

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
8/10/2021 08:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX TO PETITIONER'S WRIT OF MANDAMUS

Volume 4 of 4 – Pages PA_0883-0930

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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
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Notice of Entry of Order Granting Item 9 Labs Corp.’s Motion for Attorneys’ Fees and Costs	07.07.2021	4	PA_0912-0930
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Transcript – Motion to Dismiss	02.24.2021	1	PA_0167-0247

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Purchase/Sale of Stock, Assets,
or Real Estate**

COURT MINUTES

May 26, 2021

A-20-811232-B JDD, LLC, Plaintiff(s)
 vs.
 Larry Lemons, Defendant(s)

**May 26, 2021 8:00 AM Minute Order: Defendant Snowell Holdings, LLC's
Motion for Attorneys' Fees (Issue of Work Performed)**

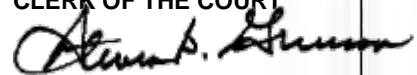
HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

- After review and consideration and in consideration of Brunzell factors, the Court hereby determines the actual work done and performed to be \$15,620.00 in connection with the Motion to Dismiss. Counsel for the Defendant Snowell Holdings shall prepare the order.

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.



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24 *and Crown Dynamics Corp.; Item 9 Properties, LLC, Strive*
25 *Management, L.L.C, d/b/a Strive Life, Viridis Group 19*
26 *Capital, LLC, Viridis Group Holdings, LLC, Andrew*
27 *Bowden, Douglas Bowden; Bryce Skalla Jeffrey Rassas,*
28 *and Chase Herschman*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

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

26 Plaintiffs,

27 vs.

28 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

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

**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**

SMITH LARSEN & WIXOM

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PA_0884

1 HARVEST FOUNDATION LLC f/k/a, a Nevada
2 limited liability company a/k/a THE HARVEST
3 FOUNDATION, LLC; STRIVE MANAGEMENT
4 L.L.C. d/b/a Strive Life, a Nevada limited liability
5 company; STRIVE WELLNESS OF NEVADA,
6 LLC d/b/a Strive Life, a Nevada limited liability
7 company; STRIVE WELLNESS OF NEVADA 2
8 L.L.C. d/b/a Strive Life, a Nevada limited liability
9 company; VIRIDIS GROUP I9 CAPITAL, LLC,
10 an Arizona limited liability company; VIRIDIS
11 GROUP HOLDINGS, LLC, an Arizona limited
12 liability company; SNOWELL HOLDINGS, LLC,
13 an Ohio limited liability company; ROBERT
14 FIREMAN, an individual; JON LEVINE, an
15 individual; ANDREW BOWDEN, an individual;
16 DOUGLAS BOWDEN, an individual; BRYCE
17 SKALLA, an individual; JEFFREY RASSAS, an
18 individual; DONALD BURTON, an individual;
19 LARRY LEMONS, an individual; JEFFREY
20 YOKIEL, an individual; JEROME YOKIEL, an
21 individual; SARA GULLICKSON, an individual;
22 CHASE HERSCHMAN, an individual; DOE
23 INDIVIDUALS I through X, and ROE
24 BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

15 Pursuant to Nevada Revised Statute ("NRS") 18.010(2)(b), Defendants Item 9 Labs
16 Corp., Viridis Group I9 Capital LLC, Viridis Group Holdings, LLC, Andrew Bowden,
17 Douglas Bowden, Bryce Skalla, Jeffrey Rassas, and Chase Herschman (collectively, the "Item
18 9 Defendants") file this reply in support of their motion for an award of the attorneys' fees and
19 costs it incurred in its successful defense of the claims filed against them by Plaintiffs
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JDD, LLC, TCS Partners, LLC, John Saunders, and Trevor Schmidt (collectively, "Plaintiffs"). This Reply is supported by the following Memorandum of Points and Authorities and the entire record in this action.

RESPECTFULLY SUBMITTED this 1st day of June, 2021.

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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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs argue that the court should not award fees because -- "at some point" -- they will be permitted to conduct discovery and maybe then they will find a basis to assert a claim against the Item 9 Defendants. This is not how litigation works.

A plaintiff must have a legitimate, good faith basis to file a complaint in the first place. Parties are not permitted to file first, and then conduct discovery in order to gin up a claim where none existed at the time the lawsuit was filed. Yet this is precisely what Plaintiffs are trying to accomplish here.

By their own admission, Plaintiffs' due diligence in advance of filing the First Amended

1 Complaint (the "FAC") consisted solely of the efforts of Mr. Brian Roche, a so-called
2 investigator that was hired by Plaintiffs. Mr. Roche's own Declaration (and email exhibits)
3 demonstrates how he harassed the Item 9 Defendants before the FAC was filed, and that
4 Plaintiffs did not have a good faith basis to assert claims against the Item 9 Defendants at the
5 outset. An award of attorneys' fees is warranted under the circumstances.

6
7 With respect to the amount of attorneys' fees sought, Plaintiffs concede that all of the
8 *Brunzell* factors weigh in favor of the Item 9 Defendants, except the fees the Item 9 Defendants
9 request are too high. Plaintiffs argue that the Item 9 Defendants should only receive "[a]n hour
10 of attorney time plus an hour of paralegal or law clerk time per page" in their Motion to Dismiss
11 briefing. Candidly, that is absurd.

12 This is not a two-party, red car/blue car case. Plaintiffs' FAC clocked in at 33 pages
13 and contained 244 paragraphs (excluding exhibits). The FAC asserted 19 claims for relief
14 against 23 defendants. Eight (8) of the claims were asserted against the ten (10) Item 9
15 Defendants. The eight (8) claims pled against the ten (10) Item 9 Defendants ranged from civil
16 conspiracy to aiding and abetting breaches of fiduciary duty.

17 Plaintiffs had the opportunity to avoid litigation (and this fee motion) at the outset. After
18 they were provided with the November 10, 2020 letter (the "November 10 letter") from the
19 Item 9 Defendants – which demonstrated that Plaintiffs' agent (Mr. Roche) threatened,
20 harassed, and intimidated the Item 9 Defendants (and in at least one instance, their families) in
21 an effort to enlist their assistance in the lawsuit or, barring that, to extract payment from them
22 – Plaintiffs agreed to voluntarily dismiss their claims. *See* Exhibit C to Stine Declaration.¹
23 Plaintiffs then inexplicably reversed course, reneged on their agreement, and forced the Item 9
24 Defendants to incur the expense of preparing the Motion to Dismiss – only to dismiss half of
25 the claims against all of the Item 9 Defendants and dismiss the Individual Defendants entirely
26 in their response brief. Responding to the FAC was not a simple or routine task. The FAC
27 suffered from multiple legal and jurisdictional defects and required significant individualized
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¹ The Stine Declaration was attached with Defendants' Motion filed on May 4, 2021.

1 work on behalf of each of the Item 9 Defendants. Under the circumstances, the fees sought are
2 reasonable and the Court should grant the Motion.

