

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.

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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 1B OF 5; RAPP_0128 - 0247

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

CHRONOLOGICAL APPENDIX

<i>DOCUMENT</i>	<i>VOL. NO.</i>	<i>Bates No.</i>
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

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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
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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 1st of November 2021.

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/s/ Candace Herling

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Attorneys for Real Parties in Interest,

Donald Burton, Larry Lemons, and

Snowell Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 2021, I served the foregoing
**APPENDIX TO REAL PARTIES IN INTEREST'S ANSWER TO PETITION
FOR WRIT OF MANDAMUS (VOL. 1B 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.

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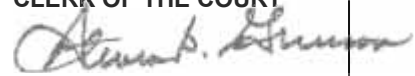
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Case No. A-20-811232-B

Dept. No. 16

**DEFENDANT SNOWELL
HOLDINGS, LLC'S REPLY
IN SUPPORT OF ITS
MOTION TO DISMISS
PURSUANT TO RULE**

12(b)(2)

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

Defendants.

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

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

DATED this 20th day of January, 2021.

MESSNER REEVES LLP

/s/ Candace C. Herling, E sq.

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Attorneys for Defendants

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

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

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

7 **II.**

8 **ARGUMENT**

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

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

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

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

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

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

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

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

24 III.

25 CONCLUSION

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

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

4 DATED this 20th day of January, 2021.

5 MESSNER REEVES LLP

6 /s/ Candace C. Herling, Esq.

7
8 CANDACE C. HERLING, ESQ.

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

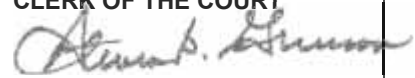
1 **CERTIFICATE OF SERVICE**

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

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

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

14
15 /s/ Candace C. Herling
16 Employee of MESSNER REEVES LLP
17
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1 **OMD**

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

13 Plaintiffs,

14 vs.

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

Defendants.

CASE NO.: A-20-811232-B

DEPT. NO.: XVI

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

Hearing date: February 24, 2021

Hearing time: 1:15 a.m.

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

6 MEMORANDUM

7 **I. INTRODUCTION**

8 Plaintiffs allege that, between them, they invested nearly \$1 million in Defendant Harvest
9 Foundation LLC (“Harvest”), a Nevada marijuana business, and obtained a collective 19.8%
10 ownership interest in the company. Plaintiffs also allege that Harvest’s managing members,
11 Defendants Donald Burton and Larry Lemons, ignored Plaintiffs’ investment and ownership, and
12 sold the company to Defendant MariMed Inc. without obtaining Plaintiffs’ consent or
13 compensating Plaintiffs for the loss of their ownership interests.

14 In addition, Plaintiffs allege that Burton and Lemons are also members of other companies
15 engaged in the marijuana business in Nevada, including Strive Management, in violation of their
16 fiduciary duties to Plaintiffs, as members of Harvest, and of Plaintiffs’ contractual rights. Plaintiffs
17 allege that Burton and Lemon (through Strive Management) violated their duties to Plaintiffs by
18 entering an agreement under which the Item 9 Defendants invested in Strive Management.

19 Plaintiffs have alleged that the Item 9 Defendants were knowing participants in Burton and
20 Lemons’s scheme to deprive Plaintiffs of their ownership interests and of opportunities to which
21 they were entitled as members of Harvest. Plaintiffs have therefore brought several claims against
22 the Item 9 Defendants, including (among others) claims for civil conspiracy and aiding and
23 abetting breaches of fiduciary duty.

24 Those claims have merit, and (except as noted below) the Item 9 Defendants’ motion to
25 dismiss them should be denied.
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27
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II. FACTUAL BACKGROUND

The TCS Agreement

In or about the beginning of 2015, Plaintiff Trevor Schmidt learned of Harvest—a Clark County, Nevada, limited liability company that holds a special use permit and two licenses for recreational and medical cannabis cultivation—and met two of its owners and officers, Donald Burton and Larry Lemons. First Amended Complaint (“Compl.”) ¶¶ 8, 15-16, 32. Schmidt then toured the Harvest facility and expressed interest in investing in its operations and becoming part of the company. *Id.* ¶ 33.

On or about January 22, 2015, after negotiations with Burton and Lemon, Schmidt, as the managing member of Plaintiff TCS Partners, LLC (“TCS”), entered into a Membership Interest Sales Agreement (“TCS Agreement”) with Burton and Lemons, who were acting as officers of Harvest. *Id.* ¶ 34. A true and accurate copy of the TCS Agreement is attached to Plaintiffs’ First Amended Complaint as Exhibit 1. *Id.* ¶ 36 & Ex. 1.

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. *Id.* ¶ 35. Section 1 of the TCS Agreement stated that, upon the transfer of the 9.9% interest to TCS, the other members of Harvest would retain the following percentages of the total ownership interests: Burton would own 25.05%; Lemons would own 25.05%; Jeffrey Yokiell would own 30%; and Jerome Yokiell would own 10%. *Id.* ¶ 36 & Ex. 1 at 1.

Additionally, under Section 4 of the TCS Agreement, Burton and Lemons, as officers of Harvest, agreed that there would be no additional transfer of any equity or membership interest in Harvest for a period of twelve months, to prevent TCS’s 9.9% membership from being diluted. *Id.* ¶ 37. Further, under Sections 5 and 6 of the TCS Agreement, TCS would be entitled to a pro rata share of any distributions of profits and would have the right to vote as a member of Harvest pursuant to Harvest’s operating agreement. *Id.* ¶ 38 & Ex. 1 at 2.

1 Also, Burton and Lemons reaffirmed that they would continue as Harvest's CEO and
2 COO, respectively, and as managing members. *Id.* Finally, under Section 8 of the TCS
3 Agreement, Harvest's operating agreement and all other governing documents were to be revised
4 to reflect TCS's 9.9% membership interest, with a copy of the TCS Agreement to be attached
5 thereto. *Id.* ¶ 39 & Ex. 1 at 2.

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

8 **The JDD Agreement**

9 In or about 2016, Plaintiff John Saunders learned of Harvest and expressed interest in
10 becoming part of the company to Burton, Lemons, and Schmidt. *Id.* ¶ 41. In or about 2016, as
11 managing member of Plaintiff JDD, LLC, Saunders entered into an agreement with Burton and
12 Lemons, acting in their respective capacities as CEO and COO of Harvest and as members of
13 Harvest, to purchase 9.9% of the Harvest membership interests (the "JDD Agreement"). *Id.* ¶ 42.
14 Although this deal was not memorialized in a fully integrated writing like the TCS Agreement,
15 Saunders engaged in a series of negotiations with Burton and Lemons—via text, emails, and other
16 documents—to purchase his 9.9% interest, and all members of Harvest approved or otherwise
17 ratified the JDD Agreement. *Id.* ¶¶ 43-45.

18 Under the JDD Agreement, JDD agreed to pay \$370,000.00 to Harvest for 9.9% of the
19 total membership interests in Harvest, and, like TCS, JDD was expressly granted the rights to vote
20 and receive distributions. *Id.* ¶ 46. Moreover, under the JDD Agreement, Saunders was appointed
21 as Harvest's Chief Financial Officer, was to be paid an annual salary of \$70,000.00, and was to be
22 given an active role in Harvest's operations. *Id.* ¶ 47.

23 As with the TCS Agreement, the JDD Agreement required Harvest's other members,
24 except TCS, to transfer portions of their own respective membership interests to JDD. *Id.* ¶ 48.
25 Thus, the new distribution of membership interests was to be:

- Burton would own 24.1%;
- Lemons (either individually or through Snowell Holdings, LLC) would own 24.1%;
- Jeffrey Yokiell would own 22%;
- Jerome Yokiell would own 10%;
- TCS would own 9.9%; and
- JDD would own 9.9%.

Id. ¶ 49.

Moreover, as part of the JDD Agreement, TCS and JDD's interests were to remain undiluted by any future sale or transfer of interests by other members. *Id.* ¶ 50. In fact, TCS and JDD retained a right of first refusal to purchase any of the other Harvest members' ownership interests, if any owner proposed the sale or transfer of his or her respective membership interests.

Id. ¶ 51.

Also, as part (the "Exclusive Authorizations Rights") of the JDD Agreement, Burton and Lemons (acting as CEO and COO of Harvest, respectively) agreed that Harvest would not sell any of Harvest's assets, including its licenses, or make any additional marijuana deal regarding Harvest's operations in Nevada, without the express prior written authorization of both JDD and TCS. *Id.* ¶ 52. Finally, TCS and JDD were to receive a pro rata share of any cash distributions that Harvest would make to its members, as the JDD Agreement closely mirrored the terms of the TCS agreement. *Id.* ¶ 53.

Burton, Lemons, Jeffrey Yokiell, and Harvest agreed to all terms of the JDD Agreement and also agreed that Harvest's operating agreement would be amended to reflect TCS's and JDD's respective 9.9% ownership interests (totaling 19.8%). *Id.* ¶ 54. Defendant Jerome Yokiell, Harvest's other member, also ratified or otherwise accepted the JDD Agreement. *Id.* ¶¶ 17, 55.

1 On or about May 6, 2016, JDD made a partial payment of \$200,000.00 to Harvest under
2 the JDD Agreement. *Id.* ¶ 56. On or about June 17, 2016, JDD paid the remaining \$170,000 to
3 Harvest, as the JDD Agreement required. *Id.* ¶ 57.

4 **Plaintiffs' Exclusion from Harvest**

5 Initially, Burton and Lemons actively involved Plaintiffs in drafting an amended operating
6 agreement for Harvest and kept Plaintiffs apprised of Harvest's operations. *Id.* ¶ 60. In fact, in or
7 around 2016, Saunders attended the Third Annual Marijuana Business and Conference Expo (the
8 "2016 Conference") in Las Vegas with Burton and Lemons. *Id.* ¶¶ 61, 89.

10 At the 2016 Conference, Saunders met Defendants Fireman and Levine, who were the
11 CEO and CFO, respectively, of Defendant MariMed, and informed them directly that Saunders
12 and Schmidt owned nearly 20 percent of the membership interests in Harvest. *Id.* ¶ 62. Saunders
13 informed Fireman and Levine that he was the CFO and a member of Harvest. *Id.* ¶ 63.

15 In or about mid-2016, Burton and Lemons became less responsive and more
16 confrontational with regard to the proposed amended Harvest operating agreement. *Id.* ¶ 64. Then
17 Burton and Lemons began excluding Plaintiffs from Harvest's business operations altogether. *Id.* ¶
18 65. Specifically, Saunders attempted to participate in Harvest's operations as CFO, but Burton and
19 Lemons repeatedly excluded him. *Id.* at ¶ 66. Additionally, Burton and Lemons refused Plaintiffs'
20 multiple requests to review Harvest's books and records, in violation of both Harvest's operating
21 agreement and NRS 86.241, claiming that the books and records were not "ready" for review. *Id.* ¶
22 67.

24 In or around 2017, after several unsuccessful attempts to reconcile with Burton and
25 Lemons and to participate in the operations of the business, Plaintiffs demanded that Harvest buy
26 out their entire membership interests. *Id.* ¶ 68. For several months afterward, Burton and Lemons
27 claimed to be working on a plan to do so—but they never provided any concrete plan. *Id.* ¶ 69.

1 Although Plaintiffs were frustrated by Burton and Lemons's unfulfilled promises, they
2 nonetheless continued to attempt to amicably resolve the dispute without resorting to litigation. *Id.*
3 ¶ 70. In or about the beginning of 2018, however, Burton and Lemons became unresponsive to
4 Plaintiffs' requests. *Id.* ¶ 71.

5 In or about 2018, Plaintiffs began to suspect that Defendants were deliberately concealing
6 Harvest's financial situation from Plaintiffs, and that Harvest might lack the means to buy out
7 their membership interests. *Id.* ¶ 72. Plaintiffs renewed their demand for Harvest's books and
8 records, and in or about August of 2018, Burton finally resumed communications with Plaintiffs
9 and told them that the books and records were "ready" for review and that their buyout requests
10 had been "submitted." *Id.* ¶¶ 73-74.

11 After months of difficulty in arranging the inspection, Saunders finally was given access to
12 Harvest's books and records—and discovered that Harvest had *failed to keep any books and*
13 *records since its inception.* *Id.* ¶¶ 75-78. And Harvest's bookkeeper revealed that all of Harvest's
14 transactions had been conducted with cash, with Burton and Lemons personally removing it from
15 and depositing it in a safe box in the office. *Id.* ¶ 79.

16 After that, Saunders worked with Harvest's office manager to implement proper financial
17 records. *Id.* ¶ 80. For the next several months, Saunders continued to attempt to fulfill his role as
18 CFO and to assist in the business's operations while awaiting his buyout, but Burton and Lemons
19 refused to respond to his calls and emails. *Id.* ¶ 81.

20 Finally, in or around September 2019, and in response to Saunders's request for his 2018
21 K-1 and a demand for the buyout to be finalized, Lemons asked to set up a phone call. *Id.* ¶ 82.
22 But Lemons then failed to answer his phone and continued to evade Saunders's calls and emails.
23 *Id.* ¶ 83.

24 **Conspiracy with MariMed**

25 While Saunders was attempting to exercise his rights, act as CFO, and get Harvest's

1 financial records in order, Defendants were secretly selling his and Schmidt's interests in Harvest
2 without their consent.

3 In or about December 2019, Plaintiffs received a copy of a Membership Interest Purchase
4 Agreement entered into between Burton, Lemons, Jeffrey Yokiell, and MariMed (the "MariMed
5 Purchase Agreement"), which had been executed on August 8, 2019. *Id.* ¶ 85. A true and accurate
6 copy of that agreement is attached to the First Amended Complaint as Exhibit 2. *Id.* ¶ 85 & Ex. 2.
7

8 The MariMed Purchase Agreement falsely stated that Burton, Lemons, and Jeffrey were
9 the only members of Harvest (with ownership interests of 34.5%, 34.5%, and 31%, respectively)
10 and that these three individuals owned 100% of the membership interests in Harvest. *Id.* ¶¶ 86-87
11 & Ex. 2 at 1. MariMed agreed to pay \$1,200,000 in MariMed's common stock to purportedly
12 purchase 100% of the membership interests of Harvest. *Id.* ¶ 86 & Ex. 2 at 1.
13

14 MariMed entered this agreement even though Fireman and Levine (MariMed's CEO and
15 CFO, respectively) had actual knowledge of Plaintiffs' ownership interests, which they had been
16 informed of when they met with Saunders, Burton, and Lemons at the 2016 Conference. *Id.* ¶¶ 88-
17 89.

18 **Conspiracy with the Item 9 Defendants**

19 Burton and Lemons, along with Defendant Sara Gullickson, are also managing members of
20 Strive Management and Strive Wellness 2. *Id.* ¶ 94. Burton and Gullickson are additionally
21 managing members of Strive Wellness. *Id.* ¶ 95. Strive Wellness is a Nevada company that has a
22 special use permit and two licenses for production and cultivation of medical cannabis. *Id.* ¶ 10.
23 Strive Management, also a Nevada company, is Strive Wellness's management arm. *Id.* ¶ 9.
24

25 On or about September 12, 2018, Strive Management received a \$1.5 million capital
26 contribution from the Item 9 Defendants through the "Item 9 Agreements." *Id.* ¶ 99. In exchange
27 for this capital contribution, some or all of the Item 9 Defendants received 20% membership
28 interests in Strive Management, with Burton, Lemons, and Gullickson holding the remaining

1 ownership. *Id.* ¶ 103. Defendants Vidris Capital, Vidris Holdings, Andrew, and Douglas will also
2 receive waterfall revenue participation. *Id.* ¶ 104.

3 The Item 9 Agreements were in direct violation of Plaintiffs’ Exclusive Authorization
4 Rights. *Id.* ¶ 100. Item 9 Labs’s most recent 10K filing with the SEC, dated January 14, 2020,
5 acknowledged the breach of Plaintiffs’ Exclusive Authorization Rights by describing an Item 9
6 Labs and Harvest joint venture in Nevada. *Id.* ¶ 104.

