed [4] 9/1 19/1 28/14 60/21</p> <p>alluded [2] 24/12 33/22</p> <p>alone [2] 33/11 40/7</p> <p>along [1] 56/12</p> <p>already [6] 31/3 31/9 33/22 36/4 41/17 55/2</p> <p>also [11] 24/21 39/6 40/16 42/7 52/8 53/11 53/13 55/22 55/25 61/2 64/16</p> <p>alter [3] 16/14 19/8 63/21</p> <p>although [2] 30/14 63/23</p> <p>always [1] 22/22</p> <p>am [2] 6/13 42/15</p> <p>amend [1] 21/12</p> <p>amended [9] 7/20 10/10 16/9 32/12 37/5 37/17 39/11 54/14 63/25</p> <p>amiss [1] 15/17</p> <p>amongst [1] 9/16</p> <p>ANDREW [2] 3/3 7/4</p> <p>another [5] 8/13 15/15 29/4 40/23 64/13</p> <p>answer [4] 17/9 44/25 48/3 61/20</p> <p>anticipate [1] 65/12</p> <p>anticipated [3] 30/14 47/17 65/7</p> <p>any [48] 10/3 10/11 10/23 13/8 15/4 19/13 21/2 22/25 22/25 24/5 24/8 24/8 25/2 27/5 28/19 29/13 29/15 31/21 31/21 32/13 32/14 32/17 32/25 33/2 36/10 36/12 37/11 37/11 37/12</p>	<p>38/5 38/5 39/1 39/12 40/5 40/11 40/17 41/5 41/13 41/13 41/20 43/6 51/22 54/11 54/12 57/1 59/3 61/22 63/24</p> <p>anybody [1] 46/16</p> <p>anything [8] 19/13 19/19 39/14 39/14 51/23 52/2 59/4 63/3</p> <p>anyway [6] 7/12 7/15 22/23 23/3 44/11 65/9</p> <p>anywhere [1] 9/8</p> <p>apologize [4] 9/25 27/20 46/1 46/24</p> <p>apparently [3] 15/17 17/8 27/7</p> <p>appear [2] 51/10 54/23</p> <p>APPEARANCE [1] 2/3</p> <p>appearances [5] 2/1 2/24 3/24 4/23 7/10</p> <p>appears [2] 10/17 52/22</p> <p>apply [1] 31/10</p> <p>approach [1] 9/15</p> <p>appropriate [1] 20/14</p> <p>approval [1] 8/22</p> <p>approved [1] 56/17</p> <p>approximately [2] 17/7 42/22</p> <p>are [63] 2/2 8/2 8/7 9/1 9/4 9/15 11/17 15/7 16/1 17/6 17/9 17/10 20/1 20/1 20/6 20/18 20/20 21/13 21/25 23/25 24/23 25/14 25/15 26/3 26/8 27/22 29/18 30/5 30/5 31/8 31/14 32/10 32/12 33/19 34/16 37/19 37/20 37/21 38/14 39/4 39/8 39/18 40/23 42/9 42/19 43/15 46/8 48/17 49/2 49/18 50/16 51/18 51/25 52/7 54/6 54/9 54/25 55/16 56/10 59/22</p>	<p>61/24 62/20 62/23</p> <p>aren't [1] 40/11</p> <p>argue [3] 13/17 42/23 56/19</p> <p>argued [2] 25/19 40/4</p> <p>arguing [4] 6/17 18/11 23/9 26/1</p> <p>argument [37] 11/20 15/20 16/4 17/11 17/18 17/23 18/3 18/10 25/20 27/10 27/25 28/14 28/25 36/3 39/19 42/14 42/16 43/5 43/24 44/13 45/9 45/22 45/24 49/5 49/9 49/22 50/14 50/24 54/3 55/20 56/1 56/8 56/10 56/23 61/4 61/25 62/13</p> <p>arguments [3] 35/19 43/1 44/4</p> <p>arise [2] 23/22 44/3</p> <p>arises [3] 13/3 46/4 47/20</p> <p>Arizona [8] 6/14 23/8 31/8 47/9 49/17 49/19 55/5 56/21</p> <p>around [6] 12/22 13/14 26/19 38/17 51/7 60/18</p> <p>arrangements [1] 32/21</p> <p>articulated [6] 34/20 36/4 37/4 54/17 55/2 64/1</p> <p>as [100]</p> <p>ascertain [1] 15/2</p> <p>ask [3] 17/4 20/14 34/2</p> <p>asked [3] 11/25 54/6 65/5</p> <p>asking [6] 18/5 18/19 19/5 26/23 47/6 62/18</p> <p>assert [2] 46/3 47/15</p> <p>asserted [2] 33/12 59/23</p> <p>assertion [8] 32/2 33/7 35/17 36/7 36/16 40/18 41/7 49/3</p> <p>asset [1] 13/10</p>	<p>assets [3] 32/5 32/17 40/15</p> <p>assistance [1] 40/9</p> <p>assisted [1] 44/16</p> <p>association [1] 57/20</p> <p>assorted [1] 13/1</p> <p>assume [4] 15/16 19/22 19/25 58/3</p> <p>at [73]</p> <p>attention [1] 9/19</p> <p>attenuated [1] 47/23</p> <p>authorities [1] 29/16</p> <p>authority [1] 56/11</p> <p>authorization [4] 32/18 38/14 38/22 62/15</p> <p>auto [1] 48/7</p> <p>available [1] 11/5</p> <p>AVE [1] 2/8</p> <p>avoid [1] 25/21</p> <p>aware [1] 12/6</p> <p>awareness [1] 35/11</p> <p>away [2] 18/2 46/18</p> <p>awesome [1] 15/8</p> <p>awhile [1] 61/2</p> <p>AZ [2] 2/21 3/20</p> <p>B</p> <p>back [9] 25/5 25/18 28/7 34/15 35/21 50/12 63/1 64/7 65/10</p> <p>backwards [1] 20/4</p> <p>bar [1] 60/11</p> <p>bare [2] 16/7 60/5</p> <p>BARRETT [3] 5/5 5/6 7/8</p> <p>BARRETTMATURA.COM [1] 5/12</p> <p>base [2] 8/14 54/8</p> <p>based [17] 21/3 21/12 26/5 26/22 28/15 31/6 31/8 33/11 34/21 46/19 47/9 48/8 51/8 51/17 52/15 54/15 58/12</p> <p>basically [2] 22/20 47/25</p> <p>basis [13] 10/9 10/14 13/24 14/12</p>
---	---	---	---	---

<p>B</p> <p>basis... [9] 16/19 32/19 35/2 36/1 40/6 40/8 52/23 57/18 57/23 BDSM [1] 54/22 be [98] bearing [1] 39/4 became [1] 60/15 because [34] 8/11 11/15 12/13 12/15 13/6 13/8 13/12 14/3 15/17 16/19 18/5 20/10 22/17 24/23 36/9 37/8 37/18 39/6 41/8 41/12 45/13 45/14 46/4 47/8 47/16 47/23 49/8 56/22 59/16 59/17 59/23 60/9 61/9 65/13 become [2] 12/11 59/10 beef [1] 51/11 been [16] 10/8 24/18 25/9 25/13 29/4 29/24 34/20 35/19 36/4 37/25 41/17 42/22 52/13 52/17 54/1 57/21 before [8] 1/19 10/15 15/19 21/17 43/21 51/3 61/24 66/6 BEFORE-ENTITLED [1] 66/6 beforehand [1] 48/11 behalf [8] 6/17 6/21 23/10 24/7 36/5 40/18 64/24 65/3 behind [1] 9/2 behold [1] 60/10 being [9] 2/2 9/3 9/7 13/1 18/1 20/11 56/10 57/25 58/18 believe [7] 9/6 11/17 41/15 45/17 55/3 57/23 60/20 believes [1] 54/19 belongs [1] 17/25 benefit [6] 26/24 37/15 37/15 38/6 38/6 60/10 benefited [2] 37/8 37/9 best [3] 31/19</p>	<p>31/25 66/11 betting [2] 39/24 44/11 between [8] 10/20 23/25 33/2 33/6 40/24 41/8 42/5 51/20 BIANCHI [1] 2/16 BIANCHIBRANDT. COM [1] 2/23 bilateral [1] 43/17 bit [6] 9/25 28/6 41/6 44/22 44/22 64/13 Board [2] 12/9 12/10 books [1] 12/12 both [5] 12/6 33/7 35/8 43/16 61/3 bottom [5] 31/12 31/18 32/11 33/5 41/15 BOWDEN [4] 3/3 3/4 7/4 7/5 bowl [1] 18/15 boy [1] 45/2 BRADY [1] 3/17 BRANDT [3] 2/16 2/18 6/16 breach [8] 16/14 19/14 21/2 40/10 40/10 44/17 44/17 52/20 breached [2] 39/25 40/1 brief [2] 8/2 50/11 briefly [1] 14/22 briefs [1] 11/9 bring [6] 17/12 19/24 48/5 56/16 59/16 60/7 brought [6] 9/18 48/5 51/16 54/9 57/21 61/8 BRYCE [2] 3/4 7/5 bumped [1] 9/20 bunch [2] 22/18 51/7 burden [8] 25/24 26/8 26/23 29/7 29/9 29/11 29/24 35/16 BURTON [19] 2/15 5/14 6/12 6/14 32/7 32/22 33/3 33/8 37/22 38/16 39/16 39/25 42/9 43/14 44/17 44/20 56/12</p>	<p>61/10 61/11 business [10] 12/15 12/21 24/5 32/4 32/4 32/21 35/12 40/14 47/15 49/20 but [72] butt [1] 10/1 bye [3] 65/19 65/19 65/20 Bye-bye [1] 65/19</p> <p>C</p> <p>calendar [1] 7/17 call [1] 14/19 called [1] 32/23 came [3] 25/3 25/5 56/14 can [29] 7/21 10/4 12/16 15/23 19/18 19/19 20/11 22/14 22/19 22/19 27/14 28/2 29/1 31/25 32/11 34/4 34/15 37/10 38/21 39/17 47/22 48/23 50/8 53/10 53/10 54/25 55/17 56/19 59/18 can't [12] 21/2 21/24 36/10 36/12 39/7 40/5 41/12 48/17 57/16 57/17 57/17 58/25 CANDACE [2] 5/18 6/11 cannabis [10] 12/3 12/9 12/10 12/20 15/2 17/16 31/6 42/21 46/2 47/15 cannot [1] 59/3 capital [6] 3/3 7/3 34/13 34/13 51/18 52/9 car [3] 45/5 57/7 57/8 cascading [4] 27/17 42/18 43/8 46/10 case [36] 1/1 8/10 8/14 11/21 13/14 13/15 19/2 19/21 20/25 21/3 21/4 25/4 27/9 29/18 29/21 29/25 31/4 31/13 32/1 35/14 35/24 36/15 41/16 43/3 43/4 45/7 48/18 54/19 56/16 56/20 56/24 58/12</p>	<p>59/1 59/13 60/5 60/14 cause [3] 10/17 47/19 62/16 causes [5] 10/4 10/6 20/6 23/21 56/7 CCR [2] 1/25 66/17 CENTER [1] 3/9 certain [5] 9/11 28/21 36/19 38/25 58/20 certainly [5] 9/8 10/24 25/15 32/8 46/7 CERTIFICATE [1] 66/1 CERTIFIED [1] 66/4 CERTIFY [1] 66/5 cetera [2] 30/18 30/18 challenged [2] 29/8 29/11 chance [2] 29/16 53/13 changed [1] 12/7 changes [1] 46/15 charge [1] 61/11 CHASE [2] 3/4 7/5 CHERLING [1] 5/24 chief [1] 17/1 choice [1] 30/1 CHRISTIAN [5] 4/6 4/12 6/21 53/22 58/7 CIRCLE [1] 3/9 circulate [1] 21/22 circulated [1] 22/1 circumstances [1] 59/12 civil [4] 23/6 38/9 52/19 63/20 claim [38] 8/11 11/18 13/24 14/13 16/24 17/5 17/24 18/14 20/25 27/18 30/19 32/14 32/24 32/25 36/11 36/21 37/1 38/1 38/4 38/10 38/10 38/15 38/19 39/4 39/6 39/22 40/7 40/8 40/21 40/23 42/25 47/3 47/16 51/1 56/14 56/20 58/21 59/3</p>	<p>claimed [1] 9/13 claiming [7] 8/20 9/4 16/1 17/9 17/11 17/20 20/3 claims [26] 16/8 16/10 16/15 16/19 31/23 33/12 33/17 33/18 33/23 34/3 34/20 35/13 36/7 36/15 36/24 37/2 41/17 44/2 44/25 45/10 51/4 51/9 51/24 52/17 52/24 57/20 clarity [1] 64/16 CLARK [3] 1/7 66/3 66/14 clear [1] 20/17 clerk [3] 50/8 65/13 65/15 client [13] 10/7 10/21 13/4 18/8 31/11 32/1 33/12 38/6 38/7 40/18 41/16 60/9 62/7 client's [5] 9/18 13/2 19/6 26/19 43/14 clients [33] 8/9 8/14 8/25 9/6 9/11 12/19 17/22 19/1 26/25 31/12 31/21 32/3 32/12 32/20 33/2 33/7 36/6 36/16 36/22 36/25 37/11 37/18 37/21 38/12 38/20 39/2 39/9 39/13 39/20 41/12 60/23 61/14 61/19 clients' [1] 18/18 cloak [1] 63/18 close [1] 57/24 coble [1] 43/11 colleague [1] 6/16 collectively [3] 31/2 52/13 52/25 come [4] 11/24 28/7 35/16 57/24 comes [1] 59/24 coming [1] 55/11 comment [2] 22/25 50/15 comments [2] 41/21 52/6 common [1] 47/25 companies [6] 24/8 24/13 26/3</p>
---	---	---	---	---

