

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Petitioners,

Vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT of the State of Nevada, in and  
for the County of Clark, and the  
HONORABLE JUDGE TIMOTHY C.  
WILLIAMS, District Court Judge,

Respondents,

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 19 CAPITAL, LLC;  
VIRIDIS GROUP HOLDINGS, LLC;  
SNOWELL HOLDINGS, LLC;  
ANDREW BOWDEN; DOUGLAS  
BOWDEN; BRYCE SKALLA; and  
CHASE HERSCHMAN,

Real Parties in Interest.

Electronically Filed  
Nov 01 2021 08:18 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No.: 83344

Dist. Ct. Case No.: A-20-811232-C

**APPENDIX TO REAL PARTIES IN INTEREST'S ANSWER TO**  
**PETITION FOR WRIT OF MANDAMUS**  
VOLUME 1A OF 5; RAPP\_0001-0127

Candace Herling, Esq.  
Nevada Bar No. 13503  
Heather Armantrout, Esq.  
Nevada Bar No. 14469  
**MESSNER REEVES LLP**  
8945 West Russell Road, Suite 300  
Las Vegas, Nevada 89148  
Telephone: (702) 363-5100  
Facsimile: (702) 363-5101  
E-mail: [cherling@messner.com](mailto:cherling@messner.com)  
[harmantrout@messner.com](mailto:harmantrout@messner.com)

*Attorneys for Real Party in Interest,  
Snowell Holdings, LLC*

**CHRONOLOGICAL APPENDIX**

| <b><i>DOCUMENT</i></b>   | <b><i>VOL. NO.</i></b> | <b><i>Bates No.</i></b> |
|--|------------------------|-------------------------|
| First Amended Complaint  | 1A                     | RAPP_0001-0063          |
| Snowell Holdings, LLC's Motion to Dismiss                                      | 1A                     | RAPP_0064-0077          |
| Item 9 Labs Corp. et al.'s Motion to Dismiss                                   | 1A                     | RAPP_0078-0123          |
| Plaintiff's Opposition to Snowell Holdings, LLC's Motion to Dismiss            | 1A                     | RAPP_0124-0127          |
| Snowell Holdings, LLC's Reply in Support of Motion to Dismiss                  | 1B                     | RAPP_0128-0133          |
| Plaintiff's Opposition to Item 9 Labs Corp. et al.'s Motion to Dismiss         | 1B                     | RAPP_0134-0151          |
| Item 9 Labs Corp. et al.'s Reply in Support of Motion to Dismiss               | 1B                     | RAPP_0152-0166          |
| Reporter's Transcript of Motion to Dismiss                                     | 1B                     | RAPP_0167-0247          |
| Snowell Holdings, LLC Motion for Attorneys' Fees                               | 2                      | RAPP_0248-0264          |
| Order Granting Snowell Holdings, LLC's Motion to Dismiss                       | 2                      | RAPP_0265-0278          |
| Notice of Entry of Order Granting Snowell Holdings, LLC's Motion to Dismiss    | 2                      | RAPP_0279-0295          |
| Plaintiff's Opposition to Defendants Snowell Holdings, LLC's Motion for Fees   | 2                      | RAPP_0296-0367          |
| Order Granting Item 9 Labs Corp. et al.'s Motion to Dismiss                    | 2                      | RAPP_0368-0383          |
| Notice of Entry of Order Granting Item 9 Labs Corp. et al.'s Motion to Dismiss | 2                      | RAPP_0384-0404          |
| Snowell Holdings, LLC's Reply in Support of Motion for Attorneys' Fees         | 2                      | RAPP_0405-0409          |
| Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs                | 3A                     | RAPP_0410-0494          |