7 **III. LEGAL STANDARD**

8 **A. Personal Jurisdiction**

9 For the Court to exercise jurisdiction over a non-resident defendant, “a plaintiff must
10 show: (1) that the requirements of the state’s long-arm statute have been satisfied, and (2) that due
11 process is not offended by the exercise of jurisdiction.” *Arbella Mut. Ins. Co. v. Eighth Judicial*
12 *Dist. Court*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006). For the Court to exercise specific
13 personal jurisdiction under these criteria, the defendant must have “purposely “purposefully
14 avail[ed] himself of the privilege of serving the market in the forum or of enjoying the protection
15 of the laws of the forum,” or must have “purposefully establish[ed] contacts with ... and
16 affirmatively direct[ed] conduct toward the forum state.” *Id.* at 513, 712-13. In considering
17 challenges to personal jurisdiction, the Court must resolve factual disputes in the plaintiffs’ favor.
18 *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014).

19 **B. Motion to Dismiss for Failure to State a Claim**

20 A complaint must include “a short and plain statement of [any] claim showing that the
21 pleader is entitled to relief.” NRCP 8(a)(2). Nevada courts construe complaints liberally to “place
22 into issue matters which are fairly noticed to the adverse party.” *W. States Constr., Inc. v. Michoff*,
23 108 Nev. 931, 936, 804 P.2d 1220, 1223 (1992).

24 A “complaint cannot be dismissed for failure to state a claim unless it appears beyond a
25 doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would
26

entitle him to relief.” *Washoe Med. Center, Inc. v. Reliance Ins. Co.*, 112 Nev. 494, 496, 915 P.2d 288, 289 (1996). The Court “must construe the pleadings liberally and accept all factual allegations in the complaint as true.” *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). Also, the Court “must draw every fair inference in favor of the non-moving party.” *Id.*

IV. ARGUMENT

A. This Court Has Jurisdiction Over the Non-Resident Defendants

Defendants allege that this Court lacks personal jurisdiction over some of the Item 9 Defendants who are not Nevada residents—namely, Vidris Capital, Vidris Holdings, Andrew Bowden, Douglas Bowden, Jeffrey Rassas, and Bryce Skalla. Defendants do *not* deny that the Court has personal jurisdiction over the other Item 9 Defendants: Item 9 Labs, Item 9 Properties, Strive Management, and Chase Herschman.

Plaintiffs do not object to dismissal of all of the individual Item 9 Plaintiffs *without prejudice*, which renders any arguments about the Court’s jurisdiction over the individual non-resident Defendants moot. Thus, the only Item 9 Defendants over whom there is a jurisdictional dispute are Vidris Capital and Vidris Holdings (the “Vidris Defendants”). This Court has specific jurisdiction over both companies.

1. The Court has specific jurisdiction over the Vidris Defendants because they have availed themselves of the financial benefits of doing business in Nevada.

This Court has specific jurisdiction over the Vidris Defendants because the two companies engaged in transactions directed at companies in Nevada and availed themselves of the financial benefits of doing business in Nevada, and Plaintiffs’ claims arise out of those actions. *Arbella*, 122 Nev. at 512, 134 P.3d at 712-14.

Plaintiffs allege that: (1) the Vidris Defendants (together with other Item 9 Defendants) made a \$1.5 million capital contribution to a Nevada limited liability company, Strive

1 Management, *id.* ¶ 99; (2) this capital was based on a total investment of \$2.7 million from the
2 Vidris Defendants under a revenue participation agreement, *id.* ¶ 101; (3) the Vidris Defendants
3 (together with other Item 9 Defendants) purchased 20 percent of the membership interests in
4 Strive Management, *id.* ¶ 102; and (4) the Vidris Defendants and associated individuals will
5 receive waterfall revenue participation, including 5% of Item 9 Labs’s gross revenue from Nevada
6 operations and scaling down to a lower percentage in perpetuity, *id.* ¶ 104.

7
8 Defendants assert that Plaintiffs’ complaint “does not arise out of any purposeful contact or
9 activities by the Non-Resident Defendants within the State of Nevada,” MTD 9, but that is not
10 true. Plaintiffs specifically allege that the Vidris Defendants made capital contributions, obtained
11 ownership interests in, and have revenue participation in, a Nevada limited liability company
12 doing business in Nevada. Thus, the Vidris Defendants have engaged in transactions directed at a
13 Nevada company and availed themselves of the financial benefits of doing business in Nevada,
14 and this Court has specific jurisdiction over them for that reason.

15
16 **2. The Court has specific jurisdiction over the Vidris Defendants**
17 **because they affirmatively directed tortious conduct at**
Nevada residents.

18 Specific jurisdiction is also established where, as here: (1) a defendant establishes contacts
19 with or affirmatively directs conduct toward the forum state; and (2) the cause of action arises
20 from that purposeful contact with the form or conduct targeting the forum. *Arbella*, 122 Nev. at
21 515-16, 134 P.3d at 713. The Vidris Defendants are subject to this Court’s jurisdiction because
22 they committed tortious activity directed at Plaintiffs, who are two Nevada residents and two
23 Nevada limited liability companies.

24
25 Plaintiffs allege that, by entering into the Item 9 Agreements (Compl. ¶¶ 99-104), the
26 Vidris Defendants participated in a civil conspiracy to harm Plaintiffs (*id.* ¶¶ 182-88) and aided
27 and abetted Burton’s and Lemons’s breaches of their fiduciary duties to Plaintiffs (*id.* ¶¶ 193-99).

1 Thus, the Vidris Defendants were parties to and therefore directly involved with
2 transactions that underlie Plaintiffs' claims for civil conspiracy and aiding and abetting breaches
3 of fiduciary duty.

4 These activities support this Court's jurisdiction over the Vidris Defendants. *Viega*, 130
5 Nev. at 375, 328 P.3d at 1157 ("Specific personal jurisdiction arises when the defendant ...
6 establishes contacts in the forum and affirmatively directs conduct there, and the claims arise from
7 that purposeful contact or conduct."); *see also Consipio Holding, BV v. Carlberg*, 128 Nev. 454,
8 282 P.3d 751, 755 (2012) (noting that corporate officers and directors who "purposefully directing
9 harm towards a Nevada citizen ... establish contacts with Nevada and 'affirmatively direct[]
10 conduct' toward Nevada" and that "officers or directors 'caus[e] important consequences' in
11 Nevada when they directly harm a Nevada corporation").

12
13 **3. The Court has specific jurisdiction over the Vidris Defendants**
14 **because they engaged in a conspiracy to harm Nevada residents.**

15 The Court also has specific personal jurisdiction over the Vidris Defendants because they
16 engaged in a conspiracy directed at Nevada residents. Conspiracy allegations can support personal
17 jurisdiction over a defendant if "the co-conspirators could have reasonably expected at the time of
18 entering into the conspiracy that their actions would have consequences in the forum state."
19 *Tricarichi v. Cooperative Rabobank, U.A.*, 440 P.3d 645, 654, 135 Nev. 87, 97 (2019).

20
21 Again, Plaintiffs have alleged facts to establish that—by entering into the Item 9
22 Agreements with actual or constructive knowledge of Plaintiffs' rights—the Vidris Defendants
23 engaged in a conspiracy with other Defendants to harm Plaintiffs, who are Nevada residents and
24 Nevada limited liability companies. Of course the Vidris Defendants would have reasonably
25 expected these actions to have consequences in Nevada: they made a capital contribution to a
26 Nevada business, obtained ownership interests in a Nevada business, and are or will be sharing in
27 revenue from a Nevada business, all to the detriment of Plaintiffs, who are Nevada residents and
28

1 companies. This provides a third basis for the Court’s personal jurisdiction over the Vidris
2 Defendants.²

3 **B. Plaintiffs Have Standing, and There is a Justiciable Controversy**

4 Like MariMed in its motion to dismiss, the Item 9 Defendants contend that the Plaintiffs
5 lack standing because the State of Nevada has not approved their membership interests in Harvest.
6 MTD 10-11. In response, Plaintiffs incorporate by reference their argument on this issue in their
7 response to MariMed’s motion to dismiss. Opposition to MTD 8-9.

9 **C. Alter Ego**

10 Plaintiffs do not oppose dismissal of this claim for relief *without prejudice* as to the
11 moving Defendant.

12 **D. Plaintiffs Have Pleaded a Viable Unjust Enrichment Claim**

13 Plaintiffs have stated a claim for unjust enrichment against the Item 9 Defendants. The
14 Nevada Supreme Court has defined unjust enrichment as “the unjust retention of a benefit to the
15 loss of another, or the retention of money or property of another against the fundamental
16 principles of justice or equity and good conscience.” *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 856,
17 839 P.2d 606, 613 (1992).

19 In this case, the Plaintiffs transferred hundreds of thousands of dollars to Defendants
20 Burton and Lemons in 2015 and 2016, money that undoubtedly helped Harvest continue its
21 operations and grow into an attractive investment opportunity for MariMed. Thus, the Plaintiffs’
22 investment in Harvest conferred a benefit on all Defendants, who by way of their intermingled
23 business interests collectively benefited from the MariMed transaction. Their retention of this
24 benefit (and non-compensation for) would be unjust.
25
26

27 ² If the Court were to conclude that Plaintiffs have not presented sufficient evidence of the Vidris Defendants’ conduct
28 directed toward Nevada and Nevada residents, Plaintiffs would respectfully request that the Court defer ruling on the
Vidris Defendants’ jurisdictional challenge until the parties have had an opportunity to complete jurisdictional
discovery.

1 The Item 9 Defendants argue that Plaintiffs cannot bring a claim for unjust enrichment
2 because “to the extent Plaintiffs allege that the Moving Defendants accepted a benefit as a result
3 of the Item 9 Agreements – which Plaintiffs were not parties to – the unjust enrichment claim fails
4 based on the existence of a written contract.” MTD 14. But Plaintiffs’ unjust enrichment claim
5 would fail as to the Item 9 Defendants only if Plaintiffs had a written contract with the Item 9
6 Defendants. *See Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747,
7 755, 942 P.2d 182 (1997) (“An action based on a theory of unjust enrichment is not available
8 when there is an express, written contract, because no agreement can be implied when there is an
9 express agreement.”). Neither Plaintiffs nor Defendants make that allegation.

11 Defendants’ argument for dismissal of Plaintiffs’ unjust enrichment claim is moot with
12 respect to the individual Defendants because Plaintiffs do not object to dismissal of all of the
13 individual Plaintiffs *without prejudice*.

14 **E. Civil Conspiracy Claim**

15 Plaintiffs have stated a claim for civil conspiracy against the Item 9 Defendants.

17 A cause of action for civil conspiracy exists where there is “a combination of two or more
18 persons who, by some concerted action, intend to accomplish an unlawful objective for the
19 purpose of harming another, and damage results from the act or acts.” *Sutherland v. Gross*, 105
20 Nev. 192, 196, 772 P.2d 1287, 1290 (1989). To succeed on a civil conspiracy claim, a plaintiff
21 must prove an explicit or tacit agreement between the alleged conspirators. *Dow Chem. Co. v.*
22 *Mahlum*, 114 Nev. 1468, 1489, 970 P.2d 98, 112 (1998).

24 Here, Plaintiffs have alleged that the Item 9 Defendants conspired with the other
25 Defendants to enter the Item 9 Agreements despite their actual or constructive knowledge that, by
26 entering the Item 9 Agreements, Defendants Burton and Lemons (through Strive Management, of
27 which they were members) were violating Plaintiffs’ Equal Authorization Rights and breaching
28 their fiduciary duties to Plaintiffs. Compl. ¶¶ 93-108, 182-88, 193-94. Plaintiffs have therefore

1 alleged what they must to state a claim for civil conspiracy against all Defendants, including the
2 Item 9 Defendants

3 In arguing for dismissal of this claim, the Item 9 Defendants assert that Plaintiffs do “not
4 allege that any of the [Item 9] Defendants even knew or should have known of Plaintiffs or
5 Plaintiffs’ alleged agreements with Lemons, Burton, and/or [Harvest].” MTD 15. In fact, Plaintiffs
6 have alleged exactly that. Compl. ¶ 98.

7
8 Defendants’ argument for dismissal of Plaintiffs’ civil conspiracy claim with respect to the
9 individual Defendants is moot because Plaintiffs do not object to dismissal of all of the individual
10 Plaintiffs without prejudice.

11 **F. Aiding & Abetting Breach of Fiduciary Duty**

12 Plaintiffs have stated a viable claim against the Item 9 Defendants for aiding and abetting a
13 breach of fiduciary duty. A third party is liable for aiding and abetting a breach of fiduciary duty
14 where “(1) a fiduciary relationship exists, (2) the fiduciary breached the fiduciary relationship, (3)
15 the third party knowingly participated in the breach, and (4) the breach of the fiduciary
16 relationship resulted in damages.” *Kahn v. Dodds*, 127 Nev. 196, 225, 252 P.3d 681, 701-702
17 (2011).

18
19 Here, the Item 9 Defendants do not dispute that the Plaintiffs have alleged the first, second,
20 and fourth elements: Plaintiffs have alleged that Defendants Burton and Lemons owed fiduciary
21 duties to Plaintiffs pursuant to their contractual agreements; that Burton and Lemons breached
22 their fiduciary duties by (among other things) appropriating for their own use an opportunity that
23 belonged to Harvest and its members, including Plaintiffs; and that Plaintiffs suffered damages as
24 a result. Compl. ¶¶ 156-67.

25
26 And Plaintiffs have also alleged the third element: the third party’s knowing participation
27 in the breach of fiduciary duty. *Kahn*, 127 Nev. at 225, 252 P.3d at 701-02. Plaintiffs specifically
28 allege that “[e]ach Defendant ... knowingly participated in or facilitated these breaches.” Compl.

¶ 196. Plaintiffs have supported this allegation by further alleging that all of the named Defendants “had actual or constructive knowledge of Plaintiffs’ membership interests and the associated Exclusive Authorization rights.” *Id.* ¶ 98.

To argue that Plaintiffs’ allegations are insufficiently specific, Defendants (MTD 16) quote a Delaware Chancery Court case that stated that there “must be factual allegations in the complaint from which knowing participation can be reasonably inferred.” *In re Gen. Motors (Hughes) S’holder Litig.*, 2005 WL 1089021, *24 (Del. Ch. May 4, 2005), *aff’d* 897 A.2d 162 (Del. 2006). But Defendants avoid quoting the first part of that sentence, which states that “[a] claim of knowing participation *need not be pled with particularity.*” *Id.* (emphasis added). Here, Plaintiffs have alleged that Defendants knew of Plaintiffs’ ownership interests and Equal Authorizations Rights, which provides a basis to reasonably infer that Defendants knew that they were aiding and abetting Burton’s and Lemons’s breaches of their fiduciary duties when they entered the Item 9 Agreements.

Defendants’ argument for dismissal of Plaintiffs’ aiding-and-abetting claim is moot with respect to the individual Defendants because Plaintiffs do not object to dismissal of all of the individual Plaintiffs without prejudice.

G. Intentional Interference with Contract and Business Expectancy

Plaintiffs do not oppose dismissal of this claim for relief *without prejudice* as to the Item 9 Defendants only.

H. Plaintiffs are Entitled to Declaratory Relief

NRS 30.040 allows individuals to obtain a “declaration of rights, status or other legal relations” with respect to a contract or instrument, with NRS 30.030 stating that courts are the entities that provide such declarations. A party may obtain declaratory relief if “(1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial

determination.” *Cty. of Clark v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998). In this case, a justiciable controversy exists between Plaintiffs and Defendants, who collectively engaged in a series of interconnected transactions that erased Plaintiffs’ interest in Harvest and shut them out of the cannabis industry in Nevada. As such, the Plaintiffs clearly have an interest in this action at issue, which is also ripe for adjudication given the damages sustained.

I. Equitable Relief

Plaintiffs do not oppose dismissal of this claim for relief without prejudice as to the Item 9 Defendants only.

J. The Item 9 Defendants are Not Entitled to Attorney’s Fees

The Item 9 Defendants are not entitled to an award of attorney’s fees. The Item 9 Defendants assert that they are entitled to a fee award because, they say, Plaintiffs’ previous counsel initially agreed to their request that Plaintiffs dismiss their claims against them but later “revoked that agreement without any explanation or alteration of the facts alleged in the FAC.” MTD 19. The Item 9 Defendants say that, by initially agreeing to dismiss Plaintiffs’ claims against them, Plaintiffs’ former counsel “effectively admitted” that Plaintiffs’ claims the Item 9 Defendants are “not proper.” *Id.*

Of course an attorney’s informal “agreement” to dismiss a client’s claims without prejudice is not an admission that the claims lack merit. Even an *actual* dismissal without prejudice would have preserved Plaintiffs’ right to pursue their claims against the Item 9 Defendants later without the prior dismissal being held against them (i.e., *without prejudice*).