<p>C</p> <p>companies... [3] 27/14 32/5 40/15</p> <p>company [13] 8/17 8/21 8/25 9/7 17/16 18/19 32/23 36/21 54/10 55/18 60/24 61/7 61/17</p> <p>company's [1] 61/5</p> <p>compensate [1] 20/2</p> <p>competing [4] 8/11 15/11 21/25 22/5</p> <p>complained [2] 55/16 56/12</p> <p>complaint [74]</p> <p>complaints [2] 44/5 63/20</p> <p>completely [1] 20/4</p> <p>Compliance [2] 12/9 12/10</p> <p>complicated [1] 8/3</p> <p>conceded [1] 35/4</p> <p>concerned [4] 21/9 30/5 52/7 53/2</p> <p>concerning [5] 6/18 23/19 24/12 32/23 37/23</p> <p>concluded [2] 56/25 65/23</p> <p>conclusion [2] 10/7 20/7</p> <p>conclusions [3] 8/7 21/21 53/4</p> <p>conclusory [1] 35/22</p> <p>conducted [1] 48/11</p> <p>conferred [1] 37/15</p> <p>confidential [2] 12/5 12/17</p> <p>confirm [1] 42/2</p> <p>conflicting [3] 44/8 44/14 62/14</p> <p>confusing [1] 44/22</p> <p>conjecture [2] 26/2 26/6</p> <p>connect [1] 11/4</p> <p>connection [8] 31/13 33/6 35/10 39/19 50/24 51/13 51/19 51/22</p>	<p>considering [1] 18/13</p> <p>consist [1] 31/5</p> <p>conspiracy [9] 8/16 16/14 18/7 18/7 19/8 38/9 44/12 52/19 63/21</p> <p>conspired [3] 10/7 20/8 38/12</p> <p>conspiring [1] 9/16</p> <p>constituencies [1] 31/4</p> <p>constituency [1] 31/11</p> <p>CONSTITUTES [1] 66/10</p> <p>constitution [1] 19/10</p> <p>constrained [1] 15/4</p> <p>constructive [1] 62/14</p> <p>contact [1] 23/22</p> <p>contacts [7] 23/25 25/2 25/16 26/8 47/10 47/19 47/20</p> <p>contained [2] 8/7 48/16</p> <p>contending [1] 43/22</p> <p>contents [1] 21/24</p> <p>contest [1] 29/1</p> <p>contested [1] 55/24</p> <p>context [1] 24/22</p> <p>contingent [3] 15/13 15/18 22/12</p> <p>continue [1] 30/21</p> <p>CONTINUED [3] 3/1 4/1 5/1</p> <p>contract [4] 19/15 19/16 44/18 62/6</p> <p>contractual [2] 63/23 63/24</p> <p>contrary [1] 11/5</p> <p>contribution [1] 51/18</p> <p>controls [1] 19/11</p> <p>controversy [2] 36/9 41/8</p> <p>convention [3] 8/15 9/20 11/2</p> <p>conversion [3] 16/13 17/24 19/7</p> <p>copy [1] 53/6</p> <p>corners [5] 27/24 44/1 44/7 45/15</p>	<p>58/15</p> <p>CORP [3] 3/2 7/2 34/11</p> <p>corporate [2] 13/8 19/8</p> <p>Corporation [2] 30/17 52/14</p> <p>correct [9] 14/5 14/8 14/9 23/6 34/17 47/3 53/20 64/24 65/3</p> <p>correctly [1] 63/12</p> <p>cost [1] 33/13</p> <p>costs [1] 30/5</p> <p>could [17] 10/24 15/20 22/15 25/7 29/4 32/13 37/24 40/7 44/11 44/12 44/19 46/6 47/16 49/24 50/15 52/22 56/6</p> <p>couldn't [1] 24/15</p> <p>counsel [18] 6/14 21/23 23/8 24/24 25/7 25/19 26/14 26/16 30/24 31/10 33/21 35/20 50/22 53/8 53/12 54/22 55/3 60/8</p> <p>counsel's [1] 50/14</p> <p>count [1] 14/7</p> <p>counts [1] 54/8</p> <p>COUNTY [3] 1/7 66/3 66/14</p> <p>couple [4] 11/3 31/3 38/19 45/6</p> <p>course [11] 10/12 10/21 11/14 13/23 14/15 15/1 15/1 19/9 21/13 45/2 49/20</p> <p>court [34] 1/6 1/20 11/15 12/5 13/11 13/16 17/4 17/12 17/13 26/6 27/4 28/1 28/3 28/5 29/23 29/24 34/1 35/18 35/24 35/25 42/24 46/16 47/11 47/18 48/24 49/4 49/10 49/22 54/2 54/2 54/8 54/17 62/8 62/18</p> <p>Court's [1] 60/21</p> <p>courthouse [2] 64/6 64/8</p> <p>courtroom [1]</p>	<p>50/8</p> <p>cover [1] 7/9</p> <p>covered [2] 11/8 64/22</p> <p>covers [1] 65/1</p> <p>COVID [1] 10/1</p> <p>create [1] 21/16</p> <p>cross [1] 7/11</p> <p>cross-talk [1] 7/11</p> <p>current [1] 52/16</p> <p>currently [2] 21/3 52/22</p> <p>cut [3] 17/22 62/21 63/9</p> <p>D</p> <p>D-350 [1] 4/19</p> <p>database [1] 64/13</p> <p>DATED [1] 1/22</p> <p>day [8] 42/12 43/17 45/15 50/25 51/15 61/9 65/9 65/17</p> <p>days [2] 22/2 25/5</p> <p>deal [1] 42/10</p> <p>dealing [2] 15/1 35/11</p> <p>dealings [1] 35/13</p> <p>decides [1] 28/5</p> <p>decision [1] 28/6</p> <p>declaration [5] 24/1 26/4 26/20 29/2 41/1</p> <p>declarations [5] 35/9 35/15 39/18 41/5 49/18</p> <p>declaratory [8] 16/15 17/4 17/15 17/19 19/6 40/22 43/21 52/20</p> <p>declare [1] 17/4</p> <p>defective [2] 33/19 34/21</p> <p>defects [3] 33/22 33/25 34/3</p> <p>defendant [18] 1/13 6/21 23/20 23/23 26/18 28/3 29/21 38/11 38/13 47/8 55/4 57/21 58/7 61/8 63/14 63/17 64/25 65/4</p> <p>defendant's [2] 7/19 30/17</p> <p>defendants [30] 2/15 3/2 5/14 6/18 6/24 7/2 13/22 17/14 21/4 23/4 29/10 30/25 31/2</p>	<p>31/5 31/15 31/20 32/22 33/16 33/17 34/10 34/21 37/8 38/16 45/21 52/7 52/13 52/24 53/18 54/4 54/18</p> <p>defending [1] 33/13</p> <p>DEL [1] 4/18</p> <p>delve [1] 32/8</p> <p>demonstrated [1] 35/10</p> <p>demonstrates [1] 41/18</p> <p>denied [2] 13/18 36/13</p> <p>DEPARTMENT [3] 2/2 12/8 12/8</p> <p>deposition [2] 19/3 54/23</p> <p>deprive [2] 8/16 9/16</p> <p>deprived [6] 9/7 18/8 42/23 58/23 60/23 61/13</p> <p>deprives [1] 42/12</p> <p>DEPT [1] 1/3</p> <p>derivatively [2] 46/10 47/20</p> <p>derive [1] 38/15</p> <p>description [1] 16/16</p> <p>detailed [1] 53/4</p> <p>details [1] 32/9</p> <p>did [13] 13/21 16/15 29/15 31/22 43/7 44/23 44/24 48/13 48/21 49/1 54/11 54/12 58/5</p> <p>didn't [5] 17/21 59/4 59/10 60/10 63/8</p> <p>different [11] 24/24 27/14 27/21 31/4 32/9 33/19 35/22 37/4 38/19 43/9 64/13</p> <p>difficult [1] 12/18</p> <p>diligence [2] 9/10 13/9</p> <p>dime [1] 20/13</p> <p>direct [2] 23/20 47/24</p> <p>DIRECTION [1] 66/9</p> <p>discern [1] 31/25</p> <p>discover [4] 10/16 12/21 13/9 17/20</p>
--	--	--	---	--

<p>D</p> <p>discovery [20] 10/16 10/22 11/24 14/15 15/21 19/2 19/19 21/14 21/16 26/24 27/5 27/6 28/7 28/14 43/6 45/12 50/25 51/12 56/25 59/7</p> <p>discuss [2] 24/22 60/1</p> <p>discussed [1] 54/21</p> <p>discussion [1] 24/25</p> <p>dismiss [19] 1/16 6/19 7/16 7/20 13/17 15/9 20/20 21/9 23/5 23/13 25/4 25/7 30/19 33/16 36/1 42/6 53/19 54/1 54/18</p> <p>dismissal [5] 21/10 27/8 30/2 35/2 53/14</p> <p>dismissed [6] 25/11 36/25 41/17 54/19 55/5 64/2</p> <p>dispute [7] 10/20 10/22 19/23 36/13 43/23 46/4 46/7</p> <p>Distilling [1] 31/24</p> <p>distinct [2] 33/9 33/10</p> <p>distinguishing [2] 55/12 55/13</p> <p>DISTRICT [3] 1/6 1/20 29/24</p> <p>diverted [2] 28/16 28/20</p> <p>do [58] 7/15 12/18 13/23 15/14 15/21 16/12 17/12 18/7 20/1 20/17 20/21 20/23 21/8 21/19 22/6 22/24 24/4 26/22 27/11 28/6 30/7 32/20 33/18 34/1 34/23 35/21 39/10 40/25 43/5 43/19 44/1 44/13 44/14 44/15 45/12 45/17 46/22 48/23 50/2 51/10 53/1 53/13 55/23 55/23 58/24 59/6 59/7 59/7 59/19 60/8 60/9 62/19 64/4</p>	<p>64/4 64/7 64/10 64/18 66/4</p> <p>DOCKET [1] 1/2</p> <p>documents [2] 9/1 9/11</p> <p>does [7] 7/9 28/3 44/24 45/1 45/1 51/10 62/18</p> <p>doesn't [18] 10/20 13/11 24/4 24/5 24/7 25/2 26/7 28/5 35/21 37/10 37/25 38/4 38/5 38/21 39/12 41/11 45/3 59/18</p> <p>dog [1] 31/15</p> <p>Don [2] 44/16 61/10</p> <p>don't [37] 8/21 12/23 15/13 15/22 15/24 17/9 17/23 19/12 19/24 21/25 22/22 27/1 27/2 27/3 27/14 29/15 31/15 32/11 32/24 32/25 33/1 36/9 36/13 36/20 40/12 41/15 41/22 45/4 45/13 46/21 49/12 51/8 57/8 62/21 64/5 64/11 65/7</p> <p>DONALD [4] 2/15 5/14 6/12 6/14</p> <p>done [2] 64/9 65/6</p> <p>Donnie [2] 32/22 61/10</p> <p>DOUGLAS [2] 3/3 7/4</p> <p>down [6] 20/12 21/12 30/3 30/15 31/24 66/5</p> <p>dozen [1] 19/3</p> <p>drag [2] 19/1 28/15</p> <p>dragged [1] 20/11</p> <p>draw [1] 8/6</p> <p>DRIVE [1] 5/7</p> <p>drop [1] 63/21</p> <p>dropped [1] 50/13</p> <p>due [2] 9/10 13/9</p> <p>during [5] 10/21 11/24 13/9 21/13 58/18</p> <p>duties [1] 40/1</p> <p>duty [7] 16/14 19/15 21/2 40/7 40/10 44/17 52/20</p>	<p>E</p> <p>each [18] 9/20 10/4 10/6 20/24 21/24 24/25 32/9 33/16 33/23 33/25 34/3 34/20 36/6 36/6 36/14 36/21 36/24 36/24</p> <p>earlier [2] 12/4 35/24</p> <p>early [2] 9/14 13/15</p> <p>eating [1] 18/15</p> <p>eerily [1] 50/23</p> <p>effects [1] 58/17</p> <p>ego [3] 16/14 19/8 63/21</p> <p>eight [1] 14/3</p> <p>Eighth [1] 29/23</p> <p>either [2] 10/7 15/17</p> <p>eliminated [1] 41/10</p> <p>else [4] 9/2 13/9 63/3 64/23</p> <p>end [8] 22/18 42/12 43/17 45/14 50/13 55/11 58/25 61/9</p> <p>ended [1] 18/18</p> <p>engage [1] 31/7</p> <p>engaged [1] 17/3</p> <p>engagement [1] 44/9</p> <p>engaging [3] 17/2 43/16 61/24</p> <p>enjoy [2] 65/9 65/17</p> <p>enough [6] 13/13 16/6 18/13 20/7 45/11 56/15</p> <p>enriched [3] 10/8 18/1 37/18</p> <p>enrichment [9] 16/13 17/25 37/1 37/3 37/14 38/1 38/4 52/19 63/20</p> <p>enter [2] 32/3 32/21</p> <p>entered [4] 33/8 37/22 55/15 63/24</p> <p>entering [6] 38/11 38/24 39/10 40/2 40/13 54/22</p> <p>entertain [1] 30/8</p> <p>entertained [1] 54/3</p> <p>entire [2] 8/14</p>	<p>32/1</p> <p>entirely [1] 28/15</p> <p>entities [20] 27/1 27/18 28/21 31/6 33/9 34/16 35/3 35/6 35/8 39/3 42/5 42/19 43/15 44/21 45/18 46/18 47/8 48/21 51/15 56/23</p> <p>entitled [3] 11/25 41/4 66/6</p> <p>entity [18] 15/19 15/25 24/4 24/15 24/17 26/10 26/21 27/7 27/10 29/3 29/4 32/24 33/1 33/17 37/23 38/18 44/8 56/11</p> <p>equally [1] 31/10</p> <p>equation [1] 49/7</p> <p>especially [6] 29/22 36/15 56/10 57/20 61/18 63/16</p> <p>ESQ [9] 2/7 2/17 2/18 3/8 3/18 4/6 4/17 5/6 5/18</p> <p>essentially [8] 8/4 10/3 10/6 17/23 19/17 24/18 25/15 25/20</p> <p>establish [3] 10/11 48/12 59/14</p> <p>established [1] 47/19</p> <p>estate [1] 31/7</p> <p>et [2] 30/18 30/18</p> <p>et cetera [1] 30/18</p> <p>even [14] 13/11 24/15 25/11 27/1 27/5 39/13 43/21 46/17 54/13 54/23 57/15 57/24 60/14 63/23</p> <p>event [2] 10/3 51/12</p> <p>events [1] 59/24</p> <p>ever [1] 9/18</p> <p>every [6] 19/3 20/25 36/14 36/21 38/11 38/12</p> <p>everybody [5] 9/2 37/8 40/19 45/7 57/9</p> <p>everyone [2] 41/8 65/9</p> <p>everything [3] 12/5 18/16 40/19</p> <p>evidence [3] 26/22</p>	<p>35/17 48/12</p> <p>evidentiary [3] 25/24 26/8 29/24</p> <p>exactly [2] 45/4 57/5</p> <p>example [12] 16/20 21/1 21/5 21/7 42/3 48/19 52/18 55/13 56/13 59/18 59/19 60/13</p> <p>except [2] 18/5 49/24</p> <p>excluded [1] 37/19</p> <p>Excluding [1] 38/2</p> <p>exclusive [7] 32/18 38/13 38/22 39/5 40/1 40/12 62/15</p> <p>execute [1] 54/12</p> <p>executives [1] 17/1</p> <p>exercise [4] 17/13 23/23 26/6 46/11</p> <p>exercising [2] 26/9 47/11</p> <p>existence [1] 17/2</p> <p>expect [1] 22/17</p> <p>expense [2] 19/20 33/13</p> <p>extent [1] 31/12</p> <p>extrapolate [2] 8/16 9/21</p> <p>F</p> <p>face [2] 38/5 40/13</p> <p>facie [1] 25/24</p> <p>fact [16] 11/22 20/22 25/2 26/4 28/3 29/3 31/11 39/11 39/17 41/16 48/12 48/22 57/14 58/4 60/5 64/7</p> <p>facts [41] 8/6 10/23 11/23 14/14 14/17 15/2 15/7 16/5 16/7 19/23 19/25 20/6 20/24 21/3 21/7 21/13 21/16 21/17 25/1 25/14 29/21 45/3 45/4 47/25 48/19 51/2 51/14 52/21 53/4 54/7 54/25 55/1 57/12 57/25 59/11 59/14 59/22 59/25 60/13 63/14 63/16</p> <p>factual [7] 10/9 13/21 16/18 18/12</p>
--	--	---	---	--