|   |    |                |
|---|----|----------------|
| Minute Order Granting Snowell Holdings, LLC's Motion for Attorneys' Fees                            | 3A | RAPP_0495      |
| Plaintiff's Opposition to Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs           | 3A | RAPP_0496-0530 |
|   | 3B | RAPP_0531-0632 |
|   | 4  | RAPP_0633-0882 |
| Minute Order regarding Snowell Holdings, LLC's Motion for Attorneys' Fees (Issue of Work Performed) | 5  | RAPP_0883      |
| Item 9 Labs Corp. et al.'s Reply in Support of Motion for Attorneys' Fees and Costs                 | 5  | RAPP_0884-0895 |
| Reporter's Transcript of Proceedings – Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees        | 5  | RAPP_0896-0915 |
| Minute Order Granting Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs               | 5  | RAPP_0916      |
| Order Granting Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs                      | 5  | RAPP_0917-0931 |
| Notice of Entry of Order Granting Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs   | 5  | RAPP_0932-0950 |



## **ALPHABETICAL APPENDIX**

| <b>DOCUMENT</b>   | <b>VOL. NO.</b> | <b>Bates No.</b> |
|---|-----------------|------------------|
| First Amended Complaint   | 1A              | RAPP_0001-0063   |
| Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs                                     | 3               | RAPP_0410-0494   |
| Item 9 Labs Corp. et al.'s Motion to Dismiss  | 1A              | RAPP_0078-0123   |
| Item 9 Labs Corp. et al.'s Reply in Support of Motion for Attorneys' Fees and Costs                 | 5               | RAPP_0884-0895   |
| Item 9 Labs Corp. et al.'s Reply in Support of Motion to Dismiss                                    | 1B              | RAPP_0152-0166   |
| Minute Order Granting Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs               | 5               | RAPP_0916        |
| Minute Order Granting Snowell Holdings, LLC's Motion for Attorneys' Fees                            | 3A              | RAPP_0495        |
| Minute Order regarding Snowell Holdings, LLC's Motion for Attorneys' Fees (Issue of Work Performed) | 5               | RAPP_0883        |
| Notice of Entry of Order Granting Item 9 Labs Corp. et al.'s Motion to Dismiss                      | 2               | RAPP_0384-0404   |
| Notice of Entry of Order Granting Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs   | 5               | RAPP_0932-0950   |
| Notice of Entry of Order Granting Snowell Holdings, LLC Motion to Dismiss                           | 2               | RAPP_0279-0295   |
| Order Granting Item 9 Labs Corp. et al.'s Motion to Dismiss   | 2               | RAPP_0368-0383   |
| Order Granting Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs                      | 5               | RAPP_0917-0931   |
| Order Granting Snowell Holdings, LLC Motion to Dismiss  | 2               | RAPP_0265-0278   |
| Plaintiff's Opposition to Item 9 Labs Corp. et al.'s Motion to Dismiss                              | 1B              | RAPP_0134-0151   |

|  |    |                |
|--|----|----------------|
| Plaintiff's Opposition to Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees and Costs    | 3A | RAPP_0496-0530 |
|  | 3B | RAPP_0531-0632 |
|  | 4  | RAPP_0633-0882 |
| Plaintiff's Opposition to Snowell Holdings, LLC Motion for Fees                              | 2  | RAPP_0296-0367 |
| Plaintiff's Opposition to Snowell Holdings, LLC's Motion to Dismiss                          | 1A | RAPP_0124-0127 |
| Reporter's Transcript of Motion to Dismiss   | 1B | RAPP_0167-0247 |
| Reporter's Transcript of Proceedings – Item 9 Labs Corp. et al.'s Motion for Attorneys' Fees | 5  | RAPP_0896-0915 |
| Snowell Holdings, LLC Motion for Attorneys' Fees   | 2  | RAPP_0248-0264 |
| Snowell Holdings, LLC Reply in Support of Motion for Attorneys' Fees                         | 2  | RAPP_0405-0409 |
| Snowell Holdings, LLC's Motion to Dismiss  | 1A | RAPP_0064-0077 |
| Snowell Holdings, LLC's Reply In Support of Motion to Dismiss                                | 1B | RAPP_0128-0133 |

**CERTIFICATE OF COMPLIANCE**

I hereby certify that on this appendix consists of true and correct copies of papers  
in the Clark County District Court file as required by NRAP 30(g).