3
4 **II. THE FAC WAS GROUNDLESS AND FILED TO HARASS THE ITEM 9 DEFENDANTS.**

5 The Item 9 Defendants demonstrated in the Motion that Plaintiffs' claims were
6 groundless from the outset and filed solely in order to harass and bully them. The Item 9
7 Defendants included a copy of their November 10, 2020 letter to counsel for Plaintiffs, which
8 detailed the intimidation and harassment Plaintiffs inflicted on the Item 9 Defendants through
9 the acts of their agent, Mr. Brian Roche. Rather than deny these facts outright, Plaintiffs
10 doubled down on the conduct of Mr. Roche in their Response.

11 Plaintiffs readily admit that the *only* due diligence they did in advance of filing the FAC
12 consisted of the efforts of Mr. Roche, the so-called third-party "investigator" who Plaintiffs
13 hired to "investigate" their investment into Harvest Foundation. Mr. Roche purports to describe
14 his "investigation and due diligence" in a 29-paragraph Declaration attached as Exhibit "1" to
15 the Response. However, even a cursory review of the Declaration demonstrates that it fails to
16 describe facts to support a basis to assert claims against the Item 9 Defendants.

17 Mr. Roche's Declaration does not include any additional facts that were not already pled
18 in the FAC. Rather, Mr. Roche's Declaration confirms the absence of any connection between
19 Plaintiffs and the Item 9 Defendants and confirms that Plaintiffs' claims were thinly predicated
20 on the mere fact that one or more of the Item 9 Defendants happened to enter into entirely
21 separate agreements with some of the other defendants regarding entirely different marijuana
22 licenses in Nevada. That is woefully insufficient to support a good faith claim against the Item
23 9 Defendants.

24 Moreover, Mr. Roche's Declaration proves the Item 9 Defendants' point – that the FAC
25 was designed to harass the Item 9 Defendants solely to extract payment with no legal basis, and
26 that Mr. Roche (whom Plaintiffs admit is their agent) threatened and harassed them prior to
27 filing the FAC.
28

- 1 • "I am the fixer. I never stop until the client is paid in full or parties are in jail. ...
2 I am the fixer and here to help you help yourself to get my guys their money
3 back." Ex. C to Stine Declaration at pg. 2.
- 4 • "Candidly to all of you here my guys gave your rat partners Burton and Lemons
5 \$741,250 and they haven't seen jack [expletive] back. The NV lawsuit is just
6 the start..." Ex. C to Stine Declaration at pg. 2 and its enclosed June 20, 2020
7 e-mail.
- 8 • "The only path I am aligned on currently is the path to 100% complete success
9 getting my guys their money back. Anyone not helping in that regard will be
10 roadkill in my rear review mirror." Ex. C to Stine Declaration at pg. 3 and its
11 enclosed June 20, 2020 e-mail.
- 12 • "I have amended our complaint and will be filing it tomorrow and promise this
13 is the least of your worries. I reached out to Bryce and crew as a one time [sic]
14 courtesy which I always do before launching my nukes. If you want to cooperate
15 and hold off litigation feel free to forward the docs...Bryce don't ever try to
16 [expletive expletive] me again I warned you about dishonestly with me." *Id.*
17 and its enclosed June 23, 2020 e-mail.
- 18 • "[W]e have Andrew and Daddy Doug dead to rights and naming them...So are
19 you willing to accept service for all of these named Defendants or do I need to
20 have my guy bang on Doug's door at his Whispering Wind home address on 4th
21 of July weekend..."² Ex. C to Stine Declaration at enclosed June 30, 2020 e-
22 mail.

23 In all events, Plaintiffs' own statements in the opposition are fatal. Plaintiffs ask the
24 Court not to award fees because, "at some point Plaintiffs will be able to commence discovery
25 and actually piece together what happened..." Opposition at pg. 2. Parties are not allowed to
26 file first, and then conduct discovery in order to prop up a claim where none existed at the time
27 the lawsuit was filed. Plaintiffs' opposition demonstrates that is precisely what they are trying
28 to do.

29 ...

30 ² Mr. Roche also describes how he apparently interfered with Harvest Foundation marijuana
31 licenses, by using his "gov't contacts" and "uncle" to "put a freeze" on "all Harvest matters and
32 licenses". Ex. C to Stine Declaration at enclosed June 20, 2020 e-mail ("[N]ow that my uncle
33 has put a freeze on all [Defendant] Harvest matters and licenses nothing is going to happen
34 anytime soon unless I say so.").

1 **III. THE ATTORNEYS' FEES AND COSTS INCURRED ARE REASONABLE**
2 **AND WERE THE DIRECT RESULT OF PLAINTIFFS' CONDUCT.**

3 Nevada courts consider four factors (the *Brunzell* factors) when determining the
4 reasonableness of the fees requested. Plaintiffs do not dispute, and in fact concede, that three
5 (3) of the four (4) factors weigh in favor of an award – (i) the qualities and experience of the
6 advocates, (ii) their hourly rates, and (iii) the result obtained. Plaintiffs *only* challenge the
7 amount of the fees incurred, claiming that an award of approximately \$80,000 for a motion to
8 dismiss is too much. Opposition at pg. 8. In doing so, Plaintiffs ignore the fact that they are
9 the root cause of the Item 9 Defendants' fees and expenses, and they improperly trivialize the
10 work that was ultimately required to secure the dismissal of the Item 9 Defendants.

11 As noted above, this is not a two-party, red car/blue car case.³ Plaintiffs' FAC is 33
12 pages and contains 244 paragraphs (excluding exhibits). The FAC asserted 19 claims for relief
13 against 23 defendants. Eight (8) of the claims were asserted against the ten (10) Item 9
14 Defendants. The claims pled against the Item 9 Defendants included: civil conspiracy, unjust
15 enrichment, alter ego, aiding and abetting breaches of fiduciary duty, intentional interference
16 with contractual relations, intentional interference with prospective economic advantage,
17 equitable relief (promissory estoppel, injunctive relief, and accounting), declaratory relief, and
18 attorneys' fees as special damages. The FAC also sought punitive and treble damages from the
19 Item 9 Defendants, along with an award of attorneys' fees and costs.

20 Plaintiffs agreed shortly after the FAC was filed – and before the Item 9 Defendants
21 incurred significant fees and expenses – to dismiss the Item 9 Defendants without prejudice.
22 Plaintiffs then fired their lawyers (the second of three sets of lawyers) and inexplicably
23 withdrew their agreement to dismiss the Item 9 Defendants. Plaintiffs then forced the Item 9
24 Defendants to incur significant expense in filing the Motion to Dismiss – only to voluntarily
25 agree to dismiss four (4) of their claims and five (5) of the Item 9 Defendants in their Opposition
26 papers. The Court should not countenance such gamesmanship. Plaintiffs could have saved
27

28 ³ Plaintiffs' 387-page Response to the Motion for Attorneys' Fees and 18-page Response to the
Motion to Dismiss demonstrates this is not a routine case.

the Item 9 Defendants (and the Court) significant time and expense if they had only lived up to their initial agreement to dismiss their claims. Indeed, the majority of fees and costs requested (over 73% of fees and over 91% of costs) were incurred *after* November 30, 2020, approximately the same time Plaintiffs' reneged on their agreement to dismiss. But they did not, and now they have only themselves to blame for their situation.