<p>F</p> <p>factual... [3] 52/23 57/18 58/18</p> <p>factually [1] 14/13</p> <p>fail [1] 33/19</p> <p>failed [1] 43/9</p> <p>fails [3] 36/23 38/19 39/6</p> <p>failure [1] 30/19</p> <p>fairly [2] 8/3 52/5</p> <p>far [10] 15/3 18/12 21/8 21/10 22/23 23/1 30/5 52/7 53/1 54/24</p> <p>fashion [1] 10/9</p> <p>fatal [1] 51/23</p> <p>Fax [5] 3/12 4/11 4/22 5/11 5/23</p> <p>feather [1] 8/5</p> <p>FEBRUARY [2] 1/22 6/1</p> <p>feel [2] 30/1 30/6</p> <p>fees [2] 25/13 30/5</p> <p>few [3] 15/19 35/19 52/5</p> <p>fiduciaries [1] 21/6</p> <p>fiduciary [9] 16/14 19/14 21/2 39/25 40/3 40/6 40/7 44/17 52/20</p> <p>fight [1] 31/16</p> <p>figure [9] 18/17 20/2 20/12 43/6 45/6 45/8 56/25 60/13 61/23</p> <p>figures [1] 27/17</p> <p>file [6] 10/15 11/16 14/14 21/17 25/10 30/11</p> <p>filed [3] 34/9 43/12 53/25</p> <p>filing [3] 25/14 48/11 50/1</p> <p>filings [3] 49/5 49/8 55/17</p> <p>finally [1] 40/22</p> <p>find [11] 10/22 14/16 15/21 16/2 19/6 19/23 19/25 27/2 27/13 45/12 51/5</p> <p>findings [3] 21/21 53/4 53/10</p> <p>fine [2] 7/22 28/8</p> <p>finished [2] 50/17 52/1</p> <p>FIREMAN [8] 4/14</p>	<p>6/24 7/19 8/5 13/22 16/11 16/21 21/5</p> <p>firms [1] 27/8</p> <p>first [18] 7/18 7/20 16/8 19/25 32/12 35/2 37/5 37/17 38/3 39/11 43/2 52/21 54/6 54/14 55/12 57/14 59/7 63/25</p> <p>firsthand [1] 17/2</p> <p>five [3] 25/5 26/20 34/16</p> <p>floor [2] 7/25 23/11</p> <p>flowed [1] 38/7</p> <p>focus [1] 55/12</p> <p>focused [1] 35/6</p> <p>focusing [4] 11/21 13/22 29/20 60/4</p> <p>folks [1] 40/13</p> <p>followed [1] 15/14</p> <p>follows [1] 62/15</p> <p>forced [1] 25/10</p> <p>FOREGOING [1] 66/10</p> <p>foreseeable [1] 46/6</p> <p>form [3] 40/6 40/8 46/10</p> <p>formally [1] 61/13</p> <p>forms [1] 32/18</p> <p>forth [7] 20/24 52/17 52/23 59/25 60/1 60/17 62/2</p> <p>forthcoming [1] 12/12</p> <p>forward [6] 18/20 19/21 35/16 44/10 48/18 51/4</p> <p>foundation [11] 5/2 7/8 20/9 32/15 32/16 36/11 36/18 39/15 51/11 51/13 55/25</p> <p>Foundation's [1] 62/10</p> <p>founded [4] 36/16 36/22 38/10 39/24</p> <p>four [8] 9/19 9/21 11/3 27/24 44/1 44/6 45/15 58/15</p> <p>frankly [1] 12/21</p> <p>free [1] 21/25</p> <p>front [1] 14/7</p> <p>fruits [3] 18/9 48/14 58/23</p> <p>frustration [3]</p>	<p>15/23 27/20 60/8</p> <p>frustrations [1] 27/2</p> <p>FULL [1] 66/10</p> <p>fundamental [1] 36/16</p> <p>G</p> <p>GABROY [5] 4/5 4/6 6/21 53/22 58/7</p> <p>GABROY.COM [1] 4/12</p> <p>game [2] 10/13 19/18</p> <p>gave [2] 15/14 18/6</p> <p>gee [1] 9/10</p> <p>general [6] 16/16 23/14 23/16 35/5 47/7 47/11</p> <p>generally [2] 41/7 42/3</p> <p>generated [1] 46/9</p> <p>generation [1] 48/1</p> <p>generic [1] 40/18</p> <p>gentlemen [2] 15/10 64/11</p> <p>get [19] 10/5 17/19 19/25 22/19 22/22 29/16 46/6 49/21 51/16 53/6 53/9 53/13 58/10 60/10 60/11 64/7 64/13 64/14 65/14</p> <p>gets [2] 45/7 53/9</p> <p>getting [1] 12/22</p> <p>give [8] 11/18 16/16 18/4 32/13 35/13 38/4 44/24 47/11</p> <p>given [1] 25/21</p> <p>go [22] 7/13 10/4 12/16 14/1 14/2 15/5 19/21 22/15 23/3 27/18 30/6 30/21 34/3 34/5 34/15 34/19 55/12 62/10 63/1 64/15 65/10 65/10</p> <p>goes [2] 19/16 37/6</p> <p>going [36] 8/1 10/17 19/2 19/21 20/1 20/2 21/8 21/9 21/12 21/19 21/20 22/17 24/6 25/18 30/4 30/14 40/20 44/4 45/16 45/16</p>	<p>46/8 46/15 48/8 48/10 49/9 51/5 52/10 53/1 53/2 53/3 53/8 64/3 64/10 64/10 64/12 65/10</p> <p>gone [1] 12/7</p> <p>good [12] 6/9 6/10 6/20 6/25 7/7 21/1 21/7 29/17 30/23 53/22 53/23 63/2</p> <p>goodness [1] 12/10</p> <p>got [12] 11/8 16/6 18/5 19/12 19/22 20/8 20/8 20/10 43/23 50/1 50/13 65/6</p> <p>grant [6] 20/15 21/10 30/1 30/4 52/11 53/2</p> <p>granted [3] 30/20 36/18 54/2</p> <p>granting [1] 54/17</p> <p>greater [1] 31/12</p> <p>GREEN [1] 4/7</p> <p>grounds [1] 63/19</p> <p>group [15] 3/3 3/3 4/16 7/3 7/4 34/12 34/12 42/18 47/1 48/25 49/15 52/6 52/8 52/9 62/11</p> <p>groups [1] 31/4</p> <p>guess [6] 7/10 30/16 34/10 48/24 52/12 52/18</p> <p>guilt [1] 57/19</p> <p>GULLICKSON [14] 4/2 6/22 54/18 55/4 55/10 56/7 56/24 57/22 58/8 60/14 62/4 64/2 64/25 65/4</p> <p>Gullickson's [1] 53/19</p> <p>guys [5] 13/13 15/24 27/11 43/14 43/18</p> <p>H</p> <p>hac [2] 6/17 23/9</p> <p>had [24] 12/23 13/5 13/7 13/10 15/12 18/13 24/19 25/6 25/11 26/22 33/13 33/22 37/12 38/3 39/20 43/5 44/7 56/2 59/13 59/15 62/13 64/9</p>	<p>66/6 66/12</p> <p>hail [1] 49/10</p> <p>hailed [2] 47/17 49/22</p> <p>hand [3] 32/2 32/3 33/6</p> <p>handful [2] 33/18 37/2</p> <p>happen [2] 18/25 32/3</p> <p>happened [7] 16/3 18/4 18/17 24/15 32/20 42/8 55/22</p> <p>happening [1] 12/17</p> <p>happens [1] 30/3</p> <p>happy [3] 32/8 33/24 34/19</p> <p>hard [1] 59/2</p> <p>harm [2] 39/11 62/6</p> <p>harmed [1] 56/13</p> <p>harvest [45] 5/2 7/8 10/20 10/22 17/3 17/7 18/8 19/22 24/9 24/10 24/20 28/23 32/15 32/16 36/11 36/17 37/7 38/18 38/24 38/25 39/5 39/15 40/5 40/12 41/10 41/13 41/14 42/6 42/11 42/13 43/7 44/8 47/6 48/2 51/11 51/13 51/21 55/14 55/15 55/25 56/2 56/3 58/5 58/9 62/10</p> <p>has [27] 12/7 12/11 23/20 25/16 26/9 27/11 29/24 31/22 35/4 35/18 35/19 35/24 39/3 40/4 43/23 46/13 46/16 49/4 52/12 54/2 54/17 58/10 58/17 58/20 63/13 63/14 65/14</p> <p>have [144]</p> <p>haven't [4] 29/11 39/8 40/17 57/24</p> <p>having [5] 11/4 22/12 26/24 35/15 39/9</p> <p>he [5] 26/20 26/25 50/14 63/14 63/21</p> <p>he's [2] 19/16 27/9</p> <p>head [2] 20/5</p>
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<p>H</p> <p>head... [1] 63/12</p> <p>Health [1] 12/8</p> <p>hear [9] 11/10 26/13 26/16 41/24 50/8 50/19 55/7 57/4 63/10</p> <p>heard [8] 2/2 18/24 31/3 31/9 50/5 50/22 50/24 57/15</p> <p>HEARING [1] 1/17</p> <p>heightened [2] 15/9 16/6</p> <p>held [1] 56/7</p> <p>Hello [1] 50/6</p> <p>helm [2] 60/25 61/15</p> <p>helpful [1] 24/21</p> <p>HENDERSON [1] 4/9</p> <p>HENRY [1] 4/17</p> <p>her [5] 55/1 56/25 58/22 59/13 61/8</p> <p>here [20] 7/17 12/17 15/20 18/11 18/14 18/15 19/5 23/24 25/23 27/22 34/8 43/5 44/22 51/6 51/17 51/22 52/18 56/1 62/17 63/19</p> <p>here's [2] 13/20 59/9</p> <p>HEREBY [1] 66/5</p> <p>HEREUNTO [1] 66/13</p> <p>HERLING [2] 5/18 6/11</p> <p>HERSCHMAN [2] 3/4 7/6</p> <p>high [2] 11/14 34/25</p> <p>highly [1] 46/9</p> <p>him [1] 27/7</p> <p>hinges [1] 32/1</p> <p>hire [1] 27/7</p> <p>his [5] 24/11 24/19 26/21 27/6 27/10</p> <p>hit [3] 20/5 34/25 63/11</p> <p>hold [1] 24/15</p> <p>holding [3] 24/17 29/22 47/1</p> <p>HOLDINGS [24] 2/15 3/3 5/14 6/11 6/15 7/4 23/8 23/15 23/25 24/3 24/4</p>	<p>24/11 24/19 25/2 25/4 25/16 28/15 28/17 28/20 28/21 28/22 29/20 34/12 52/8</p> <p>Holdings' [1] 23/5</p> <p>holds [1] 32/17</p> <p>Honor [85]</p> <p>HONORABLE [1] 1/19</p> <p>honored [1] 54/24</p> <p>hoping [1] 64/7</p> <p>host [1] 33/12</p> <p>hours [2] 22/2 22/12</p> <p>how [9] 14/7 16/2 18/17 20/1 27/1 38/17 48/17 54/24 60/13</p> <p>however [5] 8/13 35/8 37/10 40/3 51/6</p> <p>humility [1] 18/15</p> <p>I</p> <p>I'll [13] 6/17 23/9 27/2 30/24 34/2 37/2 41/19 41/21 52/6 55/12 64/14 64/17 64/18</p> <p>I'm [46] 6/15 7/13 8/1 9/25 10/1 12/13 13/22 14/1 18/11 21/8 21/9 22/3 27/23 29/20 30/4 32/8 33/24 33/24 34/8 34/19 42/14 43/2 44/6 45/16 45/16 45/25 48/7 48/10 49/19 50/12 50/12 52/10 53/1 53/2 53/2 59/5 60/3 60/4 60/12 64/3 64/7 64/10 64/10 64/12 64/14 65/9</p> <p>I9 [11] 3/3 7/3 17/8 34/13 42/5 42/16 47/5 47/21 49/14 55/13 62/11 62/11</p> <p>identify [2] 31/21 38/5</p> <p>if [72]</p> <p>ifs [2] 57/11 57/18</p> <p>IGLODY [10] 2/6 2/7 6/8 6/9 11/13 14/21 22/9 24/12 42/1 57/7</p> <p>Iglody's [2] 28/13 28/25</p>	<p>IGLODY.COM [1] 2/12</p> <p>illegal [2] 24/18 39/8</p> <p>illustration [1] 57/6</p> <p>imminently [1] 16/25</p> <p>impact [1] 39/4</p> <p>implied [1] 13/7</p> <p>important [12] 12/1 21/15 27/7 34/25 48/6 53/8 53/12 54/5 59/23 59/24 60/12 65/11</p> <p>impossible [3] 8/6 10/8 28/25</p> <p>improper [1] 39/9</p> <p>impute [2] 61/5 61/16</p> <p>imputed [1] 61/18</p> <p>in [250]</p> <p>Inc [4] 7/19 16/11 16/22 16/22</p> <p>inchoate [1] 9/23</p> <p>include [1] 39/12</p> <p>includes [1] 52/8</p> <p>including [3] 24/8 38/12 61/18</p> <p>income [1] 42/18</p> <p>incur [1] 33/13</p> <p>independent [2] 48/14 58/17</p> <p>independently [1] 15/3</p> <p>indicated [2] 39/20 66/7</p> <p>indicates [1] 8/24</p> <p>indication [1] 9/18</p> <p>individual [18] 16/13 16/20 21/4 33/16 33/23 34/10 43/1 44/4 45/10 45/17 48/8 54/3 54/9 55/3 57/21 58/7 63/13 63/17</p> <p>individuals [8] 14/5 14/16 16/21 19/9 31/5 32/6 45/13 51/14</p> <p>industries [1] 15/4</p> <p>industry [5] 12/3 15/2 42/21 46/9 46/14</p> <p>infer [1] 13/11</p> <p>inference [3] 18/4 18/6 63/22</p> <p>inferences [4]</p>	<p>13/16 28/1 42/24 60/22</p> <p>information [2] 9/5 11/6</p> <p>injured [1] 45/6</p> <p>instead [2] 26/1 32/20</p> <p>intend [1] 30/11</p> <p>intent [1] 39/10</p> <p>intentional [2] 19/15 63/22</p> <p>interconnected [1] 41/9</p> <p>interest [59] 8/11 8/17 8/19 8/21 8/25 9/7 9/13 9/13 9/17 9/22 11/5 12/23 12/24 12/24 13/3 13/10 15/11 15/18 15/18 15/19 15/25 16/2 17/10 17/11 17/20 18/18 19/7 24/8 24/10 24/11 24/16 24/16 24/20 28/23 32/16 32/17 32/24 36/11 36/17 36/18 36/20 36/23 37/12 39/15 40/5 40/11 41/3 41/13 42/9 42/12 42/23 43/19 46/14 47/24 60/24 61/13 61/14 61/20 62/14</p> <p>interested [1] 8/9</p> <p>interests [1] 48/16</p> <p>interference [1] 19/15</p> <p>interrupt [1] 22/9</p> <p>into [28] 8/15 8/16 9/20 20/11 25/12 27/17 28/20 32/3 32/21 33/8 37/22 38/1 38/11 38/25 39/10 40/2 40/13 44/4 46/16 47/17 49/10 49/22 51/19 54/22 55/15 62/10 63/24 66/8</p> <p>invest [3] 47/14 48/22 49/20</p> <p>invested [3] 18/9 37/7 60/9</p> <p>investigation [2] 48/11 48/15</p> <p>investing [1] 12/20</p> <p>investment [7] 15/15 31/7 37/7</p>	<p>46/5 49/1 49/21 58/23</p> <p>investments [2] 39/1 46/2</p> <p>involve [1] 10/21</p> <p>involved [3] 42/6 46/7 60/19</p> <p>involvement [5] 8/10 14/18 20/3 35/12 59/15</p> <p>involving [2] 55/1 55/1</p> <p>is [183]</p> <p>isn't [3] 28/19 36/8 58/4</p> <p>ISOM [3] 1/25 66/4 66/17</p> <p>issue [9] 17/14 22/25 23/17 30/9 49/4 52/11 58/4 63/11 64/17</p> <p>issued [1] 11/6</p> <p>issues [3] 33/20 33/21 64/22</p> <p>it [98]</p> <p>it's [56] 7/23 8/4 8/6 8/8 8/13 8/18 8/20 9/8 9/14 9/22 9/23 11/13 12/1 12/7 12/13 12/22 13/6 13/15 14/3 16/5 19/3 19/4 19/4 20/4 20/7 20/9 20/14 21/12 22/1 22/17 23/13 23/13 24/17 24/21 25/9 29/9 29/10 29/11 31/1 34/6 34/24 36/7 36/7 43/19 44/6 44/21 44/22 44/23 46/7 48/6 49/10 49/23 57/5 58/3 61/20 62/13</p> <p>ITEM [29] 3/2 3/2 7/2 7/2 30/17 30/17 30/25 31/2 31/5 31/20 33/4 34/11 34/11 37/20 38/11 38/21 39/1 39/3 39/8 39/10 40/2 41/1 41/3 41/4 43/7 52/13 52/14 52/14 52/24</p> <p>ITEM 9 [27] 3/2 3/2 7/2 7/2 30/17 30/25 31/2 31/5 31/20 33/4 34/11 34/11 37/20 38/11</p>
---	--	--	---	---