Dated this 1<sup>st</sup> of November 2021.

MESSNER REEVES LLP

/s/ Candace Herling

Candace Herling, Esq.

Nevada Bar No. 13503

Heather Armantrout, Esq.

Nevada Bar No. 14469

**MESSNER REEVES LLP**

8945 West Russell Road, Suite 300

Las Vegas, Nevada 89148

Telephone: (702) 363-5100

Facsimile: (702) 363-5101

E-mail: [cherling@messner.com](mailto:cherling@messner.com)

[harmantrout@messner.com](mailto:harmantrout@messner.com)

*Attorneys for Real Parties in Interest,*

*Donald Burton, Larry Lemons, and*

*Snowell Holdings, LLC*

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of November, 2021, I served the foregoing  
**APPENDIX TO REAL PARTIES IN INTEREST'S ANSWER TO PETITION  
FOR WRIT OF MANDAMUS (VOL. 1A of 5)** upon the following parties by:

  X   VIA ELECTRONIC SERVICE: by electronically filing with the  
Clerk of the Nevada Supreme Court;

           VIA U.S. MAIL: By placing a true copy thereof enclosed in a sealed  
envelope with postage thereon fully prepaid, addressed as indicated on the  
service list below in the United States mail at Las Vegas, Nevada.

Therese M. Shanks  
FENNEMORE VRAIG, P.C.  
7800 Rancharrah Parkway  
Reno, NV 89511

Michael B. Wixom  
Karl L. Nielson  
Smith Larsen & Wixom  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, NV 89134

Justin M. Brandt  
Makunda Shanbhag  
Bianch & Brandt  
6710 Scottsdale Road, Ste. 210  
Scottsdale, Arizona 85253

      /s/ Tya Frabott        
An Employee of  
MESSNER REEVES LLP

Lee Igoldy  
2580 St. Rose Pkwy., Suite 330  
Henderson, NV 89074

Lauren Elliott  
Christian G. Stahl  
Quarles & Brady LLP  
Two North Central Avenue  
Phoenix, AZ 85004

Honorable Timothy Williams  
Civil Dept. XVI  
Eighth Judicial District Court  
200 Lewis Avenue  
Las Vegas, NV 89101

Aaron Ford  
Attorney General  
OFFICE OF THE ATTORNEY  
GENERAL  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101



**ACOM**  
G. MARK ALBRIGHT, ESQ., #1394  
DANIEL R. ORMSBY, ESQ., #14595  
HAYDEN R. D. SMITH, ESQ., #15328  
**ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**  
801 South Rancho Drive, Suite D-4  
Las Vegas, Nevada 89106  
Tel: (702) 384-7111 / Fax: (702) 384-0605  
[gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)  
[dormsby@albrightstoddard.com](mailto:dormsby@albrightstoddard.com)  
[hsmith@albrightstoddard.com](mailto:hsmith@albrightstoddard.com)  
*Attorneys 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.: 26

**FIRST AMENDED COMPLAINT**

**JURY DEMAND**

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

**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.

20. Upon information and belief, Defendant Levine 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.

21. Upon information and belief, Defendant Andrew 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.

22. Upon information and belief, Defendant Douglas 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.

23. Upon information and belief, Defendant Skalla 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.

24. Upon information and belief, Defendant Rassas 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.

25. Upon information and belief, Defendant Gullickson 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

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 series 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.



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

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

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

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

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

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

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

117. 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.

118. 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.

**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.

1 145. Plaintiffs justifiably relied upon the information by entering into the TCS Agreement  
2 and JDD Agreement, and for paying valuable consideration pursuant thereto.

3 146. As a direct and proximate result of the information described herein, Plaintiffs have  
4 suffered damages in excess of \$15,000.00.