Moreover, the fees requested by the Item 9 Defendants are reasonable in light of the following substantive work they were forced to perform in order to secure their dismissal:

- Research and analysis of the 244 paragraph FAC, and eight (8) claims asserted against the ten (10) Item 9 Defendants (which are comprised of separate and distinct individuals and entities, with their own facts and associated investigations);
- Research and analysis of general and specific personal jurisdiction (and the lack thereof) pertaining to multiple Item 9 Defendants;
- Preparation of substantive written communications to Plaintiffs' counsel detailing Mr. Roche's harassment of the Item 9 Defendants, along with copies of the offending communications;
- Multiple communications with Plaintiffs' counsel, requesting dismissal of the Item 9 Defendants;
- Review and revision of a proposed stipulation dismissing the Item 9 Defendants;
- Multiple communications concerning Plaintiffs' withdrawal of their agreement to dismiss the Item 9 Defendants;
- Preparation of the substantive Motion to Dismiss, which addressed the merits (and lack thereof) of each of the eight (8) claims against the ten (10) Item 9 Defendants and the lack of subject matter jurisdiction over multiple Item 9 Defendants;
- Preparation of seven (7) separate and distinct Declarations in support of the motion to dismiss for lack of personal jurisdiction, including the:

- Declaration of Andrew Bowden;
- Declaration of Bryce Skalla;
- Declaration of Jeffrey Rassas;
- Declaration of Douglas Bowden;
- Declaration of Andrew Bowden as manager for Viridis Group 19 Capital, LLC; and
- Declaration of Andrew Bowden as manager for Viridis Group Holdings, LLC;
- Review and analysis of Plaintiffs' Response to the Motion to Dismiss, including the multiple cases cited therein;
- Preparation of the Item 9 Defendants' Reply in Support of the Motion to Dismiss;
- Preparation and participation in the lengthy oral argument on the Item 9 Defendants' Motion to Dismiss and other dismissal motions brought by separate defendants.

Again, the sum of \$77,787.50 in fees and \$2,106.33 in costs is reasonable in light of the substantive work Plaintiffs forced the Item 9 Defendants to perform in order to obtain their dismissal. Indeed, by way of comparison, the Court recently awarded Defendant Snowell Holdings, LLC \$15,620.00 in attorneys' fees and costs. Snowell is a single entity, which moved to dismiss the complaint against it for lack of personal jurisdiction, only. Again, it is worth repeating that the Item 9 Defendants consist of ten (10) individuals and entities. Six (6) of the ten (10) Item 9 Defendants moved to dismiss for lack of personal jurisdiction, and the motion included unique declarations for each of those six (6) defendants. All ten (10) Item 9 Defendants also moved to dismiss each of the eight (8) claims pled against them for failure to state a claim for relief. If one were to multiply the fees awarded to Snowell (\$15,620) by the ten (10) distinct Item 9 Defendants, it would equate to \$156,200. The Item 9 Defendants only seek half of such sum.

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IV. CONCLUSION.

For the foregoing reasons, the Item 9 Defendants respectfully request that the Court grant the Motion and award them their attorneys' fees and costs incurred in connection with this action.

RESPECTFULLY SUBMITTED this 1st day of June, 2021.

SMITH LARSEN & WIXOM

/s/ Karl L. Nielson

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Group I9 Capital, LLC, Viridis Group Holdings,
LLC, Andrew Bowden, Douglas Bowden; Bryce
Skalla Jeffrey Rassas, and Chase Herschman*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 1, 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 Motion for Attorneys' Fees and Costs** was sent via electronic means to the following at their last known email addresses, pursuant to NEFCR 9:

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Hayden R. D. Smith	hsmith@albrightstoddard.com

Defendant, Larry Lemons

Tya Frabott	Tfrabott@messner.com
Jessica Gandy	Jgandy@messner.com
Candace Herling	cherling@messner.com
David Mortensen	dmortensen@messner.com

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**Defendants, TCS Partners, LLC John
Saunders and Trevor Schmidt**

Robert A. Rabbat

rrabbat@enensteinlaw.com

**Defendants, Jeffrey Yokiel and Jerome
Jokiel**

Traci Bixenmann

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**Defendants, Marimed, Inc, Robert
Fireman and John Levine**

John H Wright

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Defendant Sara Gullickson

Ella Dumo

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Christian Gabroy

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Kaine Messer

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Misha Ray

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/s/ Mindy Warner

An employee of Smith Larsen & Wixom

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Purchase/Sale of Stock, Assets, or Real Estate

COURT MINUTES

June 08, 2021

A-20-811232-B JDD, LLC, Plaintiff(s)
vs.
Larry Lemons, Defendant(s)

June 08, 2021	09:05 AM	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 Motion for Attorneys' Fees and Costs
---------------	----------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Darling, Christopher

RECORDED:

REPORTER:

PARTIES PRESENT:

Christian G Stahl Attorney for Defendant

Kevin C. Barrett Attorney for Defendant

Lee I. Iglody **Attorney for Plaintiff**

JOURNAL ENTRIES

APPEARANCES CONTINUED: Marlene Duron, Court Reporter, present. Karl L. Nielson, Esq. also present.

Hearing held by BlueJeans remote conferencing. Arguments by counsel. Court stated ITS FINDINGS and ORDERED, Motion for Attorneys' Fees and Costs GRANTED. Court directed Mr. Iglody to prepare the order and include Brunzell case factors as part of ultimate determination.

Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us.

Heather S. Smith

CLERK OF THE COURT

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
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OGM

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Karl L. Nielson, Esq.
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*Attorneys for 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*

EIGHTH JUDICIAL 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

CASE NO.: A-20-811232-B
DEPT. NO.: 16

**ORDER GRANTING
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**

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.

HERSCHMAN'S MOTION FOR ATTORNEYS' FEES AND COSTS

On December 18, 2020, 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, the "Item 9 Defendants") filed a Motion to Dismiss First Amended Complaint for Failure to State a Claim Upon Which Relief May be Granted and Lack of Personal Jurisdiction (the "Motion to Dismiss"). On April 12, 2021, this Court entered its Order Granting the Item 9 Defendants' Motion to Dismiss (the "Dismissal Order").

On May 4, 2021, the Item 9 Defendants filed a Motion for Attorneys' Fees and Costs (the "Motion"), which requested an award of the attorneys' fees and costs that the Item 9 Defendants incurred in connection with the Motion to Dismiss, the Dismissal Order, and the Motion. On May 18, 2021, Plaintiffs filed an Opposition to Defendants' Motion (the "Opposition"). On June 1, 2021, the Item 9 Defendants filed their Reply in support of the Motion.