Further, in the absence of an actual settlement agreement signed by the Plaintiffs themselves, there was no “agreement” to dismiss the claims. Plaintiffs have no obligation to explain why they have chosen not to dismiss their claims, just as they have no obligation to explain or disclose any other aspect of their litigation strategy.

1 Moreover, any statements Plaintiffs' counsel allegedly made in response to Defendants'
2 request for dismissal would have been part of "compromise negotiations" and therefore would be
3 inadmissible as evidence regarding the merits of Plaintiffs' claims. NRS 48.105(1) ("Evidence of
4 conduct or statements made in compromise negotiations is ... not admissible.").

5 Defendants have cited no authority supporting their assertion that they are entitled to
6 attorney's fees under these circumstances. In the absence of evidence to show that Plaintiffs'
7 claims were unreasonable or brought to harass the Item 9 Defendants, the Court cannot award the
8 Item 9 Defendants fees under NRS 18.010. *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213, 234
9 (2009). The Court therefore should deny the Item 9 Defendants' request for fees.

10
11 DATED this 26th day of January, 2021.

12 Respectfully submitted,

13 /s/ Lee Iglody

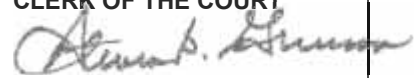
14 Lee I. Iglody, Esq.

15 *Attorney for Plaintiffs*

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on the 26th day of January, 2021, the foregoing **OPPOSITION TO**
18 **MOTION TO DISMISS** was served on the parties via electronic service through Odyssey
19 pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26.

20 /s/ Lee Iglody



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25 *Strive Management, LLC, Viridis Group I9 Capital, LLC, Viridis Group*

26 *Holdings, LLC, Andrew Bowden, Douglas Bowden, Bryce Skalla,*

Jeffrey Rassas, and Chase Herschman

DISTRICT COURT

CLARK COUNTY, NEVADA

JDD, LLC, et al.,

Plaintiffs,

vs.

MARIMED INC. f/k/a Worlds Online, Inc., a
Delaware corporation; ITEM 9 LABS CORP.
f/k/a Airware Labs Corp. and Crown Dynamics
Corp., a Delaware corporation; ITEM 9
PROPERTIES LLC, a Nevada limited liability
company; THE HARVEST FOUNDATION
LLC f/k/a, a Nevada limited liability company
a/k/a THE HARVEST FOUNDATION, LLC;
STRIVE MANAGEMENT L.L.C. d/b/a Strive

CASE NO. A-20-811232-C

DEPT. NO. XXVI

**DEFENDANTS ITEM 9 LABS CORP.,
VIRIDIS GROUP I9 CAPITAL LLC,
VIRIDIS GROUP HOLDINGS, LLC,
ANDREW BOWDEN, DOUGLAS
BOWDEN, BRYCE SKALLA, JEFFREY
RASSAS, AND CHASE HERSCHMAN'S
REPLY IN SUPPORT OF THEIR
MOTION TO DISMISS**

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

Defendants.

Date of Hearing: February 24, 2021

Time of Hearing: 1:15 P.M.

15 Defendants Item 9 Labs Corp, Item 9 Properties, LLC, Strive Management L.L.C., Viridis
16 Group I9 Capital, LLC (“Viridis Capital”), Viridis Group Holdings, LLC (“Viridis Holdings”),
17 Andrew Bowden, Douglas Bowden, Bryce Skalla, Jeffrey Rassas, and Chase Herschman
18 (collectively, “Moving Defendants”), submit this Reply in support of Moving Defendants’ Motion
19 to Dismiss Plaintiffs’ First Amended Complaint (the “Motion”).

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION.**

22 Plaintiffs’ First Amended Complaint (the “FAC”) asserted eight (8) implausible and absurd
23 claims for relief against the Moving Defendants, which ranged from conspiracy to aiding and
24 abetting breaches of fiduciary duty. Plaintiffs were informed early on that their claims were
25 meritless, which is why Plaintiffs initially agreed to dismiss each of their claims against the Moving
26 Defendants without prejudice in November 2020. Plaintiffs later inexplicably refused to dismiss

1 their claims against the Moving Defendants, forcing them to incur significant time and expense in
2 preparing and filing the Motion.

3 Plaintiffs' Opposition to the Motion (the "Opposition") affirms that the FAC should have
4 never been filed against the Moving Defendants in the first place and that it should have been
5 dismissed against them back in November 2020 – before the Moving Defendants were forced to
6 incur significant expense. Indeed, in the Opposition, Plaintiffs have now agreed to dismiss without
7 prejudice each of their claims against the Individual Defendants. Plaintiffs have also now agreed
8 to dismiss their claims for alter ego, intentional interference, and equitable relief, against each of
9 the Moving Defendants.

10 With respect to the handful of claims that remain against the Moving Defendants left in this
11 action, Plaintiffs' Opposition fails to identify any legitimate or persuasive reason why the Motion
12 should be denied. Among other things, Plaintiffs failed to satisfy their burden by offering evidence
13 to establish a *prima facie* showing of personal jurisdiction over Viridis Group and Viridis Capital
14 (the remaining non-resident Moving Defendants). Plaintiffs concede that their claims derive from
15 an alleged ownership interest in Defendant Harvest Foundation, but the Department has not
16 approved that ownership as required under N.A.C. § 453D. 315, which renders each claim in the
17 FAC pled against the Moving Defendants subject to dismissal. Plaintiffs failed to allege any
18 "benefit" allegedly received by or given to any of the Moving Defendants, as necessary to sustain
19 a claim for unjust enrichment. Plaintiffs failed to allege fundamental elements necessary to sustain
20 a conspiracy claim. Plaintiffs failed to allege a valid fiduciary relationship and the substantial
21 assistance elements of the aiding and abetting claim. Plaintiffs failed to identify a contract with the
22 Moving Defendants that could sustain the declaratory relief claim.

23 The Court should grant the Motion and dismiss the FAC in its entirety and with prejudice.
24 The Court should also award the Moving Defendants their attorneys' fees and costs.

25 **II. SUMMARY OF CLAIMS AND PARTIES DISMISSED.**

26 Plaintiffs have agreed to dismiss the following defendants and claims (Opp. at 10):

- All claims against each of the Individual Defendants (Defendants Andrew Bowden, Douglas Bowden, Jeffrey Rassas, Bryce Skalla, and Chase Herschman);
- The alter ego claim against all Moving Defendants, (FAC ¶¶ 189-192);
- The intentional interference against all Moving Defendants, (FAC ¶¶ 200-213); and
- The equitable relief claim against all Moving Defendants (FAC ¶¶ 214-222).¹

Accordingly, the only remaining claims and Moving Defendants are:

- Remaining Defendants: Item 9 Labs, Item 9 Properties, Strive Management, Viridis Capital, Viridis Holdings; and
- Remaining Claims: unjust enrichment (FAC ¶¶ 119-124), civil conspiracy (FAC ¶¶ 182-188), aiding and abetting breach of fiduciary duties (FAC ¶¶ 193-199), and declaratory relief (FAC ¶¶ 240-244).

III. PLAINTIFFS HAVE NOT ESTABLISHED PERSONAL JURISDICTION OVER THE REMAINING NON-RESIDENT DEFENDANTS.

The Individual Defendants, Viridis Capital, and Viridis Holdings moved to dismiss the FAC for lack of personal jurisdiction. Plaintiffs have agreed to dismiss their claims against the Individual Defendants, leaving only Viridis Capital and Viridis Holdings (collectively, “Viridis”) as the remaining non-resident defendants. As demonstrated below, this Court lacks personal jurisdiction over Viridis, and Plaintiffs failed to come forward with any evidence to rebut the testimony in the Viridis Declarations or otherwise support their allegations of personal jurisdiction.

A. Plaintiffs Have Not and Cannot Prove General Jurisdiction.

For general personal jurisdiction, Plaintiffs must prove that Viridis has “substantial” or “continuous and systematic” contacts with Nevada. *Easter v. Am. W. Fin.*, 381 F.3d 948, 960 (9th

¹ Although Plaintiffs concede only that the claims and defendants should be dismissed without prejudice, the Court should dismiss these claims and the Individual Moving Defendants *with prejudice*. As evidenced in the Motion and in this Reply, the Court lacks jurisdiction over them and the claims asserted against them are so far-fetched that any amendment would be futile. *See* Mot. at 12-13; *see also* *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289 (App. 2015) (“[L]eave to amend, even if timely sought, need not be granted if the proposed amendment would be ‘futile.’ A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim, such as one which would not survive a motion to dismiss under NRCP 12(b)(5) . . .”).

1 Cir. 2004). The standard is high, and requires that the defendant's contacts be of the sort that
2 approximates physical presence. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082,
3 1086 (9th Cir. 2000).

4 Plaintiffs do not expressly argue that there is general personal jurisdiction in Nevada over
5 Viridis – and therefore concede this point, for good reason. The Viridis Declarations demonstrate
6 that Viridis does not have contacts with Nevada, which even approximate a physical presence.

7 **B. Plaintiffs Have Not and Cannot Prove Specific Jurisdiction.**

8 Viridis submitted Declarations with the Motion to Dismiss that clearly demonstrate, *inter*
9 *alia*, that both Viridis entities are Arizona limited liability companies that (1) have no property in
10 Nevada, (2) conduct no business in Nevada, (3) have no members who are residents of Nevada, (4)
11 have no ownership interest in any Nevada companies, (5) have no involvement in the alleged facts
12 or events between Plaintiffs and Defendants Lemons and Burton, and (6) have no knowledge (other
13 than from this litigation) of Plaintiffs. *See* Mot., Exs. 5 & 6.

14 Under Nevada law, “when a defendant challenges the personal jurisdiction of the Nevada
15 courts, *the plaintiff must introduce competent evidence of essential facts establishing a prima*
16 *facie showing of jurisdiction.*” *Levinson v. Second Judicial Dist. Court of State*, 103 Nev. 404
17 (1987) (emphasis added). “In determining whether a *prima facie* showing has been made, the
18 district court is not acting as a fact finder. It accepts properly supported proffers of evidence by a
19 plaintiff as true. However, *the plaintiff must introduce some evidence and may not simply rely*
20 *on the allegations of the complaint to establish personal jurisdiction.*” *Trump v. Eighth Judicial*
21 *Dist. Court*, 109 Nev. 687, 693 (1993) (internal quotations and citations omitted) (emphasis added).

22 Because Viridis submitted the Declarations with its Motion, Plaintiffs could not merely rely
23 on the allegations in the FAC to meet their burden of showing that Viridis is subject to specific
24 personal jurisdiction in Nevada. Yet, that is precisely what Plaintiffs did in their Opposition –
25 Plaintiffs relied solely on allegations in the FAC (i.e., that Viridis entered into transactions and
26 engaged in tortious conduct “directed at companies in Nevada”) to argue specific jurisdiction.

1 Plaintiff did not produce *any* evidence with the Opposition which rebuts the Declarations or
2 otherwise establishes a *prima facie* showing of jurisdiction. Accordingly, Plaintiffs failed to satisfy
3 their burden of demonstrating specific personal jurisdiction, and the Court should dismiss the
4 claims against Viridis for lack of jurisdiction. See *Caledonian Swiss Inves. v. SPTL Ventures, LLC*,
5 2006 WL 845849, at *2 (D. Nev. Mar. 31, 2006) (granting motion to dismiss because plaintiffs
6 “failed to produce any authenticated evidence that would support a finding of personal jurisdiction
7 over [the defendant]”); *Desert Sales v. Paul D. Cummings World Wide Enters., Inc.*, 2009 WL
8 10708974, at *3 (D. Nev. July 9, 2009).

9 By way of footnote, devoid of any legal or factual support, Plaintiffs request an “opportunity
10 to complete jurisdictional discovery”. Opp. at 13 n.2. The Court should deny this footnote request
11 because Plaintiffs’ purported bases for establishing personal jurisdiction over Viridis Capital and
12 Viridis Holdings is so attenuated to the point of implausibility that “jurisdictional discovery [is]
13 unlikely to lead to evidence establishing jurisdiction.” See *Tricarichi v. Coop. Rabobank, U.A.*,
14 135 Nev. 87, 98 n.15 (2019) (citing *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 380
15 (2014)).

16 **IV. THERE IS NO JUSTICIABLE CONTROVERSY AND PLAINTIFFS LACK**
17 **STANDING.**

18 Plaintiffs’ Opposition merely incorporates by reference their opposition to Defendant
19 MariMed’s motion to dismiss.² Opp. at 13. Plaintiffs’ opposition to MariMed does not address the
20 Moving Defendants’ specific arguments. Regardless, none of the arguments Plaintiffs made in
21 opposition to MariMed’s motion warrant the denial of the Moving Defendants’ Motion.

22 First, the Moving Defendants demonstrated in the Motion that Plaintiffs lack standing and
23 there is no justiciable controversy because any transfer of ownership in a marijuana establishment
24 requires approval by the Department under N.A.C. § 453D.315, and Plaintiffs failed to allege
25 (because they cannot allege) that the Department has approved a transfer of interest in the Harvest

26 ² To avoid confusion, Moving Defendants will cite to Plaintiffs’ opposition to the MariMed motion
to dismiss as “MariMed Opp.”. Any other citation to an “Opp.” refers to Plaintiffs’ opposition to
Moving Defendants’ Motion.

1 Foundation to Plaintiffs. Absent such approval, Plaintiffs have no valid interest in Harvest. And
2 because each of their claims against the Moving Defendants is predicated on a valid ownership
3 interest in Harvest, Plaintiffs' claims fail.

4 Plaintiffs do not deny – and therefore concede – in the Opposition that the Department has
5 failed to approve any transfer of ownership in Harvest Foundation to Plaintiffs. That concession
6 alone renders *each* of Plaintiffs' claims subject to dismissal.

7 Plaintiffs attempt to sidestep this fatal flaw in the FAC by claiming that any challenge to
8 Plaintiffs' ownership interest in Harvest is premature because “whether Plaintiffs *actually* have the
9 ownership interests and other rights they allege, and whether they are actually entitled to relief
10 against the . . . Defendants—is a separate issue, not a question of standing.” MariMed Opp. at 9
11 (emphasis in original). Plaintiffs are wrong.

12 Under Nevada law, a “justiciable controversy” exists *only if* a plaintiff can state a viable
13 legal claim for relief, pursuant to which the plaintiff can show “that the action caused or threatened
14 to cause the claimant’s injury-in-fact, and that the relief sought will remedy the injury.” *See*
15 *Israyelyan v. Chavez*, 466 P.3d 939, at *2 (Nev. July 1, 2020) (mem.); *see also Stockmeier v. Nev.*
16 *Dep’t of Corr. Psych. Review Panel*, 122 Nev. 385, 392 (2006) (noting that, to demonstrate an
17 actual controversy, a litigant must satisfy the “standing requirements of injury, causation, and
18 redressability”).

19 As demonstrated in the Motion, each and every claim Plaintiffs allege against Moving
20 Defendants necessarily hinges on Plaintiffs' purported ownership interest in Harvest. Absent a
21 valid ownership interest (which Plaintiffs apparently concede has not been approved by the
22 Department), each of Plaintiffs' claims fail.

23 Nevertheless, even if Plaintiffs could somehow allege a valid ownership interest in Harvest
24 (they cannot), each of Plaintiffs claims is predicated on the alleged existence of one or more *valid*
25 contracts between Plaintiffs and Defendants Lemons and Burton concerning Defendant Harvest.
26 *See* Mot. at 10. Absent such a contract, Plaintiffs suffered no injuries resulting from Defendant

1 Burton's and Lemons' subsequent actions, have no interest in Defendant Harvest, and by extension
2 have no viable claim against the Moving Defendants. Indeed, absent such a contract, Plaintiffs'
3 claims are simply hypothetical. *See Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 38 n.1
4 (2008) (noting that a case is not ripe for review if the harm alleged is "remote or hypothetical").

5 Second, Plaintiffs argue that they have standing to bring their declaratory relief claim
6 because they "seek to ascertain their and the MariMed Defendants' respective rights under the TCS
7 Agreement, the JDD Agreement, and the MariMed Purchase Agreement." MariMed Opp. at 10.
8 Of course, that does not warrant denial of the Moving Defendants' Motion. Plaintiffs have not
9 alleged that Moving Defendants were a party to any of those agreements, thus Plaintiffs have no
10 standing to seek declaratory relief against Moving Defendants. *See also supra*, Section VIII.

11 Finally, Plaintiffs fail to address *any* portion of Moving Defendants' argument that
12 Plaintiffs cannot establish *any* connection to Moving Defendants sufficient to state a claim against
13 them. *See Mot.* at 11.