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

9  
10 **SEVENTH CLAIM FOR RELIEF**  
11 **TORTIOUS BREACH OF THE IMPLIED COVENANT**  
12 **OF GOOD FAITH AND FAIR DEALING**

13 (Against Burton, Lemons, Jeffrey, Jerome, Snowell Holdings, and Harvest)

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

16 149. Every contract in Nevada contains an implied covenant of good faith in performance  
17 and enforcement of the contract.

18 150. Burton, Lemons, Jeffrey, Jerome, and Harvest performed in a manner that was in  
19 violation of or unfaithful to the spirit of the TCS Agreement and JDD Agreement, which were valid  
20 and binding contracts.

21 151. There existed a special relationship of trust between the Plaintiffs as members of and  
22 investors in Harvest, and Defendants as managing members and officers of Harvest.

23 152. The Defendants named herein, unfaithful actions were deliberate, as described in the  
24 foregoing paragraphs, and such actions directly and proximately caused Plaintiffs' damages in  
25 excess of \$15,000.00.

26 153. The conduct of the aforementioned Defendants was willful and constitutes  
27 oppression, fraud, and malice, and entitles Plaintiffs to an award of punitive damages, pursuant to  
28 NRS 42.005.

154. Plaintiffs were required to obtain the services of an attorney to pursue their claims,  
and therefore seek reimbursement of the attorney's fees and costs incurred in this action.

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)**  
5 (Against All Defendants)

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

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

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

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

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

19 **PRAYER FOR RELIEF**

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

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

27 ///

28 ///

///

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*

LAW OFFICES  
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT  
A PROFESSIONAL CORPORATION  
QUAIL PARK, SUITE D-4  
801 SOUTH RANCHO DRIVE  
LAS VEGAS, NEVADA 8906

# EXHIBIT “1”

## MEMBERSHIP INTEREST SALES AGREEMENT

This Membership Interest Sales Agreement ("Agreement"), dated this 22 day of November, 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 95/100<sup>th</sup> percent) Membership interest in Harvest to TCS, Burton hereby transfers a 4.95% (four and 95/100<sup>th</sup> percent) Membership interest. With this transfer of Membership interests, TCS shall own 9.9% (nine and 9/10<sup>th</sup> percent) of the Membership interests in Harvest, Burton shall own 25.05% (twenty-five and 5/100<sup>th</sup> percent) of the Membership interests in Harvest, Lemons shall own 25.05% (twenty-five and 5/100<sup>th</sup> 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 in 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. Burnap  
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.

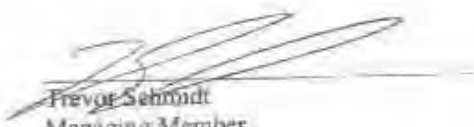


Donald E. Burton



Larry Lemons

By: TCS Partners I., 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 (2<sup>nd</sup>) 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 which 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](http://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:

Title:

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.

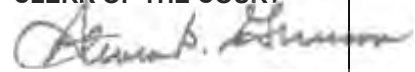
"Third Party Claim" shall have the meaning set forth in Section 7.2(a).

"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**

| <b>Name of Seller</b> | <b>Membership Interest in Company</b> |  | <b>Pro Rata Portion of Purchase Price</b> |
|-----------------------|---------------------------------------|--|---|
| Donald Burton         | 34.5%                                 |  | 34.5%                                     |
| Larry Lemon           | 34.5%                                 |  | 34.5%                                     |
| Jeffrey Yokiell       | 31%                                   |  | 31%                                       |



**MTD**

CANDACE HERLING, ESQ.  
Nevada Bar No. 13503  
JESSICA R. GANDY, ESQ.  
Nevada Bar No. 14202  
MESSNER REEVES LLP  
8945 West Russell Road, Suite 300  
Las Vegas, Nevada 89148  
Telephone: (702) 363-5100  
Facsimile: (702) 363-5101  
E-mail: [cherling@messner.com](mailto:cherling@messner.com)  
[jgandy@messner.com](mailto: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 1<sup>st</sup> 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](mailto:cherling@messner.com)  
[jgandy@messner.com](mailto: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 1<sup>st</sup> 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](mailto:cherling@messner.com)  
18 [jgandy@messner.com](mailto:jgandy@messner.com)