1 A hearing on the Motion was heard on June 8, 2021, by the Honorable Timothy C.
2 Williams. Christian G. Stahl of the law firm of Quarles & Brady LLP and Karl L. Nielson of
3 the law firm of Smith Larsen & Wixom appeared on behalf of the Item 9 Defendants. Lee I.
4 Iglody appeared on behalf of Plaintiffs JDD, LLC, TCS Partners, LLC, John Saunders, and
5 Trevor Schmidt. Kevin Barrett of the law firm Barrett Makura appeared on behalf of non-
6 moving defendant The Harvest Foundation, LLC. After review and consideration of the written
7 pleadings, arguments of counsel and all relevant statutory and case law, and good cause
8 appearing:

9
10 The **COURT ORDERS** the Motion **GRANTED** and **AWARDS** the Item 9 Defendants
11 the sum of **\$77,878.50** in attorneys' fees and **\$2,106.33** in costs (collectively, **\$79,984.83**) in
12 connection with the Motion to Dismiss, and the sum of \$_____ in attorneys' fees in
13 connection with the Motion.

14 The Court **FINDS** that Plaintiffs' First Amended Complaint was "brought or maintained
15 without reasonable ground or to harass the prevailing party." N.R.S. 018.010(2)(b).

16 The Court **FURTHER FINDS** that the Item 9 Defendants have satisfied each of the
17 factors concerning the award of attorneys' fees and costs set forth in *Brunzell v Golden Gate*
18 *National Bank*, 455 P.2d 31 (Nev. 1969), and that each of the *Brunzell* factors weighs in favor
19 of an award of attorneys' fees and costs to the Item 9 Defendants. Specifically, the Court
20 **FINDS** as follows:

21 (1) The Court **FINDS** that the qualities of the advocates factor weighs in favor of
22 an award of attorneys' fees and costs to the Item 9 Defendants. Each of the advocates
23 representing the Item 9 Defendants has the experience, education, professional standing, skill
24 and training to appropriately handle the issues in this case and command rates commensurate
25 with their experience and training. As a result, this factor weighs in favor of the award.

26 (2) The Court **FINDS** that the character and difficulty of the work performed factor
27 weighs in favor of an award of attorneys' fees and costs to the Item 9 Defendants. Plaintiffs
28 filed a 244-paragraph First Amended Complaint (the "FAC") that asserted eight (8) claims

1 against the ten (10) Item 9 Defendants, including claims for unjust enrichment, civil conspiracy,
2 alter ego, intentional interference with contract, and intentional interference with prospective
3 economic advantage. The Item 9 Defendants filed a Motion to Dismiss the FAC based on lack
4 of personal jurisdiction and failure to state a claim. The Item 9 Defendants' Motion to Dismiss
5 required and involved analysis of general and specific personal jurisdiction, the preparation of
6 multiple substantive Declarations from multiple Item 9 Defendants, research and analysis of
7 the claims pled against the Item 9 Defendants, research and assessment of the factual allegations
8 pled in the FAC, and significant drafting. The Item 9 Defendants Motion to Dismiss required
9 significant time, work, and skill. In response, Plaintiffs did not submit any evidence
10 controverting the Declarations submitted by Plaintiffs which demonstrated that the Court lacked
11 personal jurisdiction over some of the Item 9 Defendants. Plaintiffs also agreed in their
12 opposition papers to dismiss all claims against each of the five (5) individual Item 9 Defendants
13 and four (4) of claims against the remaining Item 9 Defendants. As a result, this factor weighs
14 in favor of the award.

15
16 (3) The Court **FINDS** that the actual work performed factor weighs in favor of an
17 award of attorneys' fees and costs to the Item 9 Defendants. The work actually performed by
18 counsel for the Item 9 Defendants required significant skill, time, and attention. Among other
19 things, counsel for the Item 9 Defendants performed: (i) research and analysis of the 244-
20 paragraph FAC, which asserted eight (8) claims against the ten (10) Item 9 Defendants; (ii)
21 research and analysis of general and specific personal jurisdiction (and the lack thereof)
22 pertaining to multiple Item 9 Defendants; (iii) preparation of substantive written
23 communications to Plaintiffs' counsel detailing Mr. Roche's harassment of the Item 9
24 Defendants and the absence of merit to the claims pled against the Item 9 Defendants; (iv)
25 communications, preparation, and drafting for the agreed upon dismissal before Plaintiffs
26 ultimately refused to dismiss their claims; (v) preparation of the Motion to Dismiss; (vi)
27 preparation of multiple Declarations in support of the Motion to Dismiss; (vii) review and
28 analysis of Plaintiffs' Response to the Motion to Dismiss; (viii) preparation of the Item 9

1 Defendants' Reply in Support of the Motion to Dismiss; (ix) preparation and participation in
2 the oral argument on the Item 9 Defendants' Motion to Dismiss and other dismissal motions
3 brought by separate defendants; (x) preparation of the Motion for Attorneys' Fees and Costs;
4 (xi) review and analysis of Plaintiffs' Response to the Motion for Attorneys' Fees and Costs;
5 (xii) preparation of the Item 9 Defendants' Reply in Support of the Motion for Attorneys' Fees
6 and Costs; and (xiii) preparation and participation in the oral argument on the Item 9
7 Defendants' Motion for Attorneys' Fees and Costs. As a result, this factor weighs in favor of
8 the award.

9
10 (4) The Court **FINDS** that the result obtained factor weighs in favor of an award of
11 attorneys' fees and costs to the Item 9 Defendants. The Item 9 Defendants were successful in
12 their Motion to Dismiss. As a result, this factor weighs in favor of the award.

13 The Court **FURTHER FINDS** that the attorneys' fees and costs incurred, requested by,
14 and awarded to the Item 9 Defendants' are reasonable under *Brunzell*.

15 **NOW THEREFORE, IT IS HEREBY ORDERED**, that the Item 9 Defendants'
16 Motion is **GRANTED**.

17 **NOW THEREFORE, IT IS FURTHER HEREBY ORDERED** that, after review and
18 consideration of the *Brunzell* factors, the Item 9 Defendants are hereby awarded the sum of
19 **\$77,878.50** in attorneys' fees and **\$2,106.33** in costs (collectively, **\$79,984.83**) in connection
20 with the Motion to Dismiss, with interest on such amounts at the highest lawful rate from the
21 date of this Order until paid in full.

22 **NOW THEREFORE, IT IS FURTHER HEREBY ORDERED** that, after review
23 and consideration of the *Brunzell* factors, the Item 9 Defendants are hereby awarded the sum of
24 **\$79,984.83** in connection with the Motion for Attorneys' Fees and Costs, with interest thereon
25 at the highest lawful rate from the date of this Order until paid in full.

26 ///

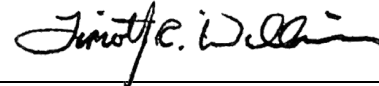
27 ///

1 **NOW THEREFORE, IT IS FURTHER HEREBY ORDERED** that Plaintiffs shall
2 be jointly and severally liable for all attorneys' fees and costs awarded herein.