14 Plaintiffs have not and cannot allege "an actual justiciable controversy," and Plaintiffs lack
15 standing to pursue their claims against Moving Defendants. The court should grant the Motion and
16 dismiss each of the remaining claims.

17 **V. THE FAC FAILS TO STATE A CLAIM FOR UNJUST ENRICHMENT.**

18 Plaintiffs argue that they pled a viable claim for unjust enrichment because the money they
19 purportedly invested in Harvest "undoubtedly helped Harvest continue its operations and grow into
20 an attractive investment opportunity *for MariMed*," which inexplicably "conferred a benefit on all
21 Defendants, who by way of their intermingled business interests collectively benefited from *the*
22 *MariMed transaction*." Opp. at 13 (emphasis added). Plaintiffs are wrong.

23 There is no legitimate dispute that to state a claim for unjust enrichment Plaintiffs were
24 required to identify a "benefit" received by each of the Moving Defendants. Plaintiffs have not
25 pled or identified (because they cannot) a single benefit *they* conferred on any of the Moving
26 Defendants or that the Moving Defendants unjustly retained any such theoretical benefit. At best,
Plaintiffs claim that some nebulous benefit was generally conferred on the Moving Defendants (but

1 none specifically) by virtue of Plaintiffs investing in Harvest, which in turn made Harvest “an
2 attractive investment opportunity for MariMed.” Again, that does not establish any connection to
3 or benefit conferred on the Moving Defendants. In fact, the FAC does not allege that any of the
4 Moving Defendants had any connection to MariMed or were parties to the MariMed transaction.
5 And Plaintiffs certainly did not cite to any such theoretical “benefit” sufficient to satisfy the
6 elements of an unjust enrichment claim.

7 Moreover, to the extent Plaintiffs suggest that “Plaintiffs’ unjust enrichment claim would
8 fail as to the Item 9 Defendants *only if* Plaintiffs had a written contract with the Item 9 Defendants”
9 (Opp. at 14 (emphasis added)), such assertion is demonstrably false. Plaintiffs’ unjust enrichment
10 claim fails for the reason stated above – i.e., Plaintiffs’ abject failure to allege sufficient facts to
11 satisfy the basic elements of an unjust enrichment claim. *See Certified Fire Prot., Inc. v. Precision*
12 *Constr., Inc.*, 128 Nev. 371, 381 (2012).

13 **VI. THE FAC FAILS TO STATE A CLAIM FOR CIVIL CONSPIRACY.**

14 Plaintiffs claim that they pled a viable claim for civil conspiracy based on only two
15 allegations: (1) the Moving Defendants conspired with the other Defendants to enter into the Item
16 9 Agreements, and (2) the Moving Defendants had “actual or constructive knowledge that, by
17 entering the Item 9 Agreements, Defendants Burton and Lemons . . . were . . . [breaching] their
18 fiduciary duties to Plaintiffs.” Opp. at 14.³ These conclusory allegations are woefully insufficient
19 and do not salvage the FAC from dismissal.

20 As noted in the Motion (at 15), Plaintiffs failed to allege several key elements of a civil
21 conspiracy claim, namely that the Moving Defendants entered into the Item 9 Agreements “*to*
22 *accomplish* an unlawful objective” and “for the *purpose* of” harming Plaintiffs. *See Guilfoyle v.*
23 *Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813 (2014) (emphasis added). Plaintiffs did

24 ³ Although Plaintiffs cite to over twenty paragraphs in the FAC to “support” their civil conspiracy
25 claim, only three of those paragraphs have any direct bearing on Plaintiffs’ civil conspiracy
26 allegations. *See* FAC ¶ 98 (conclusory allegation that “all named Defendants had actual or
constructive knowledge of Plaintiffs’ membership interest in Harvest and the associated Exclusive
Authorization Rights”); ¶¶ 183-84 (conclusory allegation that “Defendants [acted in concert and]
intended to work together as part of a conspiracy to commit the unlawful and improper conduct
described herein”).

1 not dispute, let alone address, these deficiencies in the Opposition.

2 Moreover, Plaintiffs did not (because they cannot) allege that Moving Defendants had *ever*
3 *even heard of* Plaintiffs before they entered into the Item 9 Agreements. Likewise, Plaintiffs have
4 not alleged (because they cannot allege) that the Moving Defendants entered into the Item 9
5 Agreements *to accomplish an unlawful objective and for the purpose of harming Plaintiffs*.
6 Absent such an allegation, Plaintiffs' civil conspiracy claim fails, and the Motion should be granted.

7 **VII. THE FAC FAILS TO STATE A CLAIM FOR AIDING & ABETTING.**

8 Plaintiffs claim that they pled a viable claim for aiding and abetting a breach of fiduciary
9 duties because (1) the Moving Defendants purportedly do not dispute three of the four elements of
10 the claim, and (2) Plaintiffs alleged "that Defendants knew of Plaintiffs' ownership interests and
11 Equal Authorizations Rights, which provides a basis to reasonably infer that Defendants knew that
12 they were aiding and abetting Burton's and Lemons' breaches of their fiduciary duties when they
13 entered the Item 9 Agreements." Opp. at 15-16.

14 First, contrary to Plaintiffs' assertion, the Moving Defendants *expressly disputed* that
15 Plaintiffs had sufficiently alleged the first element of the claim (i.e., existence of a fiduciary
16 relationship), which necessarily means that Plaintiffs did not allege the other elements. *See* Mot.
17 at 16. Absent a fiduciary relationship, there could obviously be no breach of that relationship or
18 damages resulting from said breach.

19 Second, Plaintiffs' suggestion that its conclusory allegations are sufficient is disingenuous
20 and completely contradicted by applicable law.⁴ Plaintiffs admit that the only allegations in the
21 FAC regarding their aiding and abetting claim are (1) that "[e]ach Defendant . . . knowingly
22 participated in or facilitated these breaches" (FAC ¶ 196), and (2) "all named Defendants had actual
23 or constructive knowledge of Plaintiffs membership interests in Harvest and the associated
24 Exclusive Authorization Rights" (FAC ¶ 98). And even after acknowledging that applicable law
25 requires "factual allegations . . . from which knowing participation can be reasonably inferred,"

26 ⁴ Plaintiffs suggest that Delaware law would not be persuasive to this Court. However, the Moving Defendants explicitly noted in the Motion that Nevada has adopted Delaware law on aiding and abetting. *See* Mot. at 16 n.4.

1 Plaintiffs do no more than refer back to their *conclusory, non-factual allegations* to declare those
2 allegations create such a reasonable inference. They do not.

3 Third, Plaintiffs fail to address – and thereby concede – that they failed to allege “that the
4 Moving Defendants substantially assisted or encouraged Lemons or Burton to breach any fiduciary
5 duty owed to Plaintiffs” (i.e., one of the necessary elements of an aiding and abetting claim). *See*
6 *Mot. at 16; see also Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1490 (1998), *overruled in part on*
7 *other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265 (2001) (alleged aider and abettor must
8 “knowingly and substantially assist[.]” the primary violator’s breach).

9 For these reasons, the aiding and abetting claim fails, and the Motion should be granted.

10 **VIII. THE FAC FAILS TO STATE A CLAIM FOR DECLARATORY RELIEF.**

11 Plaintiffs claim that they are entitled to declaratory judgment “with respect to a contract or
12 instrument” under N.R.S. 30.040. *Opp. at 16.* Plaintiffs assert that they pled a viable declaratory
13 judgment claim because “a justiciable controversy exists between Plaintiffs and Defendants, who
14 collectively engaged in a series of interconnected transactions that erased Plaintiffs’ interest in
15 Harvest and shut them out of the cannabis industry in Nevada.” *Opp. at 16-17.*

16 But as demonstrated in the Motion – which Plaintiffs completely ignore – “Plaintiffs do not
17 allege (and cannot allege) that they were parties to the Item 9 Agreements or have any rights in or
18 to the subject matter of those agreements or any ‘legally protectable’ interest therein.” *Mot. at 18.*
19 Plaintiffs cannot seek declaratory relief relating to contracts to which they were not parties.
20 Moreover, common sense alone dictates that a vague “series of interconnected transactions” cannot
21 provide a viable basis for a declaratory judgment claim.

22 **IX. THE COURT SHOULD AWARD THE MOVING DEFENDANTS THEIR ATTORNEYS’ FEES AND COSTS.**

23 The Moving Defendants sought an award of attorneys’ fees and costs in their Motion. *Mot.*
24 *at 19.* Plaintiffs argue that fees should not be granted because they never *technically* admitted that
25 the claims against the Moving Defendants were improper and did not enter into any binding
26 agreement to dismiss the claims against them. *Opp. at 17.* Plaintiffs’ arguments are unavailing.

1 Under N.R.S. § 18.010(2)(b), courts are encouraged to award a prevailing party its
2 attorneys' fees "when the court finds that the claim . . . of the opposing party was brought or
3 maintained without reasonable ground or to harass the prevailing party." The purpose of such an
4 award is to "deter frivolous or vexatious claims and defenses because such claims and defenses
5 overburden limited judicial resources, hinder the timely resolution of meritorious claims and
6 increase the costs of engaging in business and providing professional services to the public."
7 N.R.S. § 18.010(2)(b); *see also* ECDR 760.

8 Plaintiffs engaged in precisely the type of behavior that § 18.010(2)(b) and ECDR 7.60 is
9 intended to deter:

- 10 • Plaintiffs do not dispute that they were told more than a month before the Motion
11 was filed that their claims against the Moving Defendants were not based on
12 legitimate or reasonable grounds.
- 13 • Plaintiffs do not dispute that they agreed to dismiss all claims against the Moving
14 Defendants (except Strive Management).
- 15 • Plaintiffs acknowledge that they later refused to dismiss their claims against the
16 Moving Defendants.
- 17 • The Moving Defendants were then forced to incur substantial attorneys' fees and
18 costs in preparing and filing the Motion and this Reply.
- 19 • Plaintiffs have now (in their Opposition) agreed to dismiss each of the Individual
20 Defendants and many of the claims pled against the remaining Moving Defendants.

21 Plaintiffs' claims were frivolous and meritless to begin with. They were informed of such
22 facts early on. Yet they forced the Moving Defendants to spend significant resources preparing
23 and filing the Motion, only to dismiss many of the claims and Individual Defendants that they
24 should have dismissed (and agreed to dismiss) early on. This Court should not countenance such
25 improper tactics, and should award fees under § 18.010(2)(b) and ECDR 7.60.

26 . . .

1 **X. CONCLUSION.**

2 For the foregoing reasons, this court should dismiss the FAC against each of the Moving
3 Defendants with prejudice and award Moving Defendants their attorneys' fees and costs pursuant
4 to N.R.S. §§ 18.010 and 18.020.

5 DATED this 17th day of February, 2021.

6 SMITH LARSEN & WIXOM

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8 /s/ Karl L. Nielson

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26 *and Chase Herschman*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 17, 2021 a true copy of the foregoing **DEFENDANTS ITEM 9 LABS CORP., VIRIDIS GROUP 19 CAPITAL LLC, VIRIDIS GROUP HOLDINGS, LLC, ANDREW BOWDEN, DOUGLAS BOWDEN, BRYCE SKALLA, JEFFREY RASSAS, AND CHASE HERSCHMAN'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS** was sent via electronic means to the following at their last known email addresses, pursuant to EDCR 8.05(a):

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1 CASE NO. A-20-811232-B

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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JDD, LLC,

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Plaintiff,

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vs.

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LARRY LEMONS,

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Defendant.

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REPORTER'S TRANSCRIPT

16

OF

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MOTION TO DISMISS

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(TELEPHONIC HEARING)

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

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DISTRICT COURT JUDGE

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DATED WEDNESDAY, FEBRUARY 24, 2021

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Pursuant to NRS 239.053, illegal to copy without payment.

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* * * * *

1 LAS VEGAS, NEVADA; WEDNESDAY, FEBRUARY 24, 2021

2 1:23 P.M.

3 P R O C E E D I N G S

4 * * * * *

01:23:03

5
6 THE COURT: Yeah. Let's start with the
7 plaintiff.

8 MR. IGLODY: Lee Iglody for the plaintiff.
9 Yes. Good afternoon. Lee Iglody for the plaintiffs.

01:23:39

10 MS. HERLING: Good afternoon, your Honor.
11 This is Candace Herling for Snowell Holdings, Larry
12 Lemons, and Donald Burton.

01:24:00

13 MR. SHANBHAG: This is Mukunda Shanbhag. I am
14 an Arizona counsel for Larry Lemons, Donald Burton, and
15 Snowell Holdings LLC. We were -- I'm joined by my
16 colleague Mr. Justin Brandt. We were admitted
17 pro hac vice recently. I'll be arguing on behalf of
18 these defendants today specifically concerning
19 Snowell's motion to dismiss.

01:24:19

20 MR. GABROY: Good afternoon, your Honor. This
21 is Christian Gabroy, 8805, on behalf of defendant Sara
22 Gullickson.

23 MR. WRIGHT: This is John Wright for
24 defendants Marimed, Levine, and Fireman.

01:24:46

25 MR. NIELSON: Good afternoon, your Honor.

01:24:46 1 This is Karl Nielson. Lauren Stine and I represent
2 defendants ITEM 9 Labs Corp, ITEM 9 Properties LLC,
3 Strive Management LLC, Viridis Group I9 Capital LLC,
4 Viridis Group Holdings LLC, Andrew Bowden, Douglas
01:25:03 5 Bowden, Bryce Skalla, Jeffrey Rassas, and Chase
6 Herschman.

7 MR. BARRETT: Good afternoon, your Honor.
8 This is Kevin Barrett. I represent Harvest Foundation.

9 THE COURT: All right. Does that cover all
01:25:24 10 appearances? I guess, we'll take that as a yes.

11 (Multiple speaker cross-talk)

12 Anyway, we have a series --

13 I'm sorry, go ahead.

14 MS. HERLING: Sounds like it, the silence.

01:25:45 15 THE COURT: Yes. Anyway, we do have a series
16 of motions, motions to dismiss in this matter. Let me
17 look here at the calendar again.

18 Where should we start? I mean, the first one
19 up is defendant's Marimed Inc, Robert Fireman, and Jon
01:26:01 20 Levine's motion to dismiss the first amended complaint.
21 Can we just proceed in order?

22 MR. WRIGHT: That's fine, Judge. This is John
23 Wright. It's my motion.

24 THE COURT: All right. Well, Mr. Wright, you
01:26:16 25 have the floor, sir.

01:26:18 1 MR. WRIGHT: Thank you, Judge. And I'm going
2 to be brief. I know all the other ones are pretty
3 complicated. Mine's fairly simple.

4 It's essentially that the complaint with
01:26:34 5 respect to Marimed, Levine, and Fireman is so feather
6 light on facts, it's just an impossible leap to draw
7 the conclusions that are contained in there.

8 It's one thing if the plaintiff is alleging
9 that my clients may be interested parties, and,
01:27:00 10 therefore, their involvement in the case is necessary
11 because there's maybe a competing interest they claim
12 for these shares.

13 However, it's quite another thing to say -- to
14 base your entire case on the allegation that my clients
01:27:18 15 ran into the plaintiffs at a convention, 2016. And
16 then extrapolate that into a conspiracy to deprive them
17 of an interest in a company that by law is required to
18 be registered with the state. And it's not.

19 There is -- whatever interest they're
01:27:46 20 claiming, it's not registered with the state. You
21 don't have an interest in the company until there is
22 such registration or approval by the state.

23 And the public record, as alleged by plaintiff
24 in its original complaint, indicates that the
01:28:03 25 plaintiffs have no interest in the company. My clients

01:28:06 1 are allowed to rely upon publicly recorded documents.
2 Everybody else is. The whole purpose behind that is so
3 the public being rely on them.

4 If they are claiming that there is some other
01:28:23 5 source of information which lead them -- which would
6 have lead my clients to believe that the plaintiffs
7 were being deprived of some interest in this company,
8 it's certainly not alleged in the complaint anywhere.

9 You know, if -- if there was some allegation
01:28:45 10 that, Well, gee, in the process of due diligence,
11 certain documents were revealed to my clients, and as a
12 result of that they would have known about this
13 interest, or claimed interest, that might be one thing,
14 but they're not there yet. It's too early to simply,
01:29:07 15 in a shotgun approach, say all of these people are
16 conspiring amongst themselves to deprive them of an
17 interest which is not reduced to writing, there's no
18 indication that it was ever brought to my client's
19 attention other than this mere allegation that four
01:29:24 20 years ago they bumped into each other at a convention
21 and somehow we're supposed to extrapolate four years
22 later that they still have some interest and that it's
23 not -- and that it's not inchoate but rather solidified
24 by the state.