<p>I</p> <p>ITEM 9... [13] 38/21 39/1 39/3 39/8 39/10 40/2 41/1 41/3 41/4 43/7 52/13 52/14 52/14 its [9] 8/24 17/1 17/13 38/5 44/8 44/9 56/3 58/17 63/12</p> <p>J</p> <p>Jack [1] 56/18 JDD [1] 1/9 JEFFREY [2] 3/4 7/5 JOHN [4] 4/17 4/23 6/23 7/22 join [1] 10/25 joinder [1] 53/25 joined [1] 6/15 joint [4] 42/4 42/11 43/7 55/24 JON [2] 4/14 7/19 judge [12] 1/19 1/20 7/22 8/1 9/25 14/9 18/24 20/4 20/14 23/2 39/17 50/8 judgment [3] 40/23 52/20 59/6 Judicial [1] 29/23 jurisdiction [28] 17/14 23/14 23/17 23/18 23/23 25/17 25/25 26/6 26/10 27/5 28/4 29/8 29/8 29/19 30/20 33/20 35/3 35/5 35/7 35/18 36/2 39/19 45/22 45/25 46/4 46/12 47/12 52/10 jurisdictional [2] 27/6 28/7 jurisdictionally [1] 43/2 just [58] 7/21 8/6 11/2 11/13 12/16 15/24 16/2 16/15 16/17 18/19 19/3 19/4 19/4 19/17 20/16 21/6 21/15 22/17 24/22 25/5 25/9 25/21 26/7 26/8 28/21 29/5 29/11 31/1 32/3 34/8 34/14 35/1 42/2 43/21 44/6</p>	<p>45/20 48/17 49/13 49/18 50/16 52/1 52/5 52/6 53/3 53/7 53/12 56/15 59/17 60/4 60/12 60/12 61/9 62/1 63/8 63/15 64/8 64/16 65/11 justiciable [1] 36/9 justifiable [1] 16/25 justify [2] 25/16 26/9 JUSTIN [2] 2/18 6/16</p> <p>K</p> <p>KARL [2] 3/8 7/1 KBARRETT [1] 5/12 KEVIN [2] 5/6 7/8 kicking [1] 10/1 kind [8] 24/21 40/19 43/6 43/6 48/17 51/17 55/10 59/3 KLN [1] 3/13 knew [5] 13/13 15/10 17/21 39/13 40/19 know [48] 8/2 9/9 10/11 11/2 11/8 12/6 12/23 15/13 15/14 15/22 15/24 15/24 16/25 17/9 17/23 18/14 19/10 19/10 19/16 22/15 22/23 24/12 24/14 24/23 25/9 25/15 27/1 27/2 27/3 27/14 27/17 27/21 27/22 31/18 39/2 41/7 43/18 46/22 48/18 49/12 49/13 49/14 49/15 49/15 50/22 51/5 59/4 60/2 knowing [1] 44/7 knowledge [12] 13/6 13/7 13/7 17/2 35/11 39/20 40/17 56/3 57/12 61/5 61/17 62/14 knowledgeable [1] 54/13 known [1] 9/12</p>	<p>L</p> <p>Lab [1] 52/14 LABS [5] 3/2 7/2 30/17 34/11 42/16 lack [6] 30/20 36/1 36/8 51/22 62/3 62/5 laptop [1] 64/5 large [1] 13/8 LARRY [11] 1/12 2/15 5/14 6/11 6/14 24/1 26/4 32/22 44/16 61/10 61/10 LARSEN [1] 3/7 LAS [6] 2/10 3/10 4/20 5/9 5/21 6/1 last [2] 16/24 53/14 later [8] 9/22 11/3 12/2 19/19 19/25 25/5 59/14 60/16 LAUREN [4] 3/18 7/1 30/24 50/4 LAUREN.STINE [1] 3/23 law [17] 2/6 4/5 4/16 8/17 11/19 17/13 17/13 21/22 23/19 24/13 27/8 29/6 36/23 47/18 53/5 62/16 65/13 lawsuit [8] 10/15 10/15 14/14 21/17 31/23 48/12 51/12 57/16 lawyer [2] 48/7 57/9 lawyers [1] 19/3 lay [1] 20/8 lead [2] 9/5 9/6 leading [1] 59/12 leads [1] 25/12 leap [1] 8/6 learned [1] 21/13 least [8] 16/8 17/17 22/12 26/11 53/14 55/21 56/1 56/19 led [1] 26/19 LEE [8] 2/7 2/12 6/8 6/9 11/13 14/21 22/9 41/25 leeway [1] 25/21 left [3] 34/10 39/24 64/23 legal [2] 40/5 58/17 legislature [1]</p>	<p>12/11 legitimate [1] 36/12 LEMONS [28] 1/12 2/15 5/14 6/12 6/14 24/2 24/3 24/19 25/1 26/4 26/25 28/16 28/19 28/22 32/6 32/22 33/3 33/8 37/22 38/16 39/16 39/25 42/9 43/14 44/16 44/20 56/12 61/10 Lemons's [2] 24/10 29/2 lengthy [1] 31/18 let [8] 7/16 11/13 21/25 34/9 40/7 45/13 48/18 59/7 let's [8] 6/6 23/3 26/17 27/13 30/21 35/1 49/18 59/6 LEVINE [7] 4/14 6/24 8/5 13/23 16/11 16/21 21/5 Levine's [1] 7/20 liability [1] 57/1 liable [3] 44/19 55/18 56/7 license [2] 24/17 58/11 licensed [1] 12/20 light [5] 8/6 11/24 29/22 48/9 48/13 like [11] 7/14 16/2 16/13 34/1 34/2 34/23 37/6 48/16 50/8 52/3 53/3 limitations [1] 18/13 line [2] 20/12 41/15 list [2] 34/18 57/24 listed [1] 30/25 litigation [3] 15/3 26/3 39/21 little [8] 9/25 10/2 27/6 27/21 28/6 44/22 44/22 64/13 LLC [18] 1/9 2/15 3/3 3/3 3/3 3/3 5/14 6/15 7/2 7/3 7/3 7/4 23/15 34/13 52/9 59/10 59/17 63/18 LLP [2] 3/17 5/17 lo [1] 60/10 long [1] 22/1 longer [2] 25/7</p>	<p>43/18 look [7] 7/17 16/19 19/21 22/13 22/14 63/15 64/15 looked [2] 56/5 64/17 looking [5] 29/2 34/8 42/8 60/20 61/1 looks [2] 50/8 65/13 lot [6] 18/25 46/15 50/22 54/3 64/11 65/6 low [1] 10/12</p> <p>M</p> <p>ma'am [5] 34/24 41/22 51/25 52/4 53/1 made [8] 11/22 31/9 39/2 45/24 46/1 50/14 51/18 58/18 maintain [3] 42/25 45/11 59/3 major [1] 61/12 make [16] 11/16 18/13 20/7 20/16 21/22 22/19 27/25 28/6 48/10 50/16 52/1 53/8 56/20 58/2 60/21 62/1 makes [2] 12/18 28/1 making [5] 25/24 42/10 42/14 42/15 46/14 management [11] 3/3 7/3 30/18 34/12 42/17 47/5 51/19 51/20 52/15 55/23 62/12 manager [2] 54/10 58/11 managing [21] 55/14 55/17 55/19 56/1 56/16 56/18 56/22 58/4 58/16 58/20 59/4 59/10 59/17 59/20 60/6 60/14 60/15 60/18 61/6 61/17 61/22 mandate [1] 12/11 many [5] 14/7 27/1 31/8 31/13 51/6 marijuana [4] 24/13 24/13 24/17 29/3</p>
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<p>M</p> <p>MARIMED [21] 4/14 6/24 7/19 8/5 11/22 12/23 13/2 13/23 15/10 16/11 16/22 17/1 17/7 17/8 25/19 36/5 37/9 37/13 40/4 50/24 62/11</p> <p>Marimed's [3] 31/10 33/21 53/25</p> <p>Marimen [1] 16/22</p> <p>matter [6] 7/16 29/9 29/20 36/23 52/10 66/6</p> <p>matters [2] 2/2 53/4</p> <p>MATURA [1] 5/5</p> <p>may [15] 8/9 10/19 12/5 14/21 18/15 19/23 22/8 24/10 26/2 28/11 28/22 30/20 37/24 41/9 50/5</p> <p>maybe [8] 8/11 14/15 27/13 50/25 50/25 51/15 51/18 59/14</p> <p>me [19] 7/16 10/1 11/13 14/7 16/12 16/15 21/1 26/23 26/23 29/13 34/2 34/23 43/20 47/6 52/3 52/22 59/1 59/7 64/6</p> <p>mean [15] 7/18 12/25 14/6 14/12 16/17 16/24 18/11 19/5 20/17 48/17 49/17 49/25 59/18 60/7 61/10</p> <p>meantime [1] 18/19</p> <p>meet [2] 25/22 26/7</p> <p>meeting [1] 11/2</p> <p>member [25] 24/2 27/9 55/14 55/17 55/19 55/22 56/2 56/17 56/18 56/23 58/4 58/16 58/20 59/4 59/10 59/17 59/20 60/6 60/15 60/15 60/18 61/6 61/17 61/18 61/22</p> <p>membership [2] 24/16 61/6</p> <p>mentioned [1]</p>	<p>28/18</p> <p>mere [1] 9/19</p> <p>merely [1] 19/5</p> <p>merits [2] 41/18 59/6</p> <p>merry [1] 27/18</p> <p>merry-go-round [1] 27/18</p> <p>MESSNER [1] 5/17</p> <p>MESSNER.COM [1] 5/24</p> <p>met [3] 13/13 29/12 29/24</p> <p>might [10] 9/13 14/12 14/16 15/12 18/14 18/25 21/1 30/14 51/13 65/14</p> <p>million [3] 13/1 15/14 15/15</p> <p>mind [2] 64/11 65/8</p> <p>Mine's [1] 8/3</p> <p>minimum [3] 14/17 20/21 47/10</p> <p>minor [1] 52/5</p> <p>minute [2] 64/18 65/12</p> <p>minutes [1] 11/3</p> <p>mispronouncing [1] 46/1</p> <p>misrepresentation [1] 44/18</p> <p>miss [1] 64/7</p> <p>missing [2] 40/16 58/1</p> <p>mix [2] 17/8 27/23</p> <p>moment [1] 12/15</p> <p>moments [1] 35/20</p> <p>money [8] 26/19 26/25 27/11 28/16 28/20 43/15 51/7 60/10</p> <p>months [2] 18/15 51/6</p> <p>more [9] 11/23 12/2 12/12 14/16 15/3 30/7 39/24 42/3 43/4</p> <p>mostly [1] 17/16</p> <p>mother [1] 26/21</p> <p>motion [31] 1/16 6/19 7/20 7/23 13/17 20/15 20/20 21/9 21/11 23/5 23/13 23/13 23/24 25/10 25/14 25/19 30/1 30/4 30/8</p>	<p>30/15 30/18 35/9 39/18 41/18 42/6 52/11 53/2 53/19 53/24 54/1 59/6</p> <p>motions [8] 7/16 7/16 12/2 15/9 54/18 55/11 65/2 65/7</p> <p>move [4] 22/7 23/4 35/2 52/12</p> <p>moving [4] 30/13 30/22 57/4 63/10</p> <p>Mr. [34] 6/16 7/24 13/22 13/23 16/21 16/21 18/23 21/5 21/5 21/19 22/2 23/1 24/3 24/10 24/12 24/19 25/1 26/25 28/13 28/16 28/22 28/25 29/2 31/10 32/6 32/7 33/3 33/3 33/22 36/5 37/22 37/22 54/5 57/7</p> <p>Mr. Burton [3] 32/7 33/3 37/22</p> <p>Mr. Fireman [3] 13/22 16/21 21/5</p> <p>Mr. Iglody [2] 24/12 57/7</p> <p>Mr. Iglody's [2] 28/13 28/25</p> <p>Mr. Justin [1] 6/16</p> <p>Mr. Lemons [9] 24/3 24/19 25/1 26/25 28/16 28/22 32/6 33/3 37/22</p> <p>Mr. Lemons's [2] 24/10 29/2</p> <p>Mr. Levine [3] 13/23 16/21 21/5</p> <p>Mr. Wright [9] 7/24 18/23 21/19 22/2 23/1 31/10 33/22 36/5 54/5</p> <p>Ms. [1] 50/7</p> <p>Ms. Stine [1] 50/7</p> <p>much [3] 28/8 31/12 63/6</p> <p>MUKUNDA [4] 2/17 2/23 6/13 23/8</p> <p>Multiple [1] 7/11</p> <p>my [88]</p> <p>N</p> <p>nail [1] 20/5</p> <p>name [3] 16/25 43/20 66/14</p> <p>named [2] 31/14</p>	<p>47/22</p> <p>nature [2] 12/17 57/20</p> <p>necessarily [1] 36/22</p> <p>necessary [1] 8/10</p> <p>need [3] 23/21 25/22 48/18</p> <p>needed [1] 25/11</p> <p>needs [1] 44/15</p> <p>NEVADA [44] 1/7 6/1 11/15 11/19 12/4 12/19 12/20 17/16 17/16 17/16 17/18 19/10 20/23 23/5 24/1 24/5 24/6 24/7 24/8 24/13 25/3 26/3 26/9 28/21 29/22 35/12 42/20 43/4 46/2 46/12 46/13 47/10 47/14 47/17 49/20 49/22 54/7 55/25 56/14 56/17 56/23 62/16 66/2 66/15</p> <p>never [2] 56/14 63/23</p> <p>next [5] 23/4 30/15 30/16 53/18 64/8</p> <p>NIELSON [2] 3/8 7/1</p> <p>nine [1] 54/8</p> <p>no [51] 1/1 8/25 9/17 10/9 14/2 14/2 16/17 19/11 19/17 19/21 20/3 23/2 23/14 23/16 23/25 24/6 25/7 25/15 26/8 30/1 31/13 35/5 35/10 35/11 35/12 37/14 37/15 37/15 38/3 39/3 39/6 39/20 40/3 40/5 41/3 43/18 47/10 49/23 51/19 52/4 52/22 54/11 54/12 54/13 54/25 55/1 57/11 57/19 63/6 63/13 63/19</p> <p>none [1] 31/20</p> <p>nor [3] 32/11 37/10 38/21</p> <p>normal [1] 12/15</p> <p>Normally [1] 27/21</p> <p>not [59] 8/18 8/20 9/8 9/14 9/17 9/23 9/23 10/16 13/7 15/7 16/4 18/11</p>	<p>19/3 19/4 19/4 19/5 19/11 20/7 20/9 20/14 21/15 22/3 22/15 23/2 26/7 29/1 29/4 29/5 29/9 29/24 31/11 35/23 38/25 40/20 40/20 41/2 41/4 42/14 44/18 45/13 45/16 45/16 48/8 48/19 49/17 49/23 51/16 51/17 53/14 56/15 56/21 56/21 57/13 58/12 60/3 61/19 61/20 64/10 65/14</p> <p>noted [1] 35/19</p> <p>notes [3] 34/8 34/14 66/8</p> <p>nothing [5] 11/1 18/5 26/22 27/11 64/23</p> <p>notice [1] 20/23</p> <p>notices [1] 53/25</p> <p>notwithstanding [1] 20/22</p> <p>now [28] 10/1 12/1 12/9 15/17 16/1 17/7 18/1 23/24 25/5 27/3 31/9 31/17 32/8 33/15 36/3 36/12 37/24 38/9 41/6 41/6 43/3 43/11 45/12 46/15 49/12 51/6 58/25 64/14</p> <p>NRCP [1] 20/19</p> <p>NRCP Rule 8 [1] 20/19</p> <p>nucleus [1] 47/25</p> <p>number [3] 28/18 33/17 33/19</p> <p>nutshell [1] 11/7</p> <p>NV [7] 1/25 2/10 3/10 4/9 4/20 5/9 5/21</p> <p>O</p> <p>objective [1] 39/7</p> <p>obligations [1] 61/5</p> <p>obviously [2] 10/19 11/24</p> <p>occur [1] 58/5</p> <p>occurred [1] 59/12</p> <p>Odyssey [1] 64/15</p> <p>off [7] 10/2 15/5 22/4 26/18 43/2 62/21 63/9</p> <p>offered [1] 57/7</p>
--	--	--	---	---