3 **IT IS SO ORDERED.**

4
5 Dated this ____ day of June, 2021

6 Dated this 7th day of July, 2021

7 

8 DISTRICT JUDGE

9 **B5B EC4 8ACB F8CC**
10 **Timothy C. Williams**
11 **District Court Judge**

NS

12 *Respectfully Submitted By:*

13 /s/ Karl L. Nielson

14 Michael B. Wixom, Esq.

15 Nevada Bar No. 2812

16 Karl L. Nielson, Esq.

17 Nevada bar No. 5082

18 **SMITH LARSEN & WIXOM**

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26 and

27 **Quarles & Brady LLP**

28 Renaissance One

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Attorneys for 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

1 *Approved as to form and content*

2 DATED this 23rd day of June, 2021.

3 **IGLODY LAW**

4
5 /s/ Lee I. Igloidy
6 LEE I. IGLODY
7 Nevada Bar No. 7757
8 *Attorneys for Plaintiffs JDD, LLC,*
9 *TCS Partners, LLC, John Saunders,*
10 *And Trevor Schmidt*

11 DATED this 23rd day of June, 2021.

12 **GABROY LAW OFFICES**

13 /s/ Christian Gabroy
14 CHRISTIAN GABROY, ESQ.
15 Nevada Bar No. 8805
16 KAINE MESSER, ESQ.
17 Nevada Bar No. 14240
18 *Attorneys for Defendant*
19 *The Harvest Foundation*
20 *Attorneys for Defendant Sara Gullickson*

21 DATED this 23rd day of June, 2021.

22 **THE WRIGHT LAW GROUP, P.C.**

23 /s/ John Henry Wright
24 JOHN HENRY WRIGHT, ESQ.
25 Nevada Bar No. 6182
26 *Attorneys for Defendants MARIMED, INC.,*
27 *ROBERT FIREMAN and JON LEVINE*

DATED this 23rd day of June, 2021

MESSNER REEVES LLP

/s/ Candace C. Herling
Candace C. Herling
Nevada Bar No. 13503
Attorneys for Defendants Burton,
Lemons, and Snowell

DATED this 23rd day of June, 2021.

BARRETT & MATURA, P.C.

/s/ Kevin C. Barrett
KEVIN C. BARRETT, ESQ.
Nevada Bar No. 8959
Attorneys for Defendant
The Harvest Foundation

From: Lee Iglody, Esq. <lee@iglody.com>
Sent: Wednesday, June 23, 2021 9:20 AM
To: Karl L. Nielson
Cc: Candi Ashdown; christian@gabroy.com; kmesser@gabroy.com; Candace C. Herling; Mike Wixom; kbarrett@barrettmatura.com; John Wright; Andrelle Stanley; Dayana Shakerian; Mindy Warner; Stine, Lauren Elliott; Stahl, Christian G.; Jana Rivard
Subject: Re: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Approved.

Kind regards,

Lee Iglody, Esq.
2580 St Rose Pkwy #330
Henderson, Nevada 89074
O: (702) 425-5366
C: (702) 561-9934
lee@iglody.com
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The IRS requires us to inform you that any tax information or advice is not intended and cannot be used to avoid tax penalties or promote, recommend or market any tax related matters. Also, this email contains confidential communications. If you received this email in error, notify the sender immediately. Thank you.

On Wed, Jun 23, 2021 at 9:08 AM Karl L. Nielson <kln@slwlaw.com> wrote:

I am following up on the email below. Please advise if we have your approval to use your e-signature. Thanks.

Karl L. Nielson, Esq.

Smith Larsen & Wixom

1935 Village Center Circle

Las Vegas, NV 89134

Tel: (702) 252-5002

Fax: (702) 252-5006

Email: kln@slwlaw.com

From: Christian Gabroy <christian@gabroy.com>
Sent: Wednesday, June 23, 2021 9:12 AM
To: Karl L. Nielson
Cc: Candi Ashdown; lee@iglody.com; kmesser@gabroy.com; Candace C. Herling; Mike Wixom; kbarrett@barrettmatura.com; John Wright; Andrelle Stanley; Dayana Shakerian; Mindy Warner; Stine, Lauren Elliott; Stahl, Christian G.; Jana Rivard
Subject: Re: JDD v. Item 9 et al., CASE NO. A-20-811232-B

approve.

On Wed, Jun 23, 2021 at 9:08 AM Karl L. Nielson <kln@slwlaw.com> wrote:

I am following up on the email below. Please advise if we have your approval to use your e-signature. Thanks.

Karl L. Nielson, Esq.

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From: Karl L. Nielson
Sent: Monday, June 21, 2021 3:57 PM
To: Candi Ashdown <Candi@wrightlawgroupnv.com>; lee@iglody.com; christian@gabroy.com; kmesser@gabroy.com; Candace C. Herling <CHerling@messner.com>; Mike Wixom <mbw@slwlaw.com>; kbarrett@barrettmatura.com
Cc: John Wright <john@wrightlawgroupnv.com>; Andrelle Stanley <Andrelle@wrightlawgroupnv.com>; Dayana Shakerian <dayana@wrightlawgroupnv.com>; mwarner@slwlaw.com; Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>; Jana Rivard <jlr@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Counsel – Please see attached the Order Granting Item 9 Defendants’ Motion for Attorney’s Fees in the above referenced action. If the Order meets with your approval as to form, please email permission to use your e-signature. Thanks,

- Karl

Karl L. Nielson, Esq.

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From: Karl L. Nielson

Sent: Friday, March 26, 2021 2:12 PM

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Cc: John Wright <john@wrightlawgroupnv.com>; Andrelle Stanley <Andrelle@wrightlawgroupnv.com>; Dayana Shakerian <dayana@wrightlawgroupnv.com>; mwarner@slwlaw.com; Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>

Subject: RE: CASE NO. A-20-811232-B

Counsel – Please see attached the Order Granting Item 9 Defendants’ Motion to Dismiss in the above referenced action. If the Order meets with your approval, please email permission to use your e-signature. Thanks,

- Karl

From: Kevin Barrett <kbarrett@barrettmatura.com>
Sent: Tuesday, June 22, 2021 2:00 PM
To: Karl L. Nielson <kln@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

You can sign for me.

Kevin

Kevin C. Barrett, Esq.



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From: Karl L. Nielson <kln@slwlaw.com>
Sent: Monday, June 21, 2021 3:57 PM
To: Candi Ashdown <Candi@wrightlawgroupnv.com>; lee@iglody.com; christian@gabroy.com; kmesser@gabroy.com; Candace C. Herling <CHerling@messner.com>; Mike Wixom <mbw@slwlaw.com>; Kevin Barrett <kbarrett@barrettmatura.com>
Cc: John Wright <john@wrightlawgroupnv.com>; Andrelle Stanley <Andrelle@wrightlawgroupnv.com>; Dayana Shakerian <dayana@wrightlawgroupnv.com>; Mindy Warner <mwarner@slwlaw.com>; Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>; Jana Rivard <jlr@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Counsel – Please see attached the Order Granting Item 9 Defendants’ Motion for Attorney’s Fees in the above referenced action. If the Order meets with your approval as to form, please email permission to use your e-signature. Thanks,
- Karl

Karl L. Nielson, Esq.
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PA_0907

From: John Wright <john@wrightlawgroupnv.com>
Sent: Wednesday, June 23, 2021 9:18 AM
To: Karl L. Nielson <kln@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Approved

John Henry Wright, Esq.
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2340 Paseo Del Prado, Suite D-305
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From: Karl L. Nielson <kln@slwlaw.com>
Sent: Wednesday, June 23, 2021 9:08 AM
To: Candi Ashdown <Candi@wrightlawgroupnv.com>; lee@iglody.com; christian@gabroy.com; kmesser@gabroy.com; Candace C. Herling <CHerling@messner.com>; Mike Wixom <mbw@slwlaw.com>; kbarrett@barrettmatura.com
Cc: John Wright <john@wrightlawgroupnv.com>; Andrelle Stanley <Andrelle@wrightlawgroupnv.com>; Dayana Shakerian <dayana@wrightlawgroupnv.com>; Mindy Warner <mwarner@slwlaw.com>; Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>; Jana Rivard <jlr@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

I am following up on the email below. Please advise if we have your approval to use your e-signature. Thanks.