01:29:42 25 Judge, I apologize. I'm a little bit -- the

01:29:43 1 COVID vaccine is kicking me in the butt right now. I'm
2 a little off.

3 But in any event that's essentially where
4 we're at. And we can go through each of the causes of
01:29:58 5 action, but you have to realize is that when you get to
6 each one of these causes, all you have essentially is a
7 conclusion that either my client conspired with them,
8 or they've been unjustly enriched in some impossible
9 fashion. But there's no factual basis in the
01:30:15 10 complaint, or the amended complaint rather, to
11 establish any of this. And I understand, you know, the
12 standard is quite low, of course, at this stage of the
13 game.

14 And, but you're supposed to have some basis
01:30:32 15 for the lawsuit before you file the lawsuit. You're
16 not supposed to use the discovery process to discover a
17 cause of action, which appears to be what they're going
18 for.

19 There very may well be -- there's, obviously,
01:30:47 20 some dispute between them and Harvest. That doesn't
21 involve my client whatsoever. If during the course of
22 discovery of the dispute with Harvest they find some
23 facts which would actually support any of the
24 allegations in the complaint, then certainly they could
01:31:03 25 join them at that time.

01:31:05 1 But there's absolutely nothing in there other
2 than, you know, just meeting somebody at a convention
3 for a couple minutes and then somehow four years later
4 you're supposed to connect that with them having an
01:31:20 5 interest, which is contrary to publicly available
6 information that is issued by the state.

7 And so in a nutshell that's it unless you've
8 got specific questions. You know, we covered this
9 pretty well in the briefs.

01:31:41 10 THE COURT: Thank you, sir. We'll hear from
11 the opposition.

12 MR. IGLODY: Thank you, your Honor. Once
13 again it's Lee Iglody for the plaintiffs. Let me just
14 start by saying, of course, the standard is very high
01:31:54 15 precisely because the Nevada Supreme Court recognizes
16 that when you file a complaint, you have to make
17 allegations that you believe to be true that if are
18 proven true would give rise to a claim for relief under
19 Nevada law.

01:32:06 20 Our argument is we have in our opposition and
21 all the oppositions is that in this case, focusing on
22 Marimed, that we have, in fact, made sufficient
23 allegations that, if proven true, and more facts will
24 come to light during discovery, obviously, that we
01:32:21 25 would be entitled to the relief that we asked for.

01:32:24 1 Now, it's important to remember -- this will
2 be more relevant for one of the later motions -- we're
3 talking about the cannabis industry in the state of
4 Nevada, which at the earlier part, all right,
01:32:36 5 everything was confidential. As the Court may be
6 aware, you know, over time both the regulatory
7 structure has changed. So it's gone from public --
8 Department of Public Health to Department of Taxation
9 and now the Cannabis Compliance Board.

01:32:51 10 The Cannabis Compliance Board, thank goodness,
11 partial mandate of the state legislature has become
12 more forthcoming and open with books and records. Why
13 is that relevant? It's relevant because if I'm stuck
14 to my complaint, which alleges all that we have at the
01:33:09 15 moment, right, because unlike a normal business where I
16 can just go out there and try to put together what's
17 happening, the confidential nature of the records here,
18 all right, makes it difficult to do.

19 So all we have is this. My clients, Nevada
01:33:22 20 residents, investing in a Nevada licensed cannabis
21 business, right, discover after years of, frankly,
22 getting the run around, it's alleged in the complaint,
23 that Marimed had some interest. I don't know what
24 interest. They have some interest.

01:33:36 25 I mean, they reported paying, I think it was

01:33:38 1 \$1.2 million, and there being assorted agreements. And
2 so the question is if Marimed purchased my client's
3 interest, then the question arises what remedies were
4 accrued to my client.

01:33:50 5 We allege in the complaint that they had
6 knowledge. And we allege, because it's all we have, is
7 that they had actual knowledge, not implied knowledge
8 because one would think any large corporate transaction
9 during due diligence you would discover someone else
01:34:02 10 had an interest in the same asset you were purchasing.

11 But the Court doesn't even have to infer that
12 because in the complaint as stated we're stating
13 enough. We met these guys. They knew who we were.
14 And they went around us. If that's the case, and if
01:34:14 15 it's the early stage of the case, it is to be accepted
16 by the Court with all reasonable inferences as true, we
17 would argue that their motion to dismiss should be
18 denied.

19 Thank you.

01:34:29 20 THE COURT: Here's my question: From a
21 factual perspective, what specifically did these three
22 defendants -- and I'm focusing on Mr. Fireman,
23 Mr. Levine, and then, of course, Marimed -- do that
24 would be the basis for a claim for relief?

01:34:54 25 MR. IGLODY: As stated in the complaint -- oh,

01:34:55 1 go ahead. I'm sorry, your Honor.

2 THE COURT: No, no. Go ahead.

3 Because it's my understanding eight paragraphs
4 in the complaint pertain specifically to these specific
01:35:06 5 individuals; is that correct?

6 MR. IGLODY: I think so. I mean, I have my
7 outline in front of me. I have to count how many
8 paragraphs, but I think that's correct.

9 MR. WRIGHT: Judge, I think you're correct. I
01:35:20 10 put that in my reply.

11 THE COURT: And the reason why I point that
12 out, I mean, potentially there might be some basis
13 factually for a claim for relief at some point. But
14 when you file the lawsuit, you have to those facts in
01:35:47 15 your possession. And maybe in the course of discovery
16 as to other individuals you might find out more. But I
17 think as a minimum threshold, you have to pled facts as
18 to their involvement somehow in this transaction,
19 scheme, or whatever you want to call it. And that is
01:36:10 20 my point.

21 MR. IGLODY: This is Lee Iglody. May I
22 address that briefly?

23 THE COURT: Absolutely, sir.

24 MR. IGLODY: Oh, thank you.

01:36:17 25 As I stated at the outset, part of the

01:36:20 1 problem, of course, is that, of course, dealing with
2 the cannabis industry the ability to ascertain facts
3 independently prior to litigation is far more
4 constrained than it would be in any other industries.

01:36:32 5 So what we have to go off of is what you have in the
6 complaint.

7 And my position is not that our facts are
8 super awesome; right? My position simply is that under
9 the heightened standard for motions to dismiss if it is
01:36:44 10 true that these gentlemen and Marimed knew of the
11 competing ownership interest for that which they
12 alleged to have purchased or might have purchased, had
13 a contingent right to purchase. I don't know.

14 We do know they gave 1.2 million followed up,
01:36:57 15 I think it was by another 2 million investment. We
16 have a right to assume in the complaint that something
17 went amiss because they now apparently have either
18 interest in or contingent interest in our ownership
19 interest we paid for a few years before in the entity.

01:37:13 20 And so the argument here is, yes, it could be
21 we do discovery and we find out, oh, it turns that
22 "X" -- I don't know what the "X" is, by the way. And
23 from the complaint you can tell the frustration is we
24 don't know what the "X" is. We just know that our guys
01:37:25 25 paid for the ownership interest in this entity. And

01:37:26 1 now other people are claiming to own that ownership
2 interest. And we'd just like to find out how that
3 happened.

4 And so the argument would be, again, not that
01:37:35 5 we have the super spectacular facts, your Honor. It's
6 that under the heightened standard, we got enough in
7 there if only those bare facts prove true, we, at
8 least, have tenable claims as plead in the first
9 amended complaint. Thank you.

01:37:48 10 THE COURT: And what would be the claims as it
11 relates to Fireman, Levine, and Marimed Inc?

12 MR. IGLODY: Do you want me to address the
13 individual ones like the unjust enrichment, conversion,
14 conspiracy, breach of fiduciary duty, and alter ego and
01:38:06 15 declaratory relief claims? Or did you want me just to
16 give you a general description?

17 THE COURT: No. I mean, I just want to
18 understand from the factual perspective what would be
19 the basis for the claims? Because I have to look at it
01:38:18 20 from an individual perspective. For example, we have
21 two individuals, Mr. Fireman and Mr. Levine. And then
22 we have Marimen Inc -- Marimed Inc.

23 MR. IGLODY: Yes. Thank you, your Honor.

24 So, I mean, starting from the last claim. You
01:38:31 25 know, it would be imminently justifiable to name

01:38:36 1 Marimed and its chief executives who have actual
2 firsthand knowledge of our existence prior to engaging
3 in whatever transactions they engaged in with Harvest
4 to ask this Court to declare for a declaratory relief
01:38:49 5 claim who owns what.

6 So in other words if we are supposed to have
7 approximately 20 percent of Harvest, and now Marimed
8 apparently or with some mix of Marimed, Strive, and I9,
9 I don't know the answer to that, okay, are claiming an
01:39:01 10 ownership interest in that same 20 percent that we are
11 claiming ownership interest in, our argument would be,
12 yes, we do have a right to bring this to a court of
13 law. And the Court of law would have to exercise its
14 jurisdiction over these defendants in order to issue
01:39:14 15 some declaratory relief regarding the ownership of a
16 Nevada cannabis company in Nevada, by mostly Nevada
17 residents, or at least from the plaintiffs' side,
18 Nevada residents. So our argument would be, yes.

19 And if we get declaratory relief, and we
01:39:27 20 discover, oh, they're claiming an ownership interest
21 that they knew they actually didn't have a right to and
22 that they cut my clients out potentially or,
23 essentially, we don't know, then the argument is, yes.
24 We would have a claim for relief for conversion and
01:39:40 25 unjust enrichment. After all that belongs to us. And

01:39:43 1 now you have it, and you're being enriched and taking
2 it away.

3 And the argument then would be, Well, if that
4 all happened, it would give inference to -- which is
01:39:51 5 all we're asking because I got nothing except what I
6 gave you in my complaint -- but inference that there
7 was a conspiracy or potentially conspiracy to do
8 something that deprived my client and harvest the
9 fruits of whatever they invested.

01:40:03 10 And so the argument would be, your Honor, yes.
11 I mean, again, I'm not sitting here arguing we would
12 have a super strict factual complaint. Far from it.
13 But considering our limitations, we had enough to make
14 the claim. And I might be sitting here, you know,
01:40:14 15 eating may bowl of humility here in two months or
16 whatever it is after we put everything together and
17 figure out what actually happened and how those people
18 actually ended up with my clients' interest in the
19 company. But in the meantime, we're just asking for an
01:40:26 20 opportunity to proceed forward as pled.

21 Thank you.

22 THE COURT: All right. Thank you, sir.

23 Mr. Wright.

24 MR. WRIGHT: Yes, Judge. All I heard there
01:40:36 25 was a lot of speculation on what might happen if

01:40:39 1 they're allowed to drag my clients through the
2 discovery process on a case where you're going to have
3 a dozen lawyers at every deposition. It's just not --
4 it's just not -- it's just not right.

01:40:50 5 I mean, here they're not asking for merely a
6 declaratory relief action to find out what my client's
7 interest is. They're suing them for conversion, for
8 conspiracy, alter ego trying to pierce the corporate
9 veil against these individuals. Which, of course, you
01:41:08 10 know, is -- you know, Nevada constitution actually
11 controls that. And says, no, they're not responsible.
12 And you got to prove something. They don't have
13 anything today to support any of this.

14 Aiding and abetting the breach of a fiduciary
01:41:23 15 duty. Intentional interference with a contract. What
16 contract? You know, it goes on and on. And what he's
17 just saying is is that essentially there is no standard
18 when you're at this stage of the game. I can allege
19 anything, and I can sort it out later on in discovery
01:41:44 20 at your expense.

21 No. Look, the case is going to go forward, I
22 would assume, against Harvest. They've got some
23 dispute with them. They may find additional facts at
24 some point. But that's when you bring it. You don't
01:41:58 25 assume first, find the facts later, and then try to get

01:42:02 1 releases. What are they going to do? How are they
2 going to compensate us from this once they figure out
3 we have no involvement in whatever they're claiming?
4 It's completely backwards, Judge.

01:42:13 5 And I think you hit the nail on the head.
6 Which is where are the facts that support these causes
7 of action? It's not enough that you make a conclusion
8 that somebody conspired. You got to -- you got to lay
9 the foundation for that. And it's not there. And this
01:42:26 10 is really unfortunate because you've got all of these
11 people being dragged into this so that they can try to
12 figure it out somewhere down the line in their own
13 time, but on our dime.

14 It's not appropriate, Judge, and I ask you to
01:42:43 15 grant our motion.

16 THE COURT: Okay. And I just want to make
17 sure the record is clear. I mean, I do understand what
18 the pleading requirements are as it relates to
19 NRCF Rule 8(a), 9(b), and specifically what the
01:43:05 20 standards are as it pertains to a motion to dismiss.
21 But I want to point out at a very minimum you do have
22 to have -- and I should say notwithstanding the fact
23 that Nevada is a notice pleading state, you do have to
24 have facts set forth in the complaint to support each
01:43:24 25 and every claim for relief in this case.

01:43:31 1 To me a really good example potentially might
2 be breach of fiduciary duty. And I can't think of any
3 set of facts based upon the way the case currently sets
4 that the two individual defendants in this case, for
01:43:49 5 example, Mr. Fireman and Mr. Levine would be
6 fiduciaries to the plaintiff. And that's really just a
7 good example. We have to have facts to support that.

8 And so this is what I'm going to do. As far
9 as the motion to dismiss is concerned, I'm going to
01:44:11 10 grant it. It will be -- as far as the dismissal, it
11 will be without prejudice. But if there's a motion to
12 amend down the road, it's going to have to be based
13 upon facts that are learned during the course and scope
14 of discovery.

01:44:26 15 And just as important too, that's not the
16 purpose of discovery to create your facts. You should
17 have the facts before you file the lawsuit. And that's
18 my point.

19 And so what we're going to do, Mr. Wright,
01:44:46 20 we're going to have you prepare an order. And have
21 specific findings in the order, sir, with conclusions
22 of law. Make sure you circulate that with plaintiffs'
23 counsel.

24 If you can't agree on the contents, each of
01:44:57 25 you are free to submit competing orders. Don't let the

01:45:02 1 orders sit too long. Once it's circulated from
2 Mr. Wright, I think 72 hours, three days or so would be
3 a reasonable period of time to review it. And I'm not
4 saying you have to sign off, but that would be to
01:45:14 5 prepare your competing order. And so that's what we'll
6 do with that one.

7 And then I move on.

8 MR. IGLODY: Your Honor, may I? Real quick,
9 your Honor. Sorry to interrupt. Lee Iglody again for
01:45:27 10 the plaintiffs.

11 Since we're ordering the transcript, would it
12 be okay to say contingent upon at least having 24 hours
13 to look at the transcript?

14 THE COURT: You can look at --

01:45:37 15 MR. IGLODY: Or if not, I could go, you know.

16 THE COURT: Yeah.

17 MR. IGLODY: Just because I expect it's going
18 to be a bunch of orders at the end of this. And that's
19 why I ordered it, so I can make sure I can get it
01:45:47 20 right, basically.

21 THE COURT: I understand. And sometimes if
22 you don't get it right, there's always Rule 60(a), you
23 know, as far as relief from an order. But, anyway,
24 that's what we'll do.

01:46:00 25 And any other -- any comment on that issue,

01:46:04 1 Mr. Wright, as far as it relates to the transcript?

2 MR. WRIGHT: No, Judge. Not a problem.

3 THE COURT: All right. So, anyway, let's go

4 ahead and move on. I think next up, is that defendants

01:46:18 5 Snowell Holdings' motion to dismiss pursuant to Nevada

6 Rules of Civil Procedure 12(b)(2); is that correct?

7 MR. SHANBHAG: Yes, your Honor. This is

8 Mukunda Shanbhag, Arizona counsel for Snowell Holdings.

9 I was recently admitted pro hac vice. I'll be arguing

01:46:39 10 on behalf of Snowell.

11 THE COURT: Okay. Sir, you have the floor.

12 MR. SHANBHAG: Thank you, your Honor. The

13 motion to dismiss, it's a pretty simple motion. It's

14 that there's no specific or general jurisdiction over

01:46:56 15 Snowell Holdings LLC. And in the opposition, the

16 plaintiffs, they admit that there's no general

17 jurisdiction, so the only issue remaining is specific

18 personal jurisdiction.