<p>O</p> <p>OFFICE [1] 66/14</p> <p>officer [1] 55/20</p> <p>officers [3] 42/9 43/15 44/21</p> <p>OFFICES [1] 4/5</p> <p>oh [6] 13/25 14/24 15/21 17/20 45/2 56/14</p> <p>Ohio [3] 24/3 24/4 26/21</p> <p>okay [26] 17/9 20/16 22/12 23/11 26/12 27/12 30/13 31/1 41/22 45/16 46/20 48/20 50/10 50/19 51/25 58/2 58/14 62/24 63/3 63/10 64/3 64/20 65/1 65/5 65/17 65/18</p> <p>on [84]</p> <p>once [3] 11/12 20/2 22/1</p> <p>one [22] 3/19 7/18 8/8 9/13 10/6 12/2 13/8 22/6 26/24 27/2 30/11 32/2 33/6 36/14 39/24 40/7 40/23 46/17 52/21 55/23 59/23 64/14</p> <p>ones [3] 8/2 16/13 49/25</p> <p>only [8] 16/7 23/17 31/19 33/5 38/23 43/17 49/6 65/5</p> <p>open [1] 12/12</p> <p>operate [2] 31/6 38/18</p> <p>operating [1] 48/1</p> <p>operation [1] 42/20</p> <p>operations [6] 44/9 46/2 46/3 47/4 48/2 56/3</p> <p>opportunity [3] 18/20 43/5 53/9</p> <p>oppose [1] 38/17</p> <p>opposition [14] 11/11 11/20 23/15 24/9 25/20 33/15 34/9 35/4 35/20 36/14 37/5 37/6 43/25 45/24</p> <p>oppositions [1] 11/21</p> <p>or [59] 8/22 9/13</p>	<p>10/8 10/10 14/19 15/12 15/18 16/15 17/8 17/17 17/22 18/7 18/15 22/2 22/15 23/14 24/6 24/16 31/4 31/6 31/7 32/16 32/17 34/17 35/11 36/10 36/11 37/11 37/12 37/12 38/6 38/17 39/4 39/9 39/14 39/15 40/7 40/10 40/11 41/3 41/13 42/20 46/10 46/17 48/14 48/19 49/17 51/22 56/21 56/21 59/20 59/25 60/18 61/13 62/3 62/5 62/6 62/13 64/8</p> <p>order [10] 2/2 7/21 17/14 21/20 21/21 22/5 22/23 53/10 64/18 65/12</p> <p>ordered [1] 22/19</p> <p>ordering [1] 22/11</p> <p>orders [3] 21/25 22/1 22/18</p> <p>original [1] 8/24</p> <p>ostensible [1] 33/2</p> <p>other [21] 8/2 9/4 9/19 9/20 11/1 14/16 15/4 16/1 17/6 22/25 31/14 32/3 38/13 40/13 42/5 42/13 42/19 47/18 49/25 51/14 63/1</p> <p>otherwise [1] 51/5</p> <p>our [37] 11/20 11/20 15/7 15/18 15/24 17/2 17/11 17/18 18/13 20/13 20/15 23/24 25/12 29/22 35/9 42/8 42/12 42/23 42/25 43/25 44/2 44/2 44/5 44/25 45/9 45/24 47/14 49/3 49/22 53/24 58/21 58/23 61/13 61/25 62/14 62/15 65/15</p> <p>ourselves [1] 51/6</p> <p>out [33] 12/16 14/12 14/16 15/21 16/2 17/22 18/17 19/6 19/19 20/2 20/12 20/21 27/2 27/9 27/13 28/24</p>	<p>34/9 43/6 44/2 44/5 45/6 45/8 45/12 45/13 47/9 48/6 56/6 56/25 57/6 57/11 60/13 61/23 63/17</p> <p>outline [1] 14/7</p> <p>outlined [1] 23/24</p> <p>outset [1] 14/25</p> <p>outside [1] 42/8</p> <p>over [8] 12/6 17/14 23/14 23/23 25/25 26/10 47/12 56/11</p> <p>overarching [1] 36/3</p> <p>overlooked [1] 52/21</p> <p>oversight [1] 46/16</p> <p>own [8] 16/1 20/12 26/2 27/14 31/6 42/21 43/22 58/17</p> <p>owned [1] 29/4</p> <p>owner [2] 24/2 42/12</p> <p>owners [1] 61/23</p> <p>ownership [18] 15/11 15/18 15/25 16/1 17/10 17/11 17/15 17/20 24/16 36/17 42/9 42/23 43/19 44/10 60/23 61/13 61/14 61/20</p> <p>owns [2] 17/5 28/21</p> <p>P</p> <p>P.M [1] 6/2</p> <p>pages [1] 54/15</p> <p>paid [2] 15/19 15/25</p> <p>paragraph [5] 42/2 48/24 62/23 63/2 64/16</p> <p>paragraph 104 [1] 48/24</p> <p>paragraph 92 [1] 64/16</p> <p>paragraphs [10] 14/3 14/8 31/19 48/25 54/15 58/1 62/9 62/20 63/15 64/15</p> <p>paragraphs 109 [1] 48/25</p> <p>parameters [1] 38/17</p> <p>PARKWAY [1] 4/7</p> <p>part [13] 12/4</p>	<p>14/25 26/2 29/6 46/23 49/7 49/14 49/14 49/15 49/16 53/24 56/20 59/20</p> <p>partial [1] 12/11</p> <p>participants [1] 37/13</p> <p>participate [4] 38/3 45/7 46/8 49/10</p> <p>participated [1] 55/19</p> <p>participates [1] 46/16</p> <p>participating [5] 37/19 42/19 46/19 47/4 49/2</p> <p>participation [3] 42/18 49/11 49/13</p> <p>particular [5] 31/23 39/21 46/2 46/14 49/25</p> <p>particularity [1] 60/4</p> <p>particularly [1] 55/14</p> <p>parties [12] 8/9 32/12 32/14 33/1 34/6 34/7 37/25 38/17 41/2 41/13 57/4 61/12</p> <p>party [6] 30/22 39/1 44/9 57/13 61/24 63/10</p> <p>PASEO [1] 4/18</p> <p>pause [1] 50/11</p> <p>paying [1] 12/25</p> <p>PC [1] 5/5</p> <p>PEGGY [3] 1/25 66/4 66/17</p> <p>penalty [1] 26/21</p> <p>people [9] 9/15 16/1 18/17 20/11 27/14 43/19 43/22 45/6 62/11</p> <p>percent [6] 17/7 17/10 24/11 26/5 42/22 44/10</p> <p>Perfect [1] 64/19</p> <p>period [3] 22/3 61/11 63/12</p> <p>perjury [1] 26/21</p> <p>personal [14] 23/18 25/17 25/25 29/19 30/20 33/20 35/3 35/6 35/18 36/1 39/19 45/22 47/12 52/10</p>	<p>personally [1] 55/19</p> <p>perspective [5] 13/21 16/18 16/20 29/25 56/5</p> <p>pertain [2] 14/4 31/19</p> <p>pertains [3] 20/20 30/8 52/9</p> <p>PHOENIX [1] 3/20</p> <p>piece [1] 49/7</p> <p>pierce [1] 19/8</p> <p>place [5] 38/3 56/22 60/24 61/12 66/7</p> <p>plaintiff [21] 1/10 2/5 6/7 6/8 8/8 8/23 21/6 24/9 29/7 32/13 33/6 35/4 35/12 35/16 38/7 39/11 40/1 41/24 45/3 50/23 55/7</p> <p>plaintiff's [14] 25/18 26/13 26/16 29/25 31/25 36/14 38/13 50/14 53/8 53/12 53/19 54/21 60/8 60/21</p> <p>plaintiffs [26] 6/9 8/15 8/25 9/6 11/13 22/10 23/16 24/23 25/3 29/10 31/13 32/2 32/11 32/24 33/15 35/11 36/8 37/7 37/19 37/24 39/14 39/21 42/1 51/10 51/20 57/15</p> <p>plaintiffs' [2] 17/17 21/22</p> <p>players [1] 31/14</p> <p>plead [1] 16/8</p> <p>pleading [3] 20/18 20/23 60/3</p> <p>pleadings [1] 52/16</p> <p>pled [5] 14/17 18/20 52/22 54/4 62/17</p> <p>plus [1] 31/18</p> <p>point [15] 14/11 14/13 14/20 19/24 20/21 21/18 24/21 33/14 34/2 36/10 41/19 48/6 48/22 51/16 60/16</p> <p>pointed [4] 28/24 57/6 57/11 63/17</p> <p>pointing [1] 35/21</p>
---	---	--	---	--