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PA_0908

From: Candace C. Herling <CHerling@messner.com>
Sent: Wednesday, June 23, 2021 4:24 PM
To: Karl L. Nielson
Cc: Stine, Lauren Elliott; Stahl, Christian G.; Jana Rivard; justin@bianchibrandt.com; mukunda@bianchibrandt.com
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Yes.

Thanks,

Candace

Candace C. Herling
Partner

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cherling@messner.com
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Cc: Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>; Jana Rivard <jlr@slwlaw.com>; justin@bianchibrandt.com; mukunda@bianchibrandt.com
Subject: FW: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Candace – I have approvals from all other counsel to use their signatures on our order on the motion for fees. Ok to use yours as well?

Karl L. Nielson, Esq.
Smith Larsen & Wixom
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Las Vegas, NV 89134
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 JDD, LLC, Plaintiff(s)

CASE NO: A-20-811232-B

7 vs.

DEPT. NO. Department 16

8 Larry Lemons, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/7/2021

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22 Lee Iglody

lee@iglody.com

23 John Wright

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24 Candace Herling

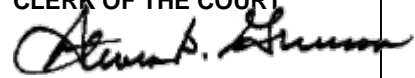
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1 **NEOJ**

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Attorneys for Defendants Item 9 Labs Corp.; Item 9 Properties, LLC,

13 *Strive Management, L.L.C., Viridis Group I9*

Capital, LLC, Viridis Group Holdings, LLC, Andrew

14 *Bowden, Douglas Bowden; Bryce Skalla Jeffrey Rassas,*

15 *and Chase Herschman*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

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

CASE NO.: A-20-811232-B

DEPT. NO.: 16

**NOTICE OF ENTRY OF ORDER
GRANTING 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 FOR
ATTORNEYS' FEES AND COSTS**

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.

NOTICE IS HEREBY GIVEN that the attached Order Granting 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 Dowden, Bryce Skalla, Jeffrey Rassas and Chase Herschman's Motion for Attorneys' Fees and Costs was entered by the Court on the 7th day of July, 2021.

DATED this 7th day of July, 2021.

SMITH LARSEN & WIXOM

/s/ Karl L. Nielson

Michael B. Wixom, Esq.

Nevada Bar No. 2812

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Attorneys for 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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 7, 2021 a true copy of the foregoing **Notice of Entry of Order Granting 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 Dowden, Bryce Skalla, Jeffrey Rassas and Chase Herschman's Motion for Attorneys' Fees and Costs** was sent via electronic means to the following at their last known email addresses, pursuant to EDCR 8.05(a):

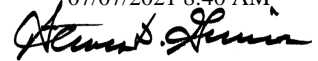
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/s/ Jana L. Rivard
An employee of Smith Larsen & Wixom



CLERK OF THE COURT

SMITH LARSEN & WIXOM

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*Attorneys for 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*

EIGHTH JUDICIAL 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

CASE NO.: A-20-811232-B

DEPT. NO.: 16

**ORDER GRANTING
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**

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.

HERSCHMAN'S MOTION FOR ATTORNEYS' FEES AND COSTS

On December 18, 2020, 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, the "Item 9 Defendants") filed a Motion to Dismiss First Amended Complaint for Failure to State a Claim Upon Which Relief May be Granted and Lack of Personal Jurisdiction (the "Motion to Dismiss"). On April 12, 2021, this Court entered its Order Granting the Item 9 Defendants' Motion to Dismiss (the "Dismissal Order").

On May 4, 2021, the Item 9 Defendants filed a Motion for Attorneys' Fees and Costs (the "Motion"), which requested an award of the attorneys' fees and costs that the Item 9 Defendants incurred in connection with the Motion to Dismiss, the Dismissal Order, and the Motion. On May 18, 2021, Plaintiffs filed an Opposition to Defendants' Motion (the "Opposition"). On June 1, 2021, the Item 9 Defendants filed their Reply in support of the Motion.

1 A hearing on the Motion was heard on June 8, 2021, by the Honorable Timothy C.
2 Williams. Christian G. Stahl of the law firm of Quarles & Brady LLP and Karl L. Nielson of
3 the law firm of Smith Larsen & Wixom appeared on behalf of the Item 9 Defendants. Lee I.
4 Iglody appeared on behalf of Plaintiffs JDD, LLC, TCS Partners, LLC, John Saunders, and
5 Trevor Schmidt. Kevin Barrett of the law firm Barrett Makura appeared on behalf of non-
6 moving defendant The Harvest Foundation, LLC. After review and consideration of the written
7 pleadings, arguments of counsel and all relevant statutory and case law, and good cause
8 appearing:

9
10 The **COURT ORDERS** the Motion **GRANTED** and **AWARDS** the Item 9 Defendants
11 the sum of **\$77,878.50** in attorneys' fees and **\$2,106.33** in costs (collectively, **\$79,984.83**) in
12 connection with the Motion to Dismiss, and the sum of \$_____ in attorneys' fees in
13 connection with the Motion.

14 The Court **FINDS** that Plaintiffs' First Amended Complaint was "brought or maintained
15 without reasonable ground or to harass the prevailing party." N.R.S. 018.010(2)(b).

16 The Court **FURTHER FINDS** that the Item 9 Defendants have satisfied each of the
17 factors concerning the award of attorneys' fees and costs set forth in *Brunzell v Golden Gate*
18 *National Bank*, 455 P.2d 31 (Nev. 1969), and that each of the *Brunzell* factors weighs in favor
19 of an award of attorneys' fees and costs to the Item 9 Defendants. Specifically, the Court
20 **FINDS** as follows:

21 (1) The Court **FINDS** that the qualities of the advocates factor weighs in favor of
22 an award of attorneys' fees and costs to the Item 9 Defendants. Each of the advocates
23 representing the Item 9 Defendants has the experience, education, professional standing, skill
24 and training to appropriately handle the issues in this case and command rates commensurate
25 with their experience and training. As a result, this factor weighs in favor of the award.