19 And the law concerning that is that the

01:47:12 20 defendant has to purposefully direct their activities

21 towards the state, the causes of action allegedly need

22 to arise from the contact, and it should be reasonable

23 to exercise jurisdiction over that defendant.

24 Now, here, and as outlined in our motion, your

01:47:31 25 Honor, there are no contacts between Snowell Holdings

01:47:34 1 and Nevada. And we submitted a declaration by Larry
2 Lemons who's the sole member and owner of Snowell
3 Holdings. Mr. Lemons is an Ohio resident. Snowell
4 Holdings is an Ohio entity. Snowell doesn't do
01:47:50 5 business in Nevada, doesn't have any representatives in
6 Nevada. There is no advertising or soliciting going on
7 in Nevada on behalf of Snowell. And Snowell doesn't
8 have any interest in any Nevada companies, including
9 Harvest, which plaintiff alleges in their opposition
01:48:06 10 that Mr. Lemons's interest in Harvest may be
11 100 percent through his interest in Snowell Holdings.
12 But as Mr. Iglody, you know, alluded this is concerning
13 marijuana law and marijuana companies in Nevada.
14 And at the time that, you know, these alleged
01:48:25 15 actions happened, an entity couldn't even hold as a
16 membership interest or an ownership interest in a
17 marijuana license holding entity. So it's -- it --
18 essentially it would have been illegal for Snowell
19 Holdings to be the vehicle to which Mr. Lemons had his
01:48:45 20 interest in Harvest.
21 And at this point, it's also helpful to kind
22 of just to discuss the context of this, your Honor.
23 Because, as you know, the plaintiffs are represented by
24 different counsel previously. And we have this
01:49:00 25 discussion with them where we went through each of

01:49:03 1 these facts. The representations from Mr. Lemons, the
2 fact that Snowell Holdings doesn't have any contacts in
3 Nevada. And we came to the agreement that plaintiffs
4 would dismiss Snowell Holdings from the case.

01:49:15 5 Now, just five days later they came back and
6 said that they had to renege on their promise, that
7 they could no longer dismiss, and the previous counsel
8 would be withdrawing.

9 And after that it's just been, you know,
01:49:30 10 Snowell is forced to file this motion on something that
11 we had even agreed needed to be dismissed.

12 So, and that's -- and that leads into our
13 request for fees. Which is we've been put in the
14 position where we're filing this motion. The facts are
01:49:47 15 certainly -- you know, there are essentially no
16 contacts with Snowell Holdings that has to justify
17 specific personal jurisdiction.

18 And, again, going back to what plaintiff's
19 counsel argued against the Marimed motion, that's
01:50:02 20 essentially their argument in their opposition. Which
21 is that they should just be given leeway to avoid the
22 standards that they need to meet.

23 And here the standard is that they have the
24 evidentiary burden of making a prima facie showing that
01:50:17 25 there's specific personal jurisdiction over Snowell.

01:50:21 1 Instead, what they're arguing is that there's
2 some conjecture that Snowell may own some part, some
3 companies in Nevada that are related to this litigation
4 which is the fact that the declaration of Larry Lemons
01:50:35 5 refutes 100 percent. But the -- based on that
6 conjecture the Court should exercise jurisdiction, and
7 that's just not the standard. It doesn't meet their
8 evidentiary burden, and there are just no contacts that
9 Snowell has in Nevada to justify exercising
01:50:52 10 jurisdiction over the entity.

11 That's it from us, your Honor. At least --

12 THE COURT: Okay.

13 MR. IGLODY: -- until we hear from plaintiff's
14 counsel.

01:51:03 15 THE COURT: All right. And thank you, sir.

16 We'll hear from plaintiff's counsel.

17 MR. IGLODY: Thank you, your Honor. Let's
18 start off with the proposition that the defendant who
19 took my client's money and then led them around for
01:51:19 20 five years submitted a declaration saying he swears
21 under penalty of perjury his mother ship entity in Ohio
22 had nothing to do with it. And based on that evidence
23 they're asking you to shift the burden to me without me
24 having the benefit of one shred of discovery regarding
01:51:38 25 Mr. Lemons, the money that he took from my clients, ran

01:51:41 1 through I don't even know how many entities. That's
2 one of my frustrations. I don't know. I'll find out,
3 but I don't know right now.

4 And somehow the Court is supposed to accept
01:51:49 5 without any discovery, even after jurisdiction, tight
6 little jurisdictional discovery, right, that his
7 entity, which apparently is important for him to hire
8 two law firms, right, to seek dismissal of, should be
9 out of this case when he's the sole member of the
01:52:04 10 entity; right? And his argument is, Well, all the
11 money I stole from your guys has nothing to do with
12 Snowell. Okay.

13 Well, let's find out. And maybe you're right.
14 People can own different companies. I don't know that.
01:52:15 15 But if what I alleged in the complaint is true, right,
16 where I say that -- well, I -- the complaint says that
17 Snowell figures into this cascading, you know,
18 merry-go-round of entities that we would have a claim
19 against them.

01:52:29 20 And again, the frustration. And I apologize.
21 Normally, you know, my complaint is a little different.
22 But here we are. The problem is, again, all I know is
23 Snowell's in the mix as alleged in the complaint. I'm
24 stuck to the four corners of the complaint. And the
01:52:43 25 argument I would make, respectfully, your Honor, is

01:52:44 1 that if the Court makes reasonable inferences from the
2 allegations as stated in the complaint, Snowell can and
3 should, in fact, be a defendant. And the Court does
4 have specific jurisdiction.

01:52:54 5 And if the Court decides it doesn't want to
6 make that decision that it would rather do a little bit
7 of jurisdictional discovery to come back to you, that's
8 fine too. But thank you so much, your Honor.

9 THE COURT: Thank you, sir.

01:53:10 10 MR. SHANBHAG: Your Honor, this is -- sorry.
11 Your Honor, if I may.

12 THE COURT: Absolutely.

13 MR. SHANBHAG: Your Honor, again, Mr. Iglody's
14 argument is that they should be allowed discovery to
01:53:27 15 drag Snowell Holdings through this based entirely on
16 speculation that Mr. Lemons somehow diverted money
17 there. At the same time, yes, Snowell Holdings is
18 mentioned a number of times in the complaint, but there
19 isn't any allegations, specific allegation that Lemons
01:53:46 20 diverted money into Snowell Holdings specifically.

21 Just that Snowell Holdings owns certain Nevada entities
22 and that Mr. Lemons may have, through Snowell Holdings,
23 purchased an interest in Harvest.

24 But as we pointed out, your Honor, that is
01:54:03 25 impossible. I understand Mr. Iglody's argument. And,

01:54:06 1 again, not something that we can contest that "yes"
2 this is Mr. Lemons's declaration. But looking at the
3 fact that this is a marijuana entity and at the time
4 could not have been owned by another entity, that
01:54:19 5 allegation just simply is not true.

6 The second part, your Honor, is that the law
7 puts the burden on the plaintiff to show specific
8 jurisdiction when jurisdiction is challenged.

9 So it's not a matter of us shifting the burden
01:54:36 10 on to the plaintiffs. It's that the defendants have
11 that burden when it's challenged, and they just haven't
12 met it, your Honor.

13 That's all from me unless you have any
14 questions.

01:54:55 15 THE COURT: Sir, I don't have any. And I did
16 get a chance to review the points and authorities, and
17 I have a pretty good understanding as to what the
18 allegations are in this case. And specifically as it
19 relates to specific personal jurisdiction in this
01:55:11 20 matter, and I'm focusing on the Snowell Holdings
21 defendant. And under the facts of this case,
22 especially in light of the holding of our Nevada
23 Supreme Court in the Trump versus Eighth Judicial
24 District Court, the evidentiary burden has not been met
01:55:35 25 in this case from the plaintiff's perspective. And I

01:55:38 1 feel I have no choice but to grant the motion, sir.

2 The dismissal will be without prejudice, and
3 if something happens down the road. But for the
4 purposes of today, I'm going to grant the motion.

01:55:54 5 As far as fees are concerned and costs are, I
6 think it would be prudent to go ahead -- if you feel
7 you want to do that, you're more than welcome to
8 entertain a motion as it pertains to that specific
9 issue.

01:56:14 10 MR. SHANBHAG: Thank you, your Honor. We
11 intend to file one.

12 THE COURT: I understand.

13 Okay. So we're moving on. We're actually
14 going quicker than I anticipated; although, that might
01:56:25 15 slow down with the next motion.

16 Next up we have, I guess it would be
17 defendant's ITEM 9 Labs Corporation, ITEM 9 Properties,
18 Strive Management, et cetera, et cetera, a motion to
19 dismiss for failure to state a claim upon which relief
01:56:49 20 may be granted and lack of personal jurisdiction.

21 And let's go ahead, and we will continue on
22 with the moving party.

23 MS. STINE: Good afternoon, your Honor. This
24 is Lauren Stine counsel for what I'll refer to as the
01:57:06 25 ITEM 9 defendants. You listed them all, your Honor.

01:57:08 1 But if it's okay for us, we'll just refer to them as
2 the ITEM 9 defendants collectively.

3 Your Honor, you've already heard from a couple
4 of different groups or constituencies in this case.

01:57:19 5 The ITEM 9 defendants consist of individuals and
6 entities that operate in the cannabis based, or own
7 real estate, or simply engage in investment activities.
8 Many of them are based solely in Arizona.

9 Now the points that you already heard made by
01:57:35 10 Marimed's counsel, Mr. Wright, I think apply equally to
11 my client constituency if not, in fact, in reality to a
12 much greater extent. At bottom my clients simply have
13 no connection to the plaintiffs in this case and many
14 of the other players that are actually named as
01:57:53 15 defendants. And they simply don't have a dog in this
16 fight.

17 And now, your Honor, while the complaint is
18 pretty lengthy, at bottom, you know, it spans 244-plus
19 paragraphs, at best only ten of them pertain to the
01:58:07 20 ITEM 9 defendants. And none of those ten actually
21 identify with any specifics what any of my clients
22 supposedly did wrong that has subjected them to some
23 pretty serious claims in this particular lawsuit.

24 Distilling the whole thing down though, your
01:58:19 25 Honor, at best, from what we can discern, plaintiff's

01:58:22 1 entire case against my client hinges on the -- on this
2 assertion that plaintiffs on the one hand and my
3 clients on the other hand just happen to enter into
4 business, separate business transactions albeit on
01:58:35 5 totally separate companies regarding separate assets,
6 with the same two individuals, Mr. Lemons and
7 Mr. Burton.

8 Now, your Honor, I'm happy to delve certainly
9 to the details of each of the different agreements and
01:58:49 10 what the allegations are in the complaint, but at
11 bottom, plaintiffs don't allege nor can they allege in
12 the first amended complaint that my clients are parties
13 to any agreements with the plaintiff that could give
14 rise to a claim, that they're parties to any
01:59:03 15 transactions with the Harvest Foundation, that they
16 have an interest in the Harvest Foundation or the
17 assets it holds, or that they have any interest in this
18 exclusive authorization rights agreement that forms the
19 basis of the complaint.

01:59:16 20 And instead what my clients happened to do is
21 enter into totally separate business arrangements with
22 the defendants Larry Lemons and Donnie Burton
23 concerning a company called Strive Wellness. But
24 plaintiffs don't claim an interest in that entity.
01:59:31 25 They don't claim to have any agreements with that

01:59:34 1 entity. And they don't allege that they were parties
2 to any of the ostensible agreements between my clients
3 and Mr. Lemons and Mr. Burton which were referred to as
4 the ITEM 9 agreement.

01:59:44 5 So again, your Honor, at bottom the only
6 connection between the plaintiff on the one hand and my
7 clients is this alleged assertion that they both
8 entered into agreements with Lemons and Burton on
9 totally separate and distinct entities with separate
01:59:57 10 and distinct terms. That's it.

11 And based on that alone, your Honor, they've
12 asserted a host of claims against my client that they
13 had to incur significant cost and expense in defending
14 up to this point.

02:00:09 15 Now, in the opposition plaintiffs have agreed
16 to dismiss each of the individual defendants and a
17 number of the claims against the entity defendants.

18 But the handful of claims that do remain still
19 fail and are defective for a number of different
02:00:24 20 reasons. We have issues with personal jurisdiction.
21 We have issues withstanding, which Marimed's counsel
22 Mr. Wright had already alluded to. And there's defects
23 with each of the individual claims, your Honor.

24 And I'm prepared and I'm happy to speak to the
02:00:36 25 defects with respect to each of those if that's

02:00:38 1 something that the Court would like to do. And so at
2 that point I'll ask. Would you like me, your Honor, to
3 go through the defects of each of the claims?

4 THE COURT: You can.

02:00:48 5 MS. STINE: Go ahead.

6 THE COURT: As to the remaining parties, it's
7 my understanding that the remaining parties after
8 the -- I'm just looking at my notes here. After the
9 opposition was filed and there was agreement to let out
02:01:03 10 some of the individual defendants. I guess, left would
11 be ITEM 9 Labs Corp, ITEM 9 Properties, Strive
12 Management, Viridis Group Holdings, and Viridis Group
13 I9 Capital and -- Capital LLC.

14 That's just my scrivener's notes. But
02:01:27 15 sometimes I wonder if I can read them after I go back
16 to it. But those are the five entities we're talking
17 about; is that correct? Or --

18 MS. STINE: That's what I have on my list as
19 well, your Honor. I'm happy to go through the reasons
02:01:37 20 why the claims that have been articulated against each
21 of those defendants that still remain defective based
22 on the allegations in the complaint if that's something
23 you would like me to do.

24 THE COURT: Yeah, ma'am. For the record it's
02:01:48 25 probably important to hit the high points.

02:01:52 1 MS. STINE: Sure. Your Honor, let's just take
2 Viridis first. Move for dismissal on the basis of
3 personal jurisdiction as to the two Viridis entities.
4 In the opposition the plaintiff has conceded that there
02:02:02 5 is no general jurisdiction against the Viridis
6 entities. They're focused solely on personal
7 jurisdiction.

8 Both of the Viridis entities, however,
9 submitted declarations with our motion which
02:02:14 10 demonstrated that they have no connection to the
11 plaintiffs, no knowledge in dealing or awareness of the
12 plaintiff. And no involvement in Nevada business
13 dealings that purportedly give rise to the claims
14 against them in this case.

02:02:26 15 In having submitted those declarations, the
16 burden is on the plaintiff to come forward with
17 admissible evidence to sustain the assertion that this
18 Court has personal jurisdiction.

19 As has been noted in the arguments a few
02:02:38 20 moments ago by counsel for Snowell, the opposition
21 simple doesn't do that. It resorts back to pointing at
22 different versus conclusory and threadbare allegations
23 in the complaint. And that's not sufficient under the
24 Trump case that the Court has referred to earlier.

02:02:53 25 So, your Honor, for those reasons the Court

02:02:55 1 should dismiss Viridis on the basis of lack of personal
2 jurisdiction.

3 Now, turning to an overarching argument I
4 think that's already been articulated very well by
02:03:06 5 Mr. Wright on behalf of Marimed, and this is -- this
6 affects each of my remaining clients and each of the
7 claims against them. It's the -- it's the assertion
8 that plaintiffs lack standing, and there isn't a
9 justiciable controversy because they don't allege and
02:03:20 10 can't allege at this point that they have any right, or
11 claim, or interest in the Harvest Foundation.

12 Now, there can't be really any legitimate
13 dispute. And I don't think this was denied in the
14 opposition that each and every one of the plaintiff's
02:03:32 15 claims in this case, especially those against my
16 clients, is founded on this fundamental assertion that
17 there's an ownership interest they have in the Harvest
18 Foundation and from that interest they were granted
19 certain rights.

02:03:45 20 But if they don't have an interest in the
21 company, each and every claim that they have against my
22 clients which is necessarily founded on that purported
23 interest fails as a matter of law. So for that reason,
24 your Honor, each of the claims against each of my
02:03:58 25 clients remaining should be dismissed.

02:04:00 1 With respect to the unjust enrichment claim,
2 there's a handful of claims, your Honor. I'll tick
3 through them relatively quickly. Unjust enrichment,
4 you'll see slightly different theories articulated in
02:04:10 5 the opposition from the first amended complaint.

6 The opposition theory goes something like
7 this. Plaintiffs invested in Harvest. That investment
8 benefited all of the defendants because everybody
9 benefited from the Marimed transaction.

02:04:24 10 The complaint, however, doesn't allege nor can
11 it allege that any of my clients which remain, or any
12 of them at all, had any interest in or right to or were
13 participants in the Marimed transaction.