<p>P</p> <p>points [3] 29/16 31/9 34/25</p> <p>police [2] 48/15 48/16</p> <p>portion [1] 58/10</p> <p>position [8] 15/7 15/8 25/14 43/2 47/9 47/13 47/14 56/11</p> <p>possession [1] 14/15</p> <p>possibly [1] 50/9</p> <p>posted [3] 65/14 65/15 65/15</p> <p>potential [1] 62/5</p> <p>potentially [8] 14/12 17/22 18/7 21/1 44/19 48/13 59/19 60/9</p> <p>PRADO [1] 4/18</p> <p>precisely [1] 11/15</p> <p>preclude [1] 40/12</p> <p>precluded [1] 38/23</p> <p>prefaced [1] 46/21</p> <p>prejudice [4] 21/11 30/2 53/15 54/23</p> <p>prepare [5] 21/20 22/5 53/3 53/10 65/13</p> <p>prepared [1] 33/24</p> <p>presumably [1] 56/2</p> <p>presumptions [1] 57/16</p> <p>pretty [6] 8/2 11/9 23/13 29/17 31/18 31/23</p> <p>previous [4] 25/7 54/16 55/3 56/3</p> <p>previously [4] 24/24 54/2 54/21 64/1</p> <p>prima [1] 25/24</p> <p>primary [1] 60/22</p> <p>prior [6] 15/3 17/2 43/5 44/20 48/11 53/4</p> <p>pro [2] 6/17 23/9</p> <p>pro hac vice [2] 6/17 23/9</p> <p>probably [5] 34/25 61/22 61/23 64/18 65/12</p> <p>problem [4] 15/1 23/2 27/22 59/1</p>	<p>Procedure [1] 23/6</p> <p>proceed [4] 7/21 18/20 48/18 51/3</p> <p>proceeding [1] 58/19</p> <p>proceedings [4] 50/11 65/23 66/6 66/12</p> <p>process [3] 9/10 10/16 19/2</p> <p>profit [1] 42/20</p> <p>profits [4] 42/20 46/8 49/2 56/15</p> <p>promise [1] 25/6</p> <p>PROPERTIES [5] 3/2 7/2 30/17 34/11 52/15</p> <p>proposition [1] 26/18</p> <p>prove [3] 16/7 19/12 58/25</p> <p>proven [3] 11/18 11/23 51/1</p> <p>prudent [1] 30/6</p> <p>public [9] 8/23 9/3 12/7 12/8 43/12 46/19 49/1 49/6 55/17</p> <p>publicly [2] 9/1 11/5</p> <p>purchase [1] 15/13</p> <p>purchased [4] 13/2 15/12 15/12 28/23</p> <p>purchasing [1] 13/10</p> <p>purported [2] 36/22 39/15</p> <p>purportedly [2] 35/13 39/2</p> <p>purpose [2] 9/2 21/16</p> <p>purposefully [1] 23/20</p> <p>purposes [1] 30/4</p> <p>pursuant [4] 2/2 23/5 38/16 56/7</p> <p>put [6] 12/16 14/10 18/16 25/13 45/24 49/13</p> <p>puts [1] 29/7</p> <p>Q</p> <p>QUARLES [1] 3/17</p> <p>QUARLES.COM [1] 3/23</p> <p>question [12] 13/2 13/3 13/20 41/23 44/5 45/2 45/20</p>	<p>48/4 49/19 59/9 61/16 65/6</p> <p>questions [3] 11/8 29/14 41/20</p> <p>quick [2] 22/8 64/17</p> <p>quicker [2] 30/14 65/6</p> <p>quickly [1] 37/3</p> <p>quite [2] 8/13 10/12</p> <p>R</p> <p>ran [3] 8/15 26/25 48/9</p> <p>RASSAS [2] 3/4 7/5</p> <p>rate [1] 38/5</p> <p>rather [3] 9/23 10/10 28/6</p> <p>RD [1] 2/19</p> <p>read [2] 34/15 65/11</p> <p>reading [1] 65/7</p> <p>real [3] 22/8 31/7 64/17</p> <p>reality [1] 31/11</p> <p>realize [1] 10/5</p> <p>really [5] 20/10 21/1 21/6 36/12 51/23</p> <p>reason [7] 14/11 36/23 48/5 49/6 59/16 60/7 65/5</p> <p>reasonable [14] 13/16 22/3 23/22 28/1 42/24 43/20 46/3 46/7 46/11 47/15 49/10 60/21 61/4 61/16</p> <p>reasons [7] 33/20 34/19 35/25 38/20 54/16 55/2 63/25</p> <p>rebuttal [1] 41/21</p> <p>received [2] 38/6 38/7</p> <p>recent [1] 43/4</p> <p>recently [2] 6/17 23/9</p> <p>recognizes [1] 11/15</p> <p>recollection [1] 47/13</p> <p>reconnecting [1] 50/9</p> <p>record [7] 8/23 20/17 34/24 52/5 52/18 62/20 66/11</p> <p>recorded [1] 9/1</p>	<p>records [5] 12/12 12/17 46/19 49/1 49/6</p> <p>red [2] 48/9 48/13</p> <p>reduced [1] 9/17</p> <p>REEVES [1] 5/17</p> <p>refer [3] 30/24 31/1 48/23</p> <p>reference [1] 53/11</p> <p>referencing [1] 43/25</p> <p>referred [4] 33/3 35/24 37/20 52/13</p> <p>referring [1] 62/8</p> <p>refutes [1] 26/5</p> <p>regard [1] 55/10</p> <p>regarding [5] 17/15 26/24 32/5 40/14 54/3</p> <p>regards [2] 45/25 52/11</p> <p>registered [2] 8/18 8/20</p> <p>registration [1] 8/22</p> <p>regulated [1] 46/9</p> <p>regulatory [1] 12/6</p> <p>related [1] 26/3</p> <p>relates [8] 16/11 20/18 23/1 29/19 52/16 62/3 62/4 63/12</p> <p>relation [1] 63/13</p> <p>relationship [2] 40/4 40/6</p> <p>relationships [2] 63/23 63/24</p> <p>relatively [1] 37/3</p> <p>releases [1] 20/1</p> <p>relevant [3] 12/2 12/13 12/13</p> <p>relief [18] 11/18 11/25 13/24 14/13 16/15 17/4 17/15 17/19 17/24 19/6 20/25 22/23 30/19 40/21 43/22 51/9 52/17 52/24</p> <p>rely [5] 9/1 9/3 57/16 57/17 57/17</p> <p>remain [3] 33/18 34/21 37/11</p> <p>remainder [1] 41/21</p> <p>remaining [5] 23/17 34/6 34/7</p>	<p>36/6 36/25</p> <p>remains [1] 39/23</p> <p>remedies [1] 13/3</p> <p>remember [2] 12/1 44/20</p> <p>remote [1] 64/4</p> <p>RENAISSANCE [1] 3/19</p> <p>renege [1] 25/6</p> <p>reply [2] 14/10 50/20</p> <p>report [1] 48/16</p> <p>reported [2] 1/25 12/25</p> <p>REPORTER [1] 66/4</p> <p>REPORTER'S [2] 1/15 65/25</p> <p>represent [2] 7/1 7/8</p> <p>representation [1] 54/24</p> <p>representations [1] 25/1</p> <p>representatives [1] 24/5</p> <p>represented [1] 24/23</p> <p>request [3] 25/13 53/6 64/1</p> <p>required [3] 8/17 44/1 54/7</p> <p>requirements [1] 20/18</p> <p>requires [1] 57/25</p> <p>resident [4] 24/3 49/19 55/4 56/21</p> <p>residents [3] 12/20 17/17 17/18</p> <p>resolve [1] 43/23</p> <p>resorts [1] 35/21</p> <p>respect [12] 8/5 33/25 37/1 38/9 38/20 39/22 40/9 41/1 41/5 43/3 50/2 50/15</p> <p>respectfully [2] 27/25 64/1</p> <p>response [3] 40/25 41/6 46/21</p> <p>responsibilities [1] 58/21</p> <p>responsible [1] 19/11</p> <p>rest [1] 41/19</p> <p>restrict [1] 38/17</p> <p>result [6] 9/12 47/20 49/11 49/21</p>
---	---	---	--	--