*Attorneys for Defendants*

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

1 **CERTIFICATE OF SERVICE**

2 On this 1<sup>st</sup> day of December 2020, pursuant to Administrative Order 14-2 and Rule 9 of the  
3 NEFCR, I caused the foregoing **DEFENDANT SNOWELL HOLDINGS, LLC'S MOTION TO**  
4 **DISMISS PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 12(b)(2)** 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 G. Mark Albright, Esq.  
10 Daniel R. Ormsby, Esq.  
11 Hayden R. D. Smith, Esq.  
12 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT  
13 801 SOUTH RANCHO DRIVE, SUITE D-4  
14 Las Vegas, Nevada 89106  
15 P: (702) 384-7111  
16 F: (702) 384-0605  
17 Email: [gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)  
18 [dormsby@albrightstoddard.com](mailto:dormsby@albrightstoddard.com)  
19 [hsmith@albrightstoddard.com](mailto:hsmith@albrightstoddard.com)  
20 *Attorneys for Plaintiffs*

21 Kevin Barrett, Esq.  
22 BARRETT & MATURA, P.C.  
23 8925 East Pima Center Parkway, Suite 215  
24 Scottsdale, Arizona 85258  
25 Email: [kbarrett@barrettmatura.com](mailto:kbarrett@barrettmatura.com)  
26 *Attorneys for Defendant*  
27 *Harvest Foundation LLC*

Michael B. Wixom, Esq.  
Karl L. Neilson, Esq.  
SMITH, LARSEN & WIXOM  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
[kln@slwlaw.com](mailto:kln@slwlaw.com)  
*Attorneys for Item 9 Properties LLC,*  
*Viridis Group I9 Capital LLC, Viridis Group*  
*Holdings, LLC, Andrew and Douglas Bowden,*  
*Bryce Skalla, Jeffrey Rassas, and Chase*  
*Herschman*

Christian Gabroy, Esq.  
GABROY LAW OFFICES  
170 S Green Valley Pkwy, Suite 280  
Henderson, NV 89012  
Email: [christian@gabroy.com](mailto:christian@gabroy.com)  
*Attorney for Defendant Sara Gullickson*

28 /s/ Tya Frabott  
Employee of MESSNER REEVES LLP

# Exhibit A

RAPP 0073



# Exhibit B

## Mukunda Shanbhag

---

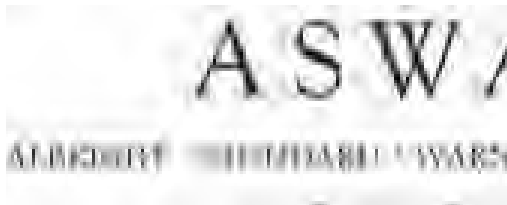
**From:** Hayden Smith <hsmith@albrightstoddard.com>  
**Sent:** Friday, November 20, 2020 9:59 AM  
**To:** Mukunda Shanbhag  
**Cc:** Daniel Ormsby; CHerling@messner.com; Nicholas Scavio; Cheritta Grey; Mark Albright; Justin Brandt  
**Subject:** RE: Dismissal of Item 9 parties and Snowell  
**Attachments:** 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  
Fax (702) 384-0605  
hsmith@albrightstoddard.com  
[albrightstoddard.com](http://albrightstoddard.com)



---

This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.

---

**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.  
Attorney

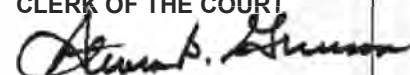


6710 N. Scottsdale Road, Suite 210  
Scottsdale, Arizona 85253  
Phone: (480) 531-1800  
[www.bianchibrandt.com](http://www.bianchibrandt.com)

The information contained in this message is privileged and confidential – is it meant for you? If not, please immediately delete it. Do not use the advice contained in this message to avoid tax penalties.  
Think green, please don't print unnecessarily.