14 So there's simply no unjust enrichment --
02:04:38 15 there was in no benefit conferred and no unjust benefit
16 retained under that theory.

17 The first amended complaint suggests that my
18 clients were somehow unjustly enriched because they
19 excluded plaintiffs from participating in what are
02:04:52 20 referred to as the ITEM 9 agreements. And those are
21 the separate agreements that my clients are alleged to
22 have entered into with Mr. Lemons and Mr. Burton
23 concerning the Strive Wellness entity.

24 Now, while plaintiffs may wish that they could
02:05:07 25 have been parties to those agreements, that doesn't

02:05:10 1 translate into a claim for unjust enrichment.

2 Excluding someone from a transaction that they
3 had no right to participate in in the first place
4 doesn't give rise to a claim for unjust enrichment.

02:05:21 5 And at any rate on its face it doesn't identify any
6 unjust benefit that my client received, or benefit that
7 my client received that flowed from the plaintiff, and
8 it was unjustly retained.

9 Now, with respect to the civil conspiracy
02:05:37 10 claim, that claim is founded on the theory that by
11 entering into the ITEM 9 agreements every defendant,
12 including my clients, somehow conspired with every
13 other defendant to violate the plaintiff's exclusive
14 authorization rights. And those are rights that they
02:05:55 15 claim derive from some sort of an unwritten agreement
16 with defendants Lemons and Burton pursuant to which the
17 parties would restrict or oppose parameters around how
18 the Harvest entity would operate.

19 Claim fails for a couple of the different
02:06:13 20 reasons with respect to my clients. The complaint
21 doesn't allege, nor can it, that the ITEM 9 agreements
22 somehow violate this exclusive authorization agreement.

23 That agreement only precluded, by virtue of
24 the allegations in the complaint, Harvest from entering
02:06:29 25 into certain types of transactions. Harvest is not a

02:06:32 1 party to the ITEM 9 agreements and any investments that
2 my clients, you know, purportedly made in the Strive
3 entities by virtue of the ITEM 9 agreements has no
4 bearing or impact on whatever they claim are their
02:06:43 5 exclusive rights in Harvest.

6 The claim also fails because there is no
7 unlawful objective. They can't allege, and they
8 haven't, that the ITEM 9 agreements are somehow illegal
9 or improper. They have alleged that my clients having
02:06:56 10 the intent in entering into those ITEM 9 agreements do
11 somehow harm the plaintiff. In fact, the first amended
12 complaint doesn't include any specific allegations
13 whatsoever that would suggest that my clients even knew
14 anything about the plaintiffs or anything about their
02:07:12 15 purported interest in the Harvest Foundation or their
16 agreements with Lemons and Burton.

17 In fact, you can see, Judge, in the
18 declarations that we submitted in the motion are in
19 connection with the personal jurisdiction argument that
02:07:24 20 my clients have indicated that had no knowledge of
21 these particular plaintiffs until this litigation.

22 With respect to the aiding and abetting claim
23 which remains, your Honor, and there's two -- there's
24 two more left. Aiding and abetting, this one is founded
02:07:38 25 on the theory that Lemons and Burton breached fiduciary

02:07:43 1 duties to the plaintiff and breached their exclusive
2 rights by entering into the ITEM 9 agreements.

3 Again, however there's no fiduciary
4 relationship as Marimed has argued as well. If there's
02:07:53 5 no legal interest in Harvest, there can't be any
6 fiduciary relationship that would form the basis of the
7 claim, or a fiduciary duty. Let alone one that could
8 form the basis of an aiding and abetting claim.

9 But the allegation with respect to assistance
02:08:06 10 in the breach, or the breach of the duty, those simply
11 aren't there. Any interest or right that they have in
12 Harvest and these exclusive rights don't preclude on
13 their face other folks from entering into separate
14 business transactions regarding separate -- separate
02:08:23 15 companies and separate assets.

16 The scienter allegation is also missing, your
17 Honor. They haven't alleged any knowledge of scienter
18 on behalf of my client. There is a generic assertion
19 that everybody kind of knew about everything that was
02:08:37 20 going on. But that's not -- that's not sufficient to
21 state a claim for relief.

22 And finally, your Honor, on the declaratory
23 judgment claim, this is another one where they are
24 shifting theories between the complaint and what you
02:08:49 25 see in the response. The theory in the complaint is do

02:08:53 1 you want a declaration with respect to the ITEM 9
2 agreements. But they're admittedly not parties to the
3 ITEM 9 agreements and have no right or interest in the
4 ITEM 9 agreements, and, therefore, they're not entitled
02:09:08 5 to any declarations with respect to those agreements.

6 Now, the response shifts a bit. And now
7 there's an assertion that, you know, there's generally
8 a controversy between everyone because there's all
9 these interconnected transactions that may have
02:09:25 10 eliminated Harvest.

11 But again, your Honor, the complaint doesn't
12 allege, because it can't, that my clients have alleged
13 any interest in Harvest or parties to any agreement
14 with Harvest.

02:09:38 15 Your Honor, I -- bottom line, I don't believe
16 my client should be in this case. The fact that the
17 claims have already been dismissed against them
18 demonstrates that there's merits to the motion.

19 And at this point, your Honor, I'll rest with
02:09:55 20 that. Unless you have any specific questions, then
21 I'll save the remainder of my comments for my rebuttal.

22 THE COURT: Okay. Ma'am. Thank you. I don't
23 have a question at this time.

24 We'll hear from the plaintiff.

02:10:08 25 MR. IGLODY: Thank you, your Honor. Lee

02:10:09 1 Iglody for the plaintiffs.

2 Just to confirm in the complaint, paragraph
3 104, for example, actually more specifically generally
4 alleged in 299 and 104 that there was a joint venture
02:10:23 5 between I9 and, therefore, all the other entities
6 involved in this motion to dismiss and Harvest.

7 And also as alleged in the complaint, again,
8 we're from the outside looking in, what happened to our
9 ownership interest. Lemons and Burton are officers of
02:10:42 10 Strive. At the time they're making a deal with the
11 joint venture with Harvest, which we're alleging at the
12 end of the day deprives us of our owner interest and
13 other rights in Harvest.

14 Again, I'm not making an argument that this is
02:10:53 15 a super spectacular complaint. I am making the
16 argument, though, that if it is true that I9 Labs and,
17 therefore, Strive Wellness, Strive Management and
18 through cascading income participation Viridis Group
19 and the other Viridis entities are participating in the
02:11:10 20 operation of profit or taking the profits of the Nevada
21 cannabis industry that we allege that we own
22 approximately 20 percent of and that we've been
23 deprived of our ownership interest. We argue that that
24 with reasonable inferences from the Court would be
02:11:23 25 sufficient for us to maintain our claim.

02:11:25 1 And so addressing the individual arguments.
2 First off, jurisdictionally I'm in the same position.
3 Now with respect to the Tricarichi case, 135
4 Nevada 87, which is a more recent case, that the
02:11:38 5 argument here is if we had a prior opportunity to do
6 some kind of discovery of any kind to figure out why
7 did ITEM 9 have this joint venture with Harvest which
8 is cascading revenue with Strive and this and that.
9 Then it would be a different situation if I failed in
02:11:52 10 the complaint to allege something.
11 All I have now is what we're able to cobble
12 together from public statements filed from the 10K
13 statements, right, where there is a venture. And
14 Burton and Lemons, the same guys who took my client's
02:12:03 15 money, by the way, are officers of the entities
16 engaging in the transaction. Both sides by the way,
17 bilateral. And somehow at the end of the day the only
18 thing I know for sure is that my guys no longer have an
19 ownership interest, but these people do. It's
02:12:13 20 reasonable for me to name them in the complaint.
21 Again, as I said before, even just for the declaratory
22 relief. There's two people contending they own the
23 same thing. Somebody has got to resolve that dispute.
24 So the argument would be, your Honor, as we
02:12:26 25 state in our opposition, referencing strictly to the

02:12:29 1 four corners of the complaint as we're required to do,
2 that if our claims turn out to be true, then our rights
3 arise.

4 Going into the individual arguments. The
02:12:39 5 question is if our complaints turn out to be true, and
6 if it's true, and, again, I'm just staying in the four
7 corners of the complaint, that knowing that we had a
8 conflicting right to the same Harvest entity, its
9 operations, its engagement in third-party agreements,
02:12:57 10 20 percent ownership, and so on, and they went forward
11 with it anyway, could we say aiding and betting? Yeah.
12 Could we say conspiracy? Yeah.

13 And then the argument would be do we have a
14 right to these -- do we have a conflicting right that
02:13:11 15 needs to be addressed? Yes, we do.

16 And if they assisted Larry Lemons and Don
17 Burton with their breach of fiduciary duty, breach of
18 contract, and so on, misrepresentation and what not,
19 then could they potentially be liable?

02:13:26 20 And remember, Lemons and Burton prior to the
21 time were actually officers of these entities. So it's
22 a little bit -- it's a little bit confusing here, but
23 if it's true that they did these things when we said in
24 the complaint that they did them, does it give rise to
02:13:39 25 our claims? And the short answer to that is, yeah, it

02:13:41 1 does. It absolutely does, your Honor.

2 And the question, of course, is, oh boy,
3 plaintiff doesn't have all the facts. Yeah, that's
4 exactly right. Typically you don't have the facts.

02:13:49 5 You show on the site. There is a car. There is a
6 couple injured people. You figure it out afterwards.
7 But everybody there gets to participate in the case
8 until we figure out who, what, when, where.

9 And so our argument, your Honor, is, unless
02:13:58 10 you want us specifically addressing individual claims,
11 is we have alleged enough to maintain the complaint for
12 now. Such as to what we find out when we do discovery
13 and we let the individuals out. Not because we don't
14 think that we have something but because at the end of
02:14:10 15 the day stuck to my four corners of the complaint --
16 okay, I'm not going -- I'm not going to waste time with
17 that. But we do absolutely believe the individual
18 entities should be in.

19 Thank you.

02:14:22 20 THE COURT: I just have a question for you,
21 sir. What about the Viridis defendants and the
22 personal jurisdiction argument?

23 MR. IGLODY: Thank you, your Honor. So as we
24 put in our opposition, the argument that we made in
02:14:36 25 regards to the jurisdiction is if Viridis -- I'm

02:14:40 1 mispronouncing. I apologize for that. If Viridis made
2 investments in Nevada operations, particular cannabis
3 operations, then it is reasonable to assert specific
4 jurisdiction because this dispute arises from that
02:14:55 5 investment.

6 It was foreseeable that they could get
7 involved in the dispute. And it's certainly reasonable
8 that if they are going to participate in the profits
9 generated from this highly regulated industry, in
02:15:05 10 whatever form, derivatively or cascading revenue share,
11 then it seems reasonable that we'd be able to exercise
12 jurisdiction in Nevada.

13 And Nevada, by the way, has a very specific
14 interest in making sure this particular industry, which
02:15:17 15 is going through a lot of changes right now, that the
16 Court has oversight into anybody who participates in it
17 even if they're separated by one or two shelter -- two
18 entities away from the transaction but they're still
19 participating based on public records.

02:15:34 20 THE COURT: Okay. But when you said that, I
21 think you prefaced your response with "if". We don't
22 know that; do we?

23 MR. IGLODY: Which part was "if"? I
24 apologize, your Honor.

02:15:45 25 THE COURT: We're talking about Viridis. The

02:15:47 1 Viridis Group Holding.

2 MR. IGLODY: Right. And again, if my -- if my
3 claim in the complaint is correct that they were
4 participating in the revenues of the operations of
02:15:57 5 Strive Wellness and Strive Management through I9 with
6 Harvest, is that what you're asking me?

7 THE COURT: Well, I think in a general sense
8 because the defendant, the Viridis entities they're
9 taking a position that they're based out of Arizona,
02:16:09 10 and they have no minimum contacts with Nevada at all
11 that would give rise to this Court exercising a general
12 personal jurisdiction over them. And that's my
13 recollection as to what their position is.

14 And our position is if you invest in Nevada
02:16:29 15 cannabis business, it is very reasonable to assert a
16 claim against them. Because it was -- it could be
17 anticipated that you would be hailed into a Nevada
18 court of law; right? In other words you -- they
19 established affirmative contacts. Cause of action
02:16:44 20 arises as a result derivatively from those contacts.

21 Again, this is under the umbrella of the I9
22 and Strive agreements. And so can they be named
23 because they have a somewhat separated attenuated
24 scale, but they have still have a direct interest in
02:16:59 25 the same -- basically the nucleus of common facts in

02:17:02 1 terms of revenue generation and the operating
2 agreements and the operations of Harvest? And the
3 answer to that is, "yes", your Honor.

4 THE COURT: But the question was "if". That's
02:17:12 5 why I brought that up. And the reason why I bring
6 that, I think it's important to point out, I was a tort
7 lawyer. And used in auto accident scenario. But I'm
8 not going to sue an individual based upon an "if" they
9 ran the red light.

02:17:28 10 I'm going to want to make sure that an
11 investigation was conducted beforehand prior to filing
12 a lawsuit to establish, in fact, there's evidence to
13 support that they did run the red light potentially by
14 statements from independent witnesses, or fruits of a
02:17:47 15 police investigation where there's an admission against
16 interests contained in the police report. Like, I
17 mean, that's just kind of how things are. So I can't
18 let a case proceed forward on "if". We need to know
19 facts, for example, as to whether or not --

02:18:02 20 MR. IGLODY: Okay.

21 THE COURT: -- the Viridis entities did, in
22 fact, invest. And that's my point.

23 MR. IGLODY: And all I can do is refer you,
24 the Court, to, I guess, to paragraph 104. But they --
02:18:16 25 group together paragraphs 109 and 104. We say this is

02:18:18 1 public records. They have did an investment. And they
2 are participating in the profits and revenues.

3 That's our assertion in the complaint. And if
4 the Court has an issue of the admissibility of 10K
02:18:31 5 filings with the SEC, the argument would be they're
6 public records. And that's the only reason we were
7 able to piece this together that part of the equation
8 is because there were 10K filings.

9 So the argument would be if you're going to
02:18:42 10 participate, it's reasonable to hail you into court as
11 a result of that participation.

12 Now, I don't know the scope of the
13 participation as we put in the complaint. We just know
14 the part of it. We know that I9 is part of it. We
02:18:54 15 know the Strive Group is part of it. We know Viridis
16 is part of it.

17 Whether they're in Arizona or not -- I mean,
18 let's just say their declarations are absolutely true;
19 right? The question is if I'm an Arizona resident and,
02:19:04 20 of course, right, and I invest in Nevada business, is
21 it unreasonable that as a result of an investment I get
22 hailed into court in Nevada? Our argument would be,
23 No, it's not unreasonable.

24 I could be wrong, by the way, except in this
02:19:17 25 particular allegation, unlike the other ones, I mean, I

02:19:19 1 got a 10K filing.

2 THE COURT: Sir, I respect that. I do; right?

3 MR. IGLODY: Thank you, your Honor.

4 MS. STINE: Your Honor, that is Lauren Stine.

02:19:31 5 May I be heard?

6 Your Honor? Hello?

7 THE COURT CLERK: Ms. Stine, this is the

8 courtroom clerk. I can hear you. It looks like judge

9 is reconnecting possibly.

02:19:56 10 MS. STINE: Okay, thank you.

11 (brief pause in proceedings.)

12 THE COURT: All right. I think I'm back. I'm

13 sorry. I got dropped and that was at the end of

14 plaintiff's counsel's argument. I think he made a

02:20:43 15 comment I could be wrong on that, and I respect that.

16 And so, sir, I just want to make sure, are you

17 finished?

18 MR. IGLODY: Yes, your Honor.

19 THE COURT: Okay. All right. We'll hear the

02:20:56 20 reply.

21 MS. STINE: Thank you, your Honor.

22 You know, a lot of what we heard from counsel

23 for the plaintiff sounded eerily similar to what we

24 heard in connection with the Marimed argument.

02:21:08 25 If maybe when discovery, maybe some day shows

02:21:12 1 there's a claim, well, then we'll be proven right. But
2 that's -- you have to have facts. You have to allege
3 them in the complaint before you actually proceed
4 forward with claims.

02:21:22 5 You know, otherwise we're going to find
6 ourselves, however many months from now, standing here
7 spending a whole bunch of money on all sides around
8 this thing based on allegations that don't sustain
9 claims for relief.