R	said [7] 25/6 43/21 44/23 46/20 53/3 57/13 66/7 salient [1] 60/5 same [10] 13/10 17/10 28/17 32/6 43/2 43/14 43/23 44/8 47/25 53/13 SARA [8] 4/2 6/21 53/18 54/18 55/4 55/12 55/13 56/6 save [1] 41/21 say [11] 8/13 9/15 20/22 22/12 27/16 44/11 44/12 48/25 49/18 59/22 64/17 saying [6] 11/14 19/17 22/4 26/20 62/23 65/8 says [2] 19/11 27/16 scale [1] 47/24 scattershot [1] 63/20 scenario [1] 48/7 scene [2] 57/8 57/9 scheme [1] 14/19 scienter [2] 40/16 40/17 scope [2] 21/13 49/12 SCOTTSDALE [2] 2/19 2/21 scrivener's [1] 34/14 SEC [1] 49/5 second [2] 29/6 64/9 see [3] 37/4 39/17 40/25 seek [1] 27/8 seems [1] 46/11 sense [1] 47/7 separate [13] 32/4 32/5 32/5 32/21 33/9 33/9 37/21 40/13 40/14 40/14 40/15 58/17 59/2 separated [2] 46/17 47/23 sequence [1] 55/11 series [2] 7/12 7/15 serious [1] 31/23 served [1] 57/15 set [7] 20/24 21/3	52/17 52/23 60/1 60/17 62/2 sets [1] 21/3 setting [1] 59/25 seven [1] 63/19 SHANBHAG [3] 2/17 6/13 23/8 share [1] 46/10 shares [1] 8/12 she [35] 54/11 54/12 54/13 54/19 55/14 55/17 55/19 55/22 56/2 56/20 56/22 57/13 57/14 57/15 58/4 58/10 58/12 58/16 58/20 59/4 59/9 59/14 59/19 59/20 60/6 60/14 60/15 60/17 60/24 61/1 61/2 61/14 62/12 62/13 63/23 She'll [1] 54/23 she's [5] 55/18 56/16 56/21 59/3 61/3 shelter [1] 46/17 shift [1] 26/23 shifting [2] 29/9 40/24 shifts [1] 41/6 ship [1] 26/21 short [1] 44/25 SHORTHAND [1] 66/4 shotgun [1] 9/15 should [20] 7/18 13/17 20/22 21/16 23/22 25/21 26/6 27/8 28/3 28/14 36/1 36/25 41/16 45/18 54/19 55/5 56/20 56/24 61/18 65/15 shouldn't [1] 60/17 show [3] 29/7 45/5 57/8 showing [1] 25/24 shows [1] 50/25 shred [1] 26/24 side [2] 17/17 63/4 sides [3] 43/16 51/7 61/3 sign [2] 22/4 54/11 significant [1] 33/13 silence [1] 7/14	similar [1] 50/23 simple [3] 8/3 23/13 35/21 simply [8] 9/14 15/8 29/5 31/7 31/12 31/15 37/14 40/10 since [3] 22/11 55/10 64/8 sir [19] 7/25 11/10 14/23 18/22 21/21 23/11 26/15 28/9 29/15 30/1 45/21 50/2 50/16 53/23 55/6 57/3 62/21 62/24 63/3 sit [1] 22/1 site [1] 45/5 sitting [2] 18/11 18/14 situation [1] 43/9 SKALLA [2] 3/4 7/5 slightly [1] 37/4 slow [1] 30/15 SLWLAW.COM [1] 3/13 SMITH [1] 3/7 SNOWELL [33] 2/15 5/14 6/11 6/15 23/5 23/8 23/10 23/15 23/25 24/2 24/3 24/4 24/7 24/7 24/11 24/18 25/2 25/4 25/10 25/16 25/25 26/2 26/9 27/12 27/17 28/2 28/15 28/17 28/20 28/21 28/22 29/20 35/20 Snowell's [3] 6/19 27/23 54/1 so [60] 8/5 9/2 11/7 12/7 12/19 13/2 14/6 15/5 15/20 16/4 16/24 17/6 17/18 18/10 20/11 21/8 21/19 22/2 22/5 22/19 23/3 23/17 24/17 25/12 28/8 29/9 30/13 33/5 34/1 35/25 36/23 37/14 43/1 43/24 44/10 44/18 44/21 45/9 45/23 47/22 48/17 49/9 50/16 53/1 54/17 54/25 55/2 55/10 55/17 56/23	60/2 60/17 61/1 61/4 61/16 62/8 62/18 63/6 64/4 64/8 sole [2] 24/2 27/9 solely [3] 31/8 35/6 58/1 soliciting [1] 24/6 solidified [1] 9/23 some [38] 9/4 9/7 9/9 9/22 10/8 10/14 10/20 10/22 12/23 12/24 14/12 14/13 17/8 17/15 19/22 19/24 26/2 26/2 26/2 31/22 34/10 38/15 43/6 50/25 51/11 51/14 51/14 51/15 55/15 55/16 56/2 57/18 59/7 59/15 61/3 61/23 62/6 62/16 somebody [3] 11/2 20/8 43/23 somehow [11] 9/21 11/3 14/18 27/4 28/16 37/18 38/12 38/22 39/8 39/11 43/17 someone [3] 13/9 38/2 59/17 something [11] 15/16 18/8 19/12 25/10 29/1 30/3 34/1 34/22 37/6 43/10 45/14 sometimes [2] 22/21 34/15 somewhat [1] 47/23 somewhere [1] 20/12 sorry [6] 7/13 14/1 22/9 28/10 50/13 59/5 sort [3] 19/19 38/15 62/6 sounded [1] 50/23 Sounds [1] 7/14 source [1] 9/5 spans [1] 31/18 speak [1] 33/24 speaker [1] 7/11 specific [18] 11/8 14/4 21/21 23/14 23/17 25/17 25/25 28/4 28/19 29/7 29/19 30/8 39/12
S	SAHARA [1] 2/8			

<p>S</p> <p>specific... [5] 41/20 46/3 46/13 52/2 59/14</p> <p>specifically [10] 6/18 13/21 14/4 20/19 28/20 29/18 42/3 45/10 62/2 62/25</p> <p>specifics [1] 31/21</p> <p>spectacular [2] 16/5 42/15</p> <p>speculation [3] 18/25 28/16 57/17</p> <p>spending [2] 51/7 56/15</p> <p>SQUARE [1] 3/19</p> <p>stage [4] 10/12 13/15 19/18 53/15</p> <p>standard [7] 10/12 11/14 15/9 16/6 19/17 25/23 26/7</p> <p>standards [3] 20/20 25/22 57/24</p> <p>standing [2] 36/8 51/6</p> <p>start [5] 6/6 7/18 11/14 26/18 58/24</p> <p>starting [1] 16/24</p> <p>state [15] 8/18 8/20 8/22 9/24 11/6 12/3 12/11 20/23 23/21 30/19 40/21 43/25 56/17 66/2 66/14</p> <p>stated [7] 13/12 13/25 14/25 28/2 56/5 58/21 60/22</p> <p>statements [3] 43/12 43/13 48/14</p> <p>stating [1] 13/12</p> <p>status [1] 52/16</p> <p>staying [2] 44/6 58/15</p> <p>STENOTYPE [2] 66/5 66/8</p> <p>stepped [1] 54/6</p> <p>still [5] 9/22 33/18 34/21 46/18 47/24</p> <p>STINE [5] 3/18 7/1 30/24 50/4 50/7</p> <p>stole [1] 27/11</p> <p>strict [1] 18/12</p> <p>strictly [1] 43/25</p> <p>STRIVE [21] 3/3 7/3 17/8 30/18 32/23 34/11 37/23 39/2 42/10 42/17</p>	<p>42/17 43/8 47/5 47/5 47/22 49/15 51/20 52/15 55/22 55/23 61/2</p> <p>Strive's [1] 51/19</p> <p>structure [2] 12/7 61/6</p> <p>stuck [3] 12/13 27/24 45/15</p> <p>subjected [1] 31/22</p> <p>submit [1] 21/25</p> <p>submitted [5] 24/1 26/20 35/9 35/15 39/18</p> <p>SUBSCRIBED [1] 66/13</p> <p>such [3] 8/22 45/12 57/19</p> <p>sue [2] 48/8 57/9</p> <p>sued [1] 59/18</p> <p>sufficient [4] 11/22 35/23 40/20 42/25</p> <p>suggest [1] 39/13</p> <p>suggests [1] 37/17</p> <p>suing [1] 19/7</p> <p>SUITE [6] 2/9 2/20 4/8 4/19 5/8 5/20</p> <p>summary [2] 59/6 63/2</p> <p>super [4] 15/8 16/5 18/12 42/15</p> <p>SUPERVISION [1] 66/9</p> <p>support [6] 10/23 19/13 20/6 20/24 21/7 48/13</p> <p>supported [1] 55/16</p> <p>supposed [6] 9/21 10/14 10/16 11/4 17/6 27/4</p> <p>supposedly [1] 31/22</p> <p>Supreme [3] 11/15 29/23 54/7</p> <p>sure [12] 20/17 21/22 22/19 35/1 43/18 46/14 48/10 50/16 52/1 53/8 58/2 62/1</p> <p>sustain [2] 35/17 51/8</p> <p>swears [1] 26/20</p> <p>T</p> <p>tail [1] 55/11</p> <p>take [4] 7/10 35/1</p>	<p>53/7 61/23</p> <p>taking [3] 18/1 42/20 47/9</p> <p>talk [1] 7/11</p> <p>talking [5] 12/3 34/16 46/25 60/3 62/21</p> <p>Taxation [1] 12/8</p> <p>TELEPHONIC [2] 1/17 2/2</p> <p>tell [1] 15/23</p> <p>telling [1] 64/12</p> <p>ten [2] 31/19 31/20</p> <p>tenable [1] 16/8</p> <p>terms [2] 33/10 48/1</p> <p>than [7] 9/19 11/2 15/4 30/7 30/14 64/14 65/6</p> <p>thank [36] 8/1 11/10 11/12 12/10 13/19 14/24 16/9 16/23 18/21 18/22 23/12 26/15 26/17 28/8 28/9 30/10 41/22 41/25 45/19 45/23 50/3 50/10 50/21 53/16 55/6 55/8 57/2 57/3 59/8 61/25 63/6 64/19 64/21 65/16 65/19 65/21</p> <p>that [319]</p> <p>that's [48] 7/22 10/3 11/7 13/14 14/8 19/24 21/6 21/15 21/17 22/5 22/18 22/24 25/12 25/19 26/7 26/11 27/1 28/7 29/13 33/10 33/25 34/14 34/18 34/22 35/23 36/4 40/20 40/20 45/3 47/12 48/4 48/17 48/22 49/3 49/6 51/2 51/15 54/24 56/15 57/9 58/23 59/1 59/1 59/5 59/22 60/16 61/8 62/24</p> <p>their [22] 8/10 13/17 14/18 20/12 23/20 24/9 25/6 25/20 25/20 26/7 39/4 39/14 39/15 40/1 40/13 44/17 47/13 49/18 51/12 60/23 61/14 61/19</p>	<p>them [32] 8/16 9/3 9/5 9/16 10/7 10/20 10/25 11/4 19/7 19/23 24/25 26/19 27/19 30/25 31/1 31/8 31/19 31/22 34/15 35/14 36/7 37/3 37/12 41/17 43/20 44/24 47/12 47/16 51/3 52/6 55/20 62/17</p> <p>themselves [1] 9/16</p> <p>then [27] 8/16 10/24 11/3 13/3 13/23 16/21 17/23 18/3 19/25 22/7 26/19 41/20 43/9 44/2 44/13 44/19 46/3 46/11 51/1 51/15 52/12 53/9 61/2 62/15 63/1 64/17 65/13</p> <p>theories [2] 37/4 40/24</p> <p>theory [6] 37/6 37/16 38/10 39/25 40/25 51/22</p> <p>there [43] 8/7 8/19 8/21 9/4 9/9 9/14 10/19 11/1 12/16 13/1 14/12 16/7 18/6 18/24 19/17 20/9 23/25 24/6 25/15 26/8 28/17 28/18 34/9 35/4 36/8 36/12 37/15 39/6 40/5 40/11 40/18 42/4 43/13 45/5 45/5 45/7 49/8 52/22 54/25 54/25 58/12 61/2 64/23</p> <p>there's [31] 8/11 9/17 10/9 10/19 11/1 21/11 22/22 23/14 23/16 25/25 26/1 33/22 36/17 37/2 37/14 39/23 39/23 40/3 40/4 41/7 41/7 41/8 41/18 43/22 48/12 48/15 51/1 51/19 57/11 57/19 63/19</p> <p>THEREAFTER [1] 66/7</p> <p>therefore [4] 8/10 41/4 42/5 42/17</p> <p>thereof [2] 62/3</p>	<p>62/5</p> <p>these [34] 6/18 8/12 9/15 10/6 13/13 13/21 14/4 15/10 17/14 19/9 20/6 20/10 24/14 25/1 39/21 40/12 41/9 43/19 44/14 44/21 44/23 54/11 54/12 54/14 54/18 55/1 55/15 57/14 57/18 58/1 61/3 63/14 63/19 63/25</p> <p>they [86]</p> <p>they're [22] 8/19 9/14 10/17 17/20 19/1 19/5 19/7 19/11 20/3 26/1 26/23 32/14 35/6 41/2 41/4 42/10 46/17 46/18 47/8 47/9 49/5 49/17</p> <p>they've [3] 10/8 19/22 33/11</p> <p>thing [9] 8/8 8/13 9/13 31/24 43/18 43/23 51/8 57/19 59/23</p> <p>things [2] 44/23 48/17</p> <p>think [28] 12/25 13/8 14/6 14/8 14/9 14/17 15/15 20/5 21/2 22/2 23/4 30/6 31/10 36/4 36/13 45/14 46/21 47/7 48/6 50/12 50/14 52/4 52/20 53/18 54/5 59/21 60/5 65/6</p> <p>third [3] 44/9 61/12 61/24</p> <p>third-party [2] 44/9 61/24</p> <p>this [117]</p> <p>thorough [1] 52/5</p> <p>those [20] 14/14 16/7 18/17 31/20 33/25 34/16 34/21 35/15 35/25 36/15 37/20 37/25 38/14 39/10 40/10 41/5 47/20 51/15 54/16 55/2</p> <p>though [3] 31/24 42/16 60/14</p> <p>threadbare [1] 35/22</p>
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Peggy Isom, CCR 541, RMR