26 (2) The Court **FINDS** that the character and difficulty of the work performed factor
27 weighs in favor of an award of attorneys' fees and costs to the Item 9 Defendants. Plaintiffs
28 filed a 244-paragraph First Amended Complaint (the "FAC") that asserted eight (8) claims

1 against the ten (10) Item 9 Defendants, including claims for unjust enrichment, civil conspiracy,
2 alter ego, intentional interference with contract, and intentional interference with prospective
3 economic advantage. The Item 9 Defendants filed a Motion to Dismiss the FAC based on lack
4 of personal jurisdiction and failure to state a claim. The Item 9 Defendants' Motion to Dismiss
5 required and involved analysis of general and specific personal jurisdiction, the preparation of
6 multiple substantive Declarations from multiple Item 9 Defendants, research and analysis of
7 the claims pled against the Item 9 Defendants, research and assessment of the factual allegations
8 pled in the FAC, and significant drafting. The Item 9 Defendants Motion to Dismiss required
9 significant time, work, and skill. In response, Plaintiffs did not submit any evidence
10 controverting the Declarations submitted by Plaintiffs which demonstrated that the Court lacked
11 personal jurisdiction over some of the Item 9 Defendants. Plaintiffs also agreed in their
12 opposition papers to dismiss all claims against each of the five (5) individual Item 9 Defendants
13 and four (4) of claims against the remaining Item 9 Defendants. As a result, this factor weighs
14 in favor of the award.

15
16 (3) The Court **FINDS** that the actual work performed factor weighs in favor of an
17 award of attorneys' fees and costs to the Item 9 Defendants. The work actually performed by
18 counsel for the Item 9 Defendants required significant skill, time, and attention. Among other
19 things, counsel for the Item 9 Defendants performed: (i) research and analysis of the 244-
20 paragraph FAC, which asserted eight (8) claims against the ten (10) Item 9 Defendants; (ii)
21 research and analysis of general and specific personal jurisdiction (and the lack thereof)
22 pertaining to multiple Item 9 Defendants; (iii) preparation of substantive written
23 communications to Plaintiffs' counsel detailing Mr. Roche's harassment of the Item 9
24 Defendants and the absence of merit to the claims pled against the Item 9 Defendants; (iv)
25 communications, preparation, and drafting for the agreed upon dismissal before Plaintiffs
26 ultimately refused to dismiss their claims; (v) preparation of the Motion to Dismiss; (vi)
27 preparation of multiple Declarations in support of the Motion to Dismiss; (vii) review and
28 analysis of Plaintiffs' Response to the Motion to Dismiss; (viii) preparation of the Item 9

1 Defendants' Reply in Support of the Motion to Dismiss; (ix) preparation and participation in
2 the oral argument on the Item 9 Defendants' Motion to Dismiss and other dismissal motions
3 brought by separate defendants; (x) preparation of the Motion for Attorneys' Fees and Costs;
4 (xi) review and analysis of Plaintiffs' Response to the Motion for Attorneys' Fees and Costs;
5 (xii) preparation of the Item 9 Defendants' Reply in Support of the Motion for Attorneys' Fees
6 and Costs; and (xiii) preparation and participation in the oral argument on the Item 9
7 Defendants' Motion for Attorneys' Fees and Costs. As a result, this factor weighs in favor of
8 the award.

9
10 (4) The Court **FINDS** that the result obtained factor weighs in favor of an award of
11 attorneys' fees and costs to the Item 9 Defendants. The Item 9 Defendants were successful in
12 their Motion to Dismiss. As a result, this factor weighs in favor of the award.

13 The Court **FURTHER FINDS** that the attorneys' fees and costs incurred, requested by,
14 and awarded to the Item 9 Defendants' are reasonable under *Brunzell*.

15 **NOW THEREFORE, IT IS HEREBY ORDERED**, that the Item 9 Defendants'
16 Motion is **GRANTED**.

17 **NOW THEREFORE, IT IS FURTHER HEREBY ORDERED** that, after review and
18 consideration of the *Brunzell* factors, the Item 9 Defendants are hereby awarded the sum of
19 **\$77,878.50** in attorneys' fees and **\$2,106.33** in costs (collectively, **\$79,984.83**) in connection
20 with the Motion to Dismiss, with interest on such amounts at the highest lawful rate from the
21 date of this Order until paid in full.

22 **NOW THEREFORE, IT IS FURTHER HEREBY ORDERED** that, after review
23 and consideration of the *Brunzell* factors, the Item 9 Defendants are hereby awarded the sum of
24 **\$79,984.83** in connection with the Motion for Attorneys' Fees and Costs, with interest thereon
25 at the highest lawful rate from the date of this Order until paid in full.

26 ///

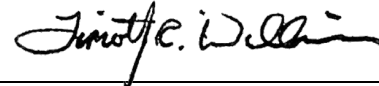
27 ///

1 **NOW THEREFORE, IT IS FURTHER HEREBY ORDERED** that Plaintiffs shall
2 be jointly and severally liable for all attorneys' fees and costs awarded herein.

3 **IT IS SO ORDERED.**

4
5 Dated this ____ day of June, 2021

6 Dated this 7th day of July, 2021

7 

8 DISTRICT JUDGE

9 **B5B EC4 8ACB F8CC**
10 **Timothy C. Williams**
11 **District Court Judge**

NS

12 *Respectfully Submitted By:*

13 /s/ Karl L. Nielson

14 Michael B. Wixom, Esq.

15 Nevada Bar No. 2812

16 Karl L. Nielson, Esq.

17 Nevada bar No. 5082

18 **SMITH LARSEN & WIXOM**

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Attorneys for 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

1 *Approved as to form and content*

2 DATED this 23rd day of June, 2021.

3 **IGLODY LAW**

4
5 /s/ Lee I. Igloody
6 LEE I. IGLODY
7 Nevada Bar No. 7757
8 *Attorneys for Plaintiffs JDD, LLC,*
9 *TCS Partners, LLC, John Saunders,*
10 *And Trevor Schmidt*

11 DATED this 23rd day of June, 2021.

12 **GABROY LAW OFFICES**

13 /s/ Christian Gabroy
14 CHRISTIAN GABROY, ESQ.
15 Nevada Bar No. 8805
16 KAINE MESSER, ESQ.
17 Nevada Bar No. 14240
18 *Attorneys for Defendant*
19 *The Harvest Foundation*
20 *Attorneys for Defendant Sara Gullickson*

21 DATED this 23rd day of June, 2021.

22 **THE WRIGHT LAW GROUP, P.C.**

23 /s/ John Henry Wright
24 JOHN HENRY WRIGHT, ESQ.
25 Nevada Bar No. 6182
26 *Attorneys for Defendants MARIMED, INC.,*
27 *ROBERT FIREMAN and JON LEVINE*

DATED this 23rd day of June, 2021

MESSNER REEVES LLP

/s/ Candace C. Herling
Candace C. Herling
Nevada Bar No. 13503
Attorneys for Defendants Burton,
Lemons, and Snowell

DATED this 23rd day of June, 2021.

BARRETT & MATURA, P.C.