SMITH LARSEN & WIXOM

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



Michael B. Wixom, Esq.  
Nevada Bar No. 2812  
Karl L. Nielson, Esq.  
Nevada bar No. 5082  
SMITH LARSEN & WIXOM  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
[kln@slwlaw.com](mailto:kln@slwlaw.com)

Quarles & Brady LLP  
Renaissance One  
Two North Central Avenue  
Phoenix, AZ 85004-2391  
TELEPHONE 602-229-5200  
Lauren Elliott Stine (#025083)\*  
[Lauren.Stine@quarles.com](mailto:Lauren.Stine@quarles.com)  
Christian G. Stahl (#029984)\*  
[Christian.Stahl@quarles.com](mailto:Christian.Stahl@quarles.com)  
\*pro hac vice forthcoming

*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

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.<sup>1</sup>**

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. Ct. rel. Clark County*, 109 Nev. 687, 698 (1993); *Catholic Diocese, Green Bay v. John Doe 119*, 131 Nev. 246, 249 (2015).<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> 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



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

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

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

<sup>3</sup> 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

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

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

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

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

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

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



**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).<sup>4</sup> 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").

<sup>4</sup> 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 **H. The FAC Fails to State a Claim for Declaratory Relief.**

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

10 Michael B. Wixom, Esq.  
11 Nevada Bar No. 2812  
12 Karl L. Nielson, Esq.  
13 Nevada bar No. 5082  
14 Hills Center Business Park  
15 1935 Village Center Circle  
16 Las Vegas, Nevada 89134

17 QUARLES & BRADY LLP  
18 Renaissance One  
19 Two North Central Avenue  
20 Phoenix, AZ 85004-2391

21 *Attorneys for Defendants Item 9 Labs Corp.*  
22 *f/k/a Airware Labs Corp. and Crown Dynamics*  
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):

**Plaintiff, JDD, LLC**

Robert A. Rabbat

rrabbat@enensteinlaw.com

JDD, LLC

16530 Ventura Blvd., Suite 305

Encino, CA 91436

Email: jsaunders@citrincooperman.com

John E. Saunders

16530 Ventura Blvd., Suite 305

Encino, CA 91436

Email: jsaunders@citrincooperman.com

2359 Villandry Court

Henderson, NV 89074

Trevor Schmidt

1581 Villa Rica Drive

Henderson, NV 89052

Email: ta\_schmidt@yahoo.com

trevor@myshapelipo.com

2359 Villandry Court

Henderson, NV 89074

Email: ta\_schmidt@yahoo.com

trevor@myshapelipo.com

TSC Partners, LLC

2610 W. Horizon Ridge Pkwy. #203

Henderson, NV 89052

**Defendant, Larry Lemons**

Tya Frabott

Tfrabott@messner.com

Jessica Gandy

Jgandy@messner.com

Candace Herling

cherling@messner.com

David Mortensen

dmortensen@messner.com

Stephanie Prescott

sprescott@messner.com

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

Robert A. Rabbat

rrabbat@enensteinlaw.com

**Defendants, Jeffrey Yokiell and Jerome  
Jokiell**

Traci Bixenmann

traci@johnaldrichlawfirm.com

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

John H Wright

efile@wrightlawgroupnv.com

**Defendant Sara Gullickson**

Ella Dumo

assistant@gabroy.com

Christian Gabroy

christian@gabroy.com

Kaine Messer

knesser@gabroy.com

Misha Ray

clerk@gabroy.com

/s/ Mindy Warner

An employee of Smith Larsen & Wixom

QB\172300.00004\66157057.7

# **Exhibit 1**

# **Exhibit 1**



Michael B. Wixom, Esq.  
Nevada Bar No. 2812  
Karl L. Nielson, Esq.  
Nevada bar No. 5082  
SMITH LARSEN & WIXOM  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
[kln@slwlaw.com](mailto: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 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