(13) specific... - threadbare

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T	61/3 61/12 61/24 62/5 62/11 TRANSCRIBED [1] 66/8 transcript [8] 1/15 22/11 22/13 23/1 53/7 53/9 53/11 66/10 translate [1] 38/1 transport [2] 54/9 58/11 transportation [1] 58/11 Tricarichi [1] 43/3 true [18] 11/17 11/18 11/23 13/16 15/10 16/7 27/15 29/5 42/16 44/2 44/5 44/6 44/23 49/18 56/6 62/13 65/2 66/10 Trump [2] 29/23 35/24 trust [1] 64/6 try [5] 12/16 19/25 20/11 58/10 65/10 trying [2] 19/8 60/12 turn [2] 44/2 44/5 turning [1] 36/3 turns [2] 15/21 56/6 two [12] 16/21 18/15 21/4 27/8 32/6 35/3 39/23 39/24 43/22 46/17 46/17 64/8 type [1] 57/18 types [2] 38/25 59/24 TYPEWRITING [1] 66/8 Typically [1] 45/4	unfortunately [1] 64/4 unjust [11] 16/13 17/25 37/1 37/3 37/14 37/15 38/1 38/4 38/6 52/18 63/20 unjustly [3] 10/8 37/18 38/8 unlawful [1] 39/7 unless [6] 11/7 29/13 41/20 45/9 52/2 59/13 unlike [3] 12/15 49/25 56/13 unreasonable [3] 49/21 49/23 61/21 until [6] 8/21 26/13 39/21 45/8 58/12 59/10 unwritten [1] 38/15 up [13] 7/19 15/14 18/18 23/4 30/16 33/14 48/5 53/18 54/6 57/8 59/12 59/16 60/7 upon [11] 9/1 21/3 21/13 22/12 30/19 48/8 52/15 54/15 57/17 57/17 61/17 us [11] 13/14 17/25 20/2 26/11 29/9 31/1 42/12 42/25 45/10 56/16 61/13 use [1] 10/16 used [1] 48/7	VILLAGE [1] 3/9 violate [2] 38/13 38/22 VIRIDIS [26] 3/3 3/3 7/3 7/4 34/12 34/12 35/2 35/3 35/5 35/8 36/1 42/18 42/19 45/21 45/25 46/1 46/25 47/1 47/8 48/21 49/15 51/18 52/7 52/8 52/9 56/14 virtue [2] 38/23 39/3 vis [2] 62/4 62/4 vis-à-vis [1] 62/4	we're [23] 9/21 10/4 12/2 13/12 18/5 18/19 21/19 21/20 22/11 25/14 30/13 30/13 34/16 42/8 42/11 43/11 44/1 46/25 51/5 53/8 55/10 55/13 56/14 we've [3] 25/13 42/22 62/16 WEDNESDAY [2] 1/22 6/1 weeks [1] 64/8 weigh [1] 52/3 welcome [2] 30/7 65/22 well [19] 7/24 9/10 10/19 11/9 18/3 27/10 27/13 27/16 34/19 36/4 40/4 47/7 51/1 53/24 54/6 54/17 54/20 55/3 59/3 Wellness [5] 32/23 37/23 42/17 47/5 55/23 went [4] 13/14 15/17 24/25 44/10 were [21] 6/15 6/16 9/7 9/11 13/3 13/10 13/13 33/1 33/3 36/18 37/12 37/18 44/21 47/3 49/6 49/8 56/13 58/22 61/11 65/23 66/8 what [58] 10/17 12/23 13/3 13/21 15/5 15/5 15/22 15/24 16/10 16/18 17/5 18/5 18/17 18/25 19/6 19/15 19/16 20/1 20/17 20/19 21/8 21/19 22/5 22/24 25/18 26/1 27/15 29/17 30/24 31/21 31/25 32/10 32/20 34/18 37/19 40/24 42/8 43/11 44/18 45/8 45/12 45/21 47/6 47/13 50/22 50/23 52/12 53/1 54/5 54/7 56/25 57/6 62/2 62/15 62/20 62/23 64/3 64/10 what's [2] 12/16
three [5] 13/21 22/2 59/10 59/14 60/15 threshold [1] 14/17 through [18] 10/4 19/1 24/11 24/25 27/1 28/15 28/22 34/3 34/19 37/3 42/18 46/15 47/5 60/20 62/9 62/25 63/15 64/16 tick [1] 37/2 ties [1] 51/23 tight [1] 27/5 time [23] 10/25 12/6 20/13 22/3 24/14 28/17 29/3 41/23 42/10 44/21 45/16 53/7 57/13 57/14 60/1 60/6 60/18 61/11 61/23 62/12 63/12 64/11 66/7 times [1] 28/18 timing [1] 58/3 TIMOTHY [1] 1/19 today [8] 6/18 19/13 30/4 54/2 64/10 64/18 65/12 65/14 together [6] 12/16 18/16 43/12 48/25 49/7 51/23 tomorrow [2] 65/12 65/15 too [7] 9/14 21/15 22/1 28/8 60/12 61/2 65/2 took [8] 26/19 26/25 43/14 56/22 60/24 61/12 63/15 66/5 tort [3] 48/6 57/9 62/6 totally [3] 32/5 32/21 33/9 towards [1] 23/21 transaction [12] 13/8 14/18 37/9 37/13 38/2 43/16 46/18 59/11 59/12 59/20 60/23 63/1 transactions [14] 17/3 32/4 32/15 38/25 40/14 41/9 55/24 59/25 60/19	umbrella [1] 47/21 under [13] 11/18 15/8 16/6 26/21 29/21 35/23 37/16 47/21 52/21 60/4 60/13 62/16 66/9 understand [10] 10/11 16/18 20/17 22/21 28/25 30/12 58/3 58/9 60/8 62/2 understanding [3] 14/3 29/17 34/7 unfortunate [1] 20/10	unlike [3] 12/15 49/25 56/13 unreasonable [3] 49/21 49/23 61/21 until [6] 8/21 26/13 39/21 45/8 58/12 59/10 unwritten [1] 38/15 up [13] 7/19 15/14 18/18 23/4 30/16 33/14 48/5 53/18 54/6 57/8 59/12 59/16 60/7 upon [11] 9/1 21/3 21/13 22/12 30/19 48/8 52/15 54/15 57/17 57/17 61/17 us [11] 13/14 17/25 20/2 26/11 29/9 31/1 42/12 42/25 45/10 56/16 61/13 use [1] 10/16 used [1] 48/7	W want [18] 14/19 16/12 16/15 16/17 20/16 20/21 28/5 30/7 41/1 45/10 48/10 50/16 52/1 58/2 59/13 62/1 62/21 63/8 wanted [1] 63/1 was [43] 9/9 9/18 12/5 12/25 15/15 18/7 18/25 23/9 34/9 34/9 36/13 37/15 38/8 40/19 42/4 46/6 46/23 47/16 48/4 48/6 48/11 50/13 54/9 54/13 54/22 55/14 56/22 57/15 58/1 58/4 58/10 58/16 59/19 59/20 60/6 60/14 60/18 60/24 61/1 61/14 62/12 64/6 65/7 wasn't [4] 54/24 57/13 59/23 61/9 waste [2] 45/16 64/11 way [12] 15/22 21/3 43/15 43/16 46/13 49/24 54/11 54/12 54/13 56/17 58/6 58/9 we [120] we'd [2] 16/2 46/11 we'll [14] 7/10 11/10 22/5 22/24 26/16 31/1 41/24 50/19 51/1 55/7 56/25 57/4 59/6 63/10	

Peggy Isom, CCR 541, RMR

(14) three - what's

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<p>W</p> <p>what's... [1] 56/5</p> <p>whatever [8] 8/19 14/19 17/3 18/9 18/16 20/3 39/4 46/10</p> <p>whatsoever [3] 10/21 39/13 63/13</p> <p>when [24] 10/5 11/16 14/14 19/18 19/24 27/9 29/8 29/11 44/23 45/8 45/12 46/20 50/25 54/5 55/14 56/22 56/25 57/15 58/5 59/2 59/24 60/2 60/24 65/7</p> <p>where [16] 7/18 10/3 12/15 19/2 20/6 24/25 25/14 27/16 40/23 43/13 45/8 48/15 54/6 58/10 61/11 62/10</p> <p>WHEREOF [1] 66/13</p> <p>whether [3] 48/19 49/17 56/21</p> <p>which [41] 9/5 9/5 9/17 10/17 10/23 11/5 12/4 12/14 15/11 18/4 19/9 20/6 24/9 24/19 25/13 25/20 26/4 27/7 30/19 33/3 33/21 35/9 36/22 37/11 38/16 39/23 42/11 43/4 43/7 46/14 46/23 51/18 54/1 54/14 54/22 55/16 55/24 57/25 57/25 58/17 64/13</p> <p>while [3] 31/17 37/24 61/14</p> <p>who [11] 13/13 17/1 17/5 26/18 43/14 45/8 46/16 54/9 60/2 61/11 61/23</p> <p>who's [1] 24/2</p> <p>whole [4] 9/2 31/24 51/7 59/11</p> <p>why [12] 12/12 14/11 22/19 34/20 43/6 48/5 48/5 59/13 59/16 59/22 60/7 61/8</p> <p>will [9] 11/23 12/1 21/10 21/11 30/2</p>	<p>30/21 53/13 53/15 64/15</p> <p>WILLIAMS [1] 1/19</p> <p>wish [2] 37/24 53/11</p> <p>withdrawing [1] 25/8</p> <p>within [1] 64/8</p> <p>without [6] 21/11 26/23 27/5 30/2 53/15 54/22</p> <p>withstanding [1] 33/21</p> <p>WITNESS [1] 66/13</p> <p>witnesses [1] 48/14</p> <p>WIXOM [1] 3/7</p> <p>wonder [1] 34/15</p> <p>words [2] 17/6 47/18</p> <p>work [1] 64/4</p> <p>would [67]</p> <p>WRIGHT [13] 4/16 4/17 6/23 7/23 7/24 18/23 21/19 22/2 23/1 31/10 33/22 36/5 54/5</p> <p>WRIGHTLAWGRO UPNV.COM [1] 4/23</p> <p>writing [1] 9/17</p> <p>wrong [3] 31/22 49/24 50/15</p> <p>wrongdoing [1] 57/19</p> <p>X</p> <p>XVI [1] 1/3</p> <p>Y</p> <p>yeah [8] 6/6 22/16 34/24 44/11 44/12 44/25 45/3 62/22</p> <p>years [9] 9/20 9/21 11/3 12/21 15/19 26/20 59/11 59/14 60/15</p> <p>yes [24] 6/9 7/10 7/15 15/20 16/23 17/12 17/18 17/23 18/10 18/24 23/7 28/17 29/1 44/15 48/3 50/18 53/21 55/20 56/9 56/24 57/5 61/7 61/20 63/5</p> <p>yet [1] 9/14</p>	<p>you [164]</p> <p>you'd [1] 52/3</p> <p>you'll [1] 37/4</p> <p>you're [13] 10/14 10/15 11/4 14/9 18/1 19/2 19/18 27/13 30/7 47/6 49/9 61/1 65/22</p> <p>you've [3] 11/7 20/10 31/3</p> <p>your [98]</p>		
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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 9th day of August, 2021,
I caused service of a true and correct copy of the foregoing **APPENDIX TO
PETITIONERS' WRIT OF MANDAMUS** by the following means:

X BY MAIL: I placed a true copy thereof enclosed in a sealed envelope
addressed as follows:

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Eighth Judicial District Court
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