/s/ Kevin C. Barrett
KEVIN C. BARRETT, ESQ.
Nevada Bar No. 8959
Attorneys for Defendant
The Harvest Foundation

From: Lee Iglody, Esq. <lee@iglody.com>
Sent: Wednesday, June 23, 2021 9:20 AM
To: Karl L. Nielson
Cc: Candi Ashdown; christian@gabroy.com; kmesser@gabroy.com; Candace C. Herling; Mike Wixom; kbarrett@barrettmatura.com; John Wright; Andrelle Stanley; Dayana Shakerian; Mindy Warner; Stine, Lauren Elliott; Stahl, Christian G.; Jana Rivard
Subject: Re: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Approved.

Kind regards,

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The IRS requires us to inform you that any tax information or advice is not intended and cannot be used to avoid tax penalties or promote, recommend or market any tax related matters. Also, this email contains confidential communications. If you received this email in error, notify the sender immediately. Thank you.

On Wed, Jun 23, 2021 at 9:08 AM Karl L. Nielson <kln@slwlaw.com> wrote:

I am following up on the email below. Please advise if we have your approval to use your e-signature. Thanks.

Karl L. Nielson, Esq.

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From: Christian Gabroy <christian@gabroy.com>
Sent: Wednesday, June 23, 2021 9:12 AM
To: Karl L. Nielson
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Subject: Re: JDD v. Item 9 et al., CASE NO. A-20-811232-B

approve.

On Wed, Jun 23, 2021 at 9:08 AM Karl L. Nielson <kln@slwlaw.com> wrote:

I am following up on the email below. Please advise if we have your approval to use your e-signature. Thanks.

Karl L. Nielson, Esq.

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From: Karl L. Nielson
Sent: Monday, June 21, 2021 3:57 PM
To: Candi Ashdown <Candi@wrightlawgroupnv.com>; lee@iglody.com; christian@gabroy.com; kmesser@gabroy.com; Candace C. Herling <CHerling@messner.com>; Mike Wixom <mbw@slwlaw.com>; kbarrett@barrettmatura.com
Cc: John Wright <john@wrightlawgroupnv.com>; Andrelle Stanley <Andrelle@wrightlawgroupnv.com>; Dayana Shakerian <dayana@wrightlawgroupnv.com>; mwarner@slwlaw.com; Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>; Jana Rivard <jlr@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Counsel – Please see attached the Order Granting Item 9 Defendants’ Motion for Attorney’s Fees in the above referenced action. If the Order meets with your approval as to form, please email permission to use your e-signature. Thanks,

- Karl

Karl L. Nielson, Esq.

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From: Karl L. Nielson

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Cc: John Wright <john@wrightlawgroupnv.com>; Andrelle Stanley <Andrelle@wrightlawgroupnv.com>; Dayana Shakerian <dayana@wrightlawgroupnv.com>; mwarner@slwlaw.com; Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>

Subject: RE: CASE NO. A-20-811232-B

Counsel – Please see attached the Order Granting Item 9 Defendants’ Motion to Dismiss in the above referenced action. If the Order meets with your approval, please email permission to use your e-signature. Thanks,

- Karl

From: Kevin Barrett <kbarrett@barrettmatura.com>
Sent: Tuesday, June 22, 2021 2:00 PM
To: Karl L. Nielson <kln@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

You can sign for me.

Kevin

Kevin C. Barrett, Esq.



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From: Karl L. Nielson <kln@slwlaw.com>
Sent: Monday, June 21, 2021 3:57 PM
To: Candi Ashdown <Candi@wrightlawgroupnv.com>; lee@iglody.com; christian@gabroy.com; kmesser@gabroy.com; Candace C. Herling <CHerling@messner.com>; Mike Wixom <mbw@slwlaw.com>; Kevin Barrett <kbarrett@barrettmatura.com>
Cc: John Wright <john@wrightlawgroupnv.com>; Andrelle Stanley <Andrelle@wrightlawgroupnv.com>; Dayana Shakerian <dayana@wrightlawgroupnv.com>; Mindy Warner <mwarner@slwlaw.com>; Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>; Jana Rivard <jlr@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Counsel – Please see attached the Order Granting Item 9 Defendants’ Motion for Attorney’s Fees in the above referenced action. If the Order meets with your approval as to form, please email permission to use your e-signature. Thanks,
- Karl

Karl L. Nielson, Esq.
Smith Larsen & Wixom
1935 Village Center Circle
Las Vegas, NV 89134
Tel: (702) 252-5002
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PA_0926

From: John Wright <john@wrightlawgroupnv.com>
Sent: Wednesday, June 23, 2021 9:18 AM
To: Karl L. Nielson <kln@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Approved

John Henry Wright, Esq.
The Wright Law Group, P.C.
2340 Paseo Del Prado, Suite D-305
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From: Karl L. Nielson <kln@slwlaw.com>
Sent: Wednesday, June 23, 2021 9:08 AM
To: Candi Ashdown <Candi@wrightlawgroupnv.com>; lee@iglody.com; christian@gabroy.com; kmesser@gabroy.com; Candace C. Herling <CHerling@messner.com>; Mike Wixom <mbw@slwlaw.com>; kbarrett@barrettmatura.com
Cc: John Wright <john@wrightlawgroupnv.com>; Andrelle Stanley <Andrelle@wrightlawgroupnv.com>; Dayana Shakerian <dayana@wrightlawgroupnv.com>; Mindy Warner <mwarner@slwlaw.com>; Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>; Jana Rivard <jlr@slwlaw.com>
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

I am following up on the email below. Please advise if we have your approval to use your e-signature. Thanks.

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From: Candace C. Herling <CHerling@messner.com>
Sent: Wednesday, June 23, 2021 4:24 PM
To: Karl L. Nielson
Cc: Stine, Lauren Elliott; Stahl, Christian G.; Jana Rivard; justin@bianchibrandt.com; mukunda@bianchibrandt.com
Subject: RE: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Yes.

Thanks,

Candace

Candace C. Herling
Partner

Messner Reeves LLP
8945 W. Russell Road | Suite 300
Las Vegas, NV 89148

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From: Karl L. Nielson <kln@slwlaw.com>
Sent: Wednesday, June 23, 2021 4:23 PM
To: Candace C. Herling <CHerling@messner.com>
Cc: Stine, Lauren Elliott <Lauren.Stine@quarles.com>; Stahl, Christian G. <Christian.Stahl@quarles.com>; Jana Rivard <jlr@slwlaw.com>; justin@bianchibrandt.com; mukunda@bianchibrandt.com
Subject: FW: JDD v. Item 9 et al., CASE NO. A-20-811232-B

Candace – I have approvals from all other counsel to use their signatures on our order on the motion for fees. Ok to use yours as well?

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 JDD, LLC, Plaintiff(s)

CASE NO: A-20-811232-B

7 vs.

DEPT. NO. Department 16

8 Larry Lemons, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/7/2021

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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:

The Honorable Timothy C. Williams
Eighth Judicial District Court
Civil Dept. XVI
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondent

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Karl L. Nielson
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Attorneys for Snowell Holdings, LLC

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