ATTORNEYS

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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**

**SMITH LARSEN & WIXOM**

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

1 Michael B. Wixom, Esq.  
2 Nevada Bar No. 2812  
3 Karl L. Nielson, Esq.  
4 Nevada bar No. 5082  
5 SMITH LARSEN & WIXOM  
6 Hills Center Business Park  
7 1935 Village Center Circle  
8 Las Vegas, Nevada 89134  
9 Tel: (702) 252-5002  
10 Fax: (702) 252-5006  
11 Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
12 [klm@slwlaw.com](mailto:klm@slwlaw.com)

13 *Attorneys for Defendants Item 9 Labs Corp. f/k/a Airware Labs Corp.*  
14 *and Crown Dynamics Corp.; Item 9 Properties, LLC, Strive*  
15 *Management, L.L.C. d/b/a Strive Life, Viridis Group 19*  
16 *Capital, LLC, Viridis Group Holdings, LLC, Andrew*  
17 *Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassus,*  
18 *and Chase Herschman*

19 **DISTRICT COURT**  
20 **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  
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.

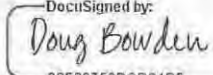
12. I have had no involvement in the alleged facts, events, and contracts between Plaintiffs and Defendants Lemons and Burton.

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

SMITH LARSEN & WIXOM  
ATTORNEYS  
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  
5 DATED this 18<sup>th</sup> day of December, 2020.  
6

7 By:   
8 Douglas Bowden  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **Exhibit 3**

# **Exhibit 3**



Michael B. Wixom, Esq.  
Nevada Bar No. 2812  
Karl L. Nielson, Esq.  
Nevada bar No. 5082  
SMITH LARSEN & WIXOM  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
[kln@slwlaw.com](mailto: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**

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, Jeffrey Rassas, declare as follows:

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

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

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

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

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

8. I do not own property in Nevada.

9. I do not maintain an address in Nevada.

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

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

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  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **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  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
[kln@slwlaw.com](mailto: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 19  
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 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 BRYCE  
SKALLA 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**



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, Bryce Skalla, declare as follows:

1. I am Chief Revenue Officer at Item 9 Labs Corp., one of the other defendants in the above captioned case. I am also a manager of Item 9 Properties, LLC. 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.

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

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

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

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

8. I do not own property in Nevada.

9. I do not maintain an address in Nevada.

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

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

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

I declare under the penalty of perjury under 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: \_\_\_\_\_

  
Bryce Skalla



# **Exhibit 5**

# **Exhibit 5**

Michael B. Wixom, Esq.  
Nevada Bar No. 2812  
Karl L. Nielson, Esq.  
Nevada bar No. 5082  
SMITH LARSEN & WIXOM  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
[kln@slwlaw.com](mailto: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.

- 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 Andrew Bowden

19 Manager/Member

20 Viridis Group I9 Capital, LLC  
21  
22  
23  
24  
25  
26  
27  
28

# **Exhibit 6**

# **Exhibit 6**

Michael B. Wixom, Esq.  
Nevada Bar No. 2812  
Karl L. Nielson, Esq.  
Nevada bar No. 5082  
SMITH LARSEN & WIXOM  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
[kln@slwlaw.com](mailto: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 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.

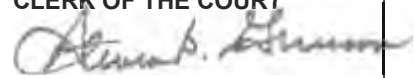
By: \_\_\_\_\_



Andrew Bowden

Manager/Member

Viridis Group Holdings, LLC



1 **OMD**

2 Lee I. Iglody, Esq.  
3 Nevada Bar #: 7757  
4 2580 St Rose Pkwy., Suite 330  
5 Henderson, Nevada 89074  
6 Tel: (702) 425-5366  
7 Email: [Lee@Iglody.com](mailto: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-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 18<sup>th</sup> 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 18<sup>th</sup> 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