02:21:35 10 Again, it does appear that plaintiffs do have
11 some beef with the Harvest Foundation. And in the
12 event that their lawsuit -- again, discovery in
13 connection with the Harvest Foundation might reveal
14 some facts against some of the other individuals and
02:21:51 15 entities, then maybe that's the day that some of those
16 get brought in. But not at this point, your Honor.
17 Not based on the kind of allegation that we have here
18 which are maybe Viridis made a capital contribution
19 into Strive's management. And there's no connection
02:22:06 20 between Strive Management and the plaintiffs and
21 Harvest.

22 The lack of any connection here or theory that
23 ties anything together is really fatal to all the
24 claims, your Honor.

02:22:22 25 THE COURT: Okay. Ma'am, and are you

02:22:25 1 finished? I just want to make sure.

2 MS. STINE: Unless you have anything specific
3 you'd like me to weigh in on.

4 THE COURT: No, ma'am. I think we have a
02:22:33 5 fairly thorough record. I just have a few minor
6 comments. And I'll just group them.

7 As far as the Viridis defendants are concerned
8 and that includes Viridis Group Holdings and also
9 Viridis Group 19 Capital LLC, and as it pertains to
02:22:55 10 personal jurisdiction in this matter, I'm going to
11 grant the motion as in regards to that issue.

12 And then we move on to the, I guess, what has
13 been referred to collectively as the ITEM 9 defendants.
14 And that would be ITEM 9 Lab Corporation, ITEM 9
02:23:15 15 Properties, and Strive Management. Based upon the
16 current status of the pleadings as it relates to the
17 claims for relief that have been set forth on the
18 record here, I guess, for example, would be unjust
19 enrichment, civil conspiracy, aiding and abetting,
02:23:36 20 breach of fiduciary duty, declaratory judgment, I think
21 I overlooked the first one. But under the facts as
22 currently pled, it appears to me there could be no
23 factual basis as set forth in the complaint as to
24 claims for relief against the ITEM 9 defendants
02:23:53 25 collectively.

02:23:54 1 And so, ma'am, what I'm going to do as far as
2 the motion is concerned, I'm going to grant that. I'm
3 going to have you prepare -- just like I said in the
4 prior matters, a detailed findings of facts conclusions
02:24:05 5 of law.

6 I would request that you get a copy of the
7 transcript. And take your time on that. And just as
8 important, we're going to make sure plaintiff's counsel
9 gets an opportunity to get the transcript. And then
02:24:16 10 you can prepare an order with findings. And you can
11 also reference the transcript if you wish.

12 And just as important, plaintiff's counsel
13 will get a chance to also do the same.

14 Last, but not least, the dismissal at this
02:24:31 15 stage will be without prejudice.

16 MS. STINE: Thank you, your Honor.

17 THE COURT: All right.

18 I think next up is defendants Sara
19 Gullickson's motion to dismiss plaintiff's complaint;
02:24:58 20 is that correct?

21 MR. GABROY: Yes, your Honor. This is
22 Christian Gabroy. Good afternoon.

23 THE COURT: Good afternoon, sir.

24 MR. GABROY: As part of our motion as well,
02:25:06 25 your Honor, we filed notices of joinder to Marimed's

02:25:11 1 and Snowell's motion to dismiss, which have been
2 granted previously today by this Court. The Court has
3 entertained a lot of argument regarding the individual
4 defendants and the allegations as pled.

02:25:22 5 What I think is important when Mr. Wright
6 first stepped up and your Honor asked, Well, where are
7 the facts? What is required by the Nevada Supreme
8 Court to base your allegation in this nine counts that
9 are brought against an individual who was transport
02:25:42 10 manager of a company in 2018?

11 And in no way did she sign any of these
12 agreements. In no way did she execute any of these
13 agreements. And no way was she even knowledgeable of
14 these agreements in 2015, which the first amended
02:25:59 15 complaint, 244 paragraphs 33 pages is based upon.

16 For all those previous reasons, your Honor,
17 that this Court has so well articulated in granting
18 these motions to dismiss, defendants Sara Gullickson
19 believes she should be dismissed from this case as
02:26:16 20 well.

21 Previously I discussed with plaintiff's
22 counsel about entering into a BDSM which was without
23 prejudice. She'll appear for a deposition even. But
24 that's how far, that representation wasn't honored.

02:26:29 25 So, your Honor, there are no facts, there can

02:26:31 1 be no facts involving her, involving these 2015
2 agreements. For those reasons already articulated so
3 well by previous counsel we believe that the individual
4 defendant Sara Gullickson, a resident, your Honor, of
02:26:46 5 Arizona should be dismissed from this action.

6 THE COURT: Thank you, sir.

7 We'll hear from the plaintiff.

8 MR. IGLODY: All right. Thank you, your
9 Honor.

02:26:57 10 So in regard to Gullickson, since we're kind
11 of coming to the tail end of the sequence of motions
12 I'll go ahead and focus on distinguishing Sara first.

13 We're distinguishing Sara from for example I9.
14 She was a managing member of Harvest, particularly when
02:27:12 15 Harvest entered into some of these agreements that we
16 complained of, again, some of which are supported by
17 public filings. So as a managing member can she be
18 liable for the actions of the company that she's a
19 managing member of if she personally participated in
02:27:26 20 them? And the argument is yes. As an officer at the
21 very least.

22 Also she happened to be a member of Strive
23 Management and Strive Wellness. Do we -- do we -- one
24 of the contested transactions which resulted in a joint
02:27:41 25 venture in Nevada with Harvest Foundation, and also the

02:27:46 1 argument here is that at the very least, as a managing
2 member of Harvest, she would have presumably had some
3 knowledge of the operations of Harvest, its previous
4 agreements. And that if, again, my -- the complaint is
02:28:02 5 looked at from the perspective of if what's stated in
6 the complaint turns out to be true, could Sara
7 Gullickson be held liable pursuant to the causes of
8 action in the complaint? And the argument would be
9 yes.

02:28:17 10 And the argument being especially if you are
11 in a position of authority over the entity that we
12 complained against, along with Burton and Lemons, and
13 we were harmed as a result, that unlike, for example,
14 the Viridis claim, oh, we never came to Nevada. We're
02:28:32 15 just spending the profits, but that's not enough to
16 bring us in. In this case, she's the actual managing
17 member approved by the State of Nevada by the way.
18 Jack is a managing member.

19 At the very least we would argue that we can
02:28:42 20 make the claim that she should be part of this case
21 whether or not she's a resident of Arizona or not.
22 Because when the action took place she was a managing
23 member of Nevada entities. And so the argument would
24 be, yes, Gullickson should be in this case. And as to
02:28:56 25 when discovery is concluded, we'll figure out what her

02:28:59 1 liability is, if any.

2 Thank you.

3 THE COURT: Thank you, sir.

4 We'll hear from the moving parties.

02:29:10 5 MR. SHANBHAG: Yes, your Honor. It's exactly
6 what you pointed out about the illustration that
7 Mr. Iglody offered about a car accident.

8 You don't show up at a scene of a car accident
9 as a tort lawyer and sue everybody that's at the scene
02:29:22 10 of the accident.

11 But your Honor pointed out there's no "ifs".
12 You have to have facts. You have to have knowledge.
13 She wasn't, at the time in 2015, as I said, not a party
14 to these agreements. And, in fact, the first time she
02:29:34 15 even heard of the plaintiffs is when she was served
16 with this lawsuit. You can't rely on presumptions.
17 You can't rely upon speculation. You can't rely upon
18 these ifs. You have to have some type of factual basis
19 of wrongdoing. There's no such thing as guilt by
02:29:50 20 association, especially with the nature of the claims
21 that have been brought against the defendant individual
22 Gullickson.

23 For that basis, your Honor, we believe that
24 they haven't even come close to the list of standards
02:30:00 25 which requires facts being alleged, your Honor, which

02:30:02 1 was solely missing in these 244 paragraphs.

2 THE COURT: Okay. And I want to make sure I
3 understand the timing. It's alleged, and I assume this
4 isn't an issue of fact, but she was a managing member
02:30:17 5 of Harvest. And when did that occur?

6 MR. GABROY: Your Honor, the way that -- this
7 is Christian Gabroy for the individual defendant
8 Gullickson.

9 The way that I understand it is that Harvest
02:30:29 10 has a portion where she was retained to try to get the
11 transportation license, as a transport manager.

12 She not there until 2018. This case is based
13 on 2015, your Honor.

14 THE COURT: Okay.

02:30:46 15 MR. GABROY: And staying to the four corners
16 of the complaint, we allege she was managing member
17 which has its own independent legal effects separate
18 from the factual allegations being made during this
19 proceeding.

02:30:58 20 And that as a managing member she has certain
21 responsibilities. And our claim as stated in the
22 complaint is that as a result of her actions, we were
23 deprived of the fruits of our investment. That's all
24 we have to do in a complaint to start.

02:31:14 25 Now, if I can't prove that at the end of the

02:31:16 1 case, that's my problem. That's on me.

2 But again, when we separate from hard you
3 cannot maintain claim of any kind to well she's
4 managing member, but she didn't know anything about
02:31:28 5 this, I'm sorry, your Honor, that's ripe for the
6 merits. We'll do a motion for summary judgment, let's
7 do to. But let me do some discovery first.

8 Thank you.

9 THE COURT: But here's my question. If she
02:31:35 10 didn't become a managing member of the LLC until three
11 years after this whole transaction and the facts and
12 circumstances leading up to the transaction occurred,
13 why would you want her in the case unless you had
14 specific facts to establish maybe three years later she
02:32:01 15 had some involvement?

16 Because and the reason why I bring that up
17 just because someone is a managing member of an LLC,
18 for example, doesn't mean they can be sued. And, for
19 example, I do agree with you. If she was potentially
02:32:16 20 part of the transaction or she was a managing member I
21 think in 2015, absolutely.

22 But -- and that's why I say facts are
23 important because one thing that wasn't asserted, and
24 this is important when it comes to all types of events
02:32:34 25 and transactions and setting forth or alleging facts as

02:32:39 1 set forth in the complaint, you have to discuss time.

2 When, you know, who, and so on.

3 And I'm not talking about pleading with

4 particularity under Rule 9(b). I'm just focusing on a

02:32:54 5 bare and salient fact in this case, I would think would

6 be time she was a managing member.

7 And the reason why I bring that up, I mean, I

8 do understand the frustration of plaintiff's counsel, I

9 do, and your client, potentially, because they invested

02:33:10 10 money, and lo and behold they didn't get the benefit

11 the bar again. And I get that.

12 But just as important too, I'm just trying to

13 figure out how, for example, under the facts of this

14 case, Gullickson, even though she was a managing

02:33:28 15 member, she became the managing member three years

16 later. And that's my point.

17 So shouldn't the complaint set forth that she

18 was a managing member at or around the time of the

19 transactions involved?

02:33:47 20 MR. IGLODY: I believe looking through the

21 plaintiff's, the Court's allowed to make reasonable

22 inferences. As we stated in the complaint, the primary

23 transaction that deprived my clients of their ownership

24 interest in the company took place when she was at the

02:34:01 25 helm.

02:34:01 1 And so if you're looking at 18 and 19, she was
2 there. And then also for awhile she is Strive too.
3 She's on both sides of some of these transactions.

4 And so the argument is, is it reasonable to
02:34:11 5 impute knowledge of the company's obligations and
6 membership structure to the managing member of the
7 company? And as we allege in the complaint, yes. It
8 is. And that's why we brought her in as a defendant.

9 Because at the end of the day it wasn't just
02:34:26 10 Larry Burton and Don -- I mean, Larry Lemons and Donnie
11 Burton who were in charge for the time period where the
12 major transactions of the third parties took place that
13 formally deprived us of our ownership interest, or my
14 clients of their ownership interest, while she was at
02:34:43 15 the helm.

16 So the question is, is it reasonable to impute
17 upon a managing member of a company knowledge that
18 should be imputed to that member, including especially
19 not -- the agreement with my clients and their
02:34:55 20 ownership interest? And the answer is, yes. It's not
21 unreasonable at all.

22 And probably any managing member would
23 probably take some time to figure out who the owners
24 are before engaging in third-party transactions would
02:35:09 25 be our argument. Thank you.

02:35:12 1 THE COURT: But I just want to make sure I
2 understand what specifically is set forth in the
3 complaint as it relates to actions or lack thereof
4 vis-à-vis Gullickson in 2018 and 2019 as it relates to
02:35:27 5 potential transactions or lack thereof that resulted in
6 some sort of harm be it in contract and/or tort to your
7 client?

8 MR. IGLODY: So, again, referring the Court to
9 paragraphs 94 through 104 of the complaint. And this
02:35:46 10 is where we go into the Harvest Foundation's
11 transactions with the I9 people in the Marimed Group.

12 If she was management at the time, the
13 argument is, and it's true that she had actual or
14 constructive knowledge of our conflicting interest and
02:36:04 15 our exclusive authorization rights, then what follows
16 under Nevada law is some cause of action, and we've
17 pled them in here.

18 And so if the Court is asking does this have
19 to do --

02:36:16 20 THE COURT: For the record what paragraphs are
21 you talking about? Sir, I don't want to cut you off.

22 MR. IGLODY: Yeah.

23 THE COURT: What paragraph are you saying,
24 sir? That's okay.

02:36:25 25 MR. IGLODY: Specifically 94 through 104. And

02:36:31 1 then if you wanted to go back to the other transaction,
2 92 would be a good summary paragraph.

3 THE COURT: Okay. Anything else, sir?

4 MR. IGLODY: On my side?

02:36:47 5 THE COURT: Yes.

6 MR. IGLODY: No. Thank you so much, your
7 Honor.

8 THE COURT: All right. Just I didn't want to
9 cut you off.

02:36:54 10 Okay. We'll hear from the moving party.

11 MR. GABROY: Your Honor, you hit the issue
12 correctly on its head. This relates to a time period
13 that has no relation whatsoever to the individual
14 defendant at this. And he has to allege these facts.

02:37:10 15 I just took a look at paragraphs 94 through 104.
16 Again, you have to allege facts against, especially
17 against, an individual defendant, as you pointed out,
18 with a cloak of an LLC.

19 There's no grounds here for these seven
02:37:25 20 scattershot complaints of unjust enrichment, civil
21 conspiracy. He agreed to drop the alter ego, and the
22 aiding and abetting, and intentional inference of
23 contractual relationships. Although she never even
24 entered into any contractual relationships as alleged
02:37:39 25 in the first amended complaint. For all these reasons

02:37:41 1 previously articulated, we respectfully request
2 Gullickson be dismissed.

3 THE COURT: Okay. This is what I'm going to
4 do. And, unfortunately, I work remote. And so I do
02:37:52 5 have my laptop. And I don't have all the accouterments
6 I would have if I was in the courthouse. And trust me,
7 I do miss that. In fact, I'm hoping to get back in the
8 courthouse within the next two weeks or so since I just
9 had my second vaccine done.

02:38:09 10 But what I'm going to do today, I'm not going
11 to waste a lot of time on it, gentlemen. I don't mind
12 telling you this. I'm going to have to -- I have to
13 get on another database which is a little bit different
14 than the one I'm on right now. And I'll get on
02:38:21 15 Odyssey. And I will go ahead and look at paragraphs 94
16 through 104 and also paragraph 92 just for clarity to
17 say I looked at that. Then I'll issue a real quick
18 minute order. And I'll probably do it today.

19 MR. GABROY: Perfect. Thank you, your Honor.

02:38:38 20 THE COURT: Okay.

21 MR. IGLODY: Thank you, your Honor.

22 THE COURT: And that covered all issues;
23 right? There is nothing else, left?

24 MR. GABROY: Correct, your Honor, on behalf of
02:38:47 25 defendant Gullickson.

02:38:48 1 THE COURT: Okay. All right. And that covers
2 all motions; is that true too?

3 MR. GABROY: Correct, your Honor. On behalf
4 of the defendant Gullickson.

02:38:56 5 THE COURT: Okay. The only reason I asked
6 that question I think we got done a lot quicker than I
7 anticipated when I was reading the motions. I don't
8 mind saying that.

9 But anyway, everyone enjoy your day. And I'm
02:39:07 10 going to go ahead this afternoon and try to go back and
11 read the complaint. And just as important I would
12 anticipate the minute order today, probably tomorrow.
13 Because I have to prepare it. Then my law clerk looks
14 at it. It might not get posted today, but it has to be
02:39:26 15 posted by our clerk. But it should be posted tomorrow.

16 MR. GABROY: Thank you, your Honor.

17 THE COURT: Okay. Enjoy your day.

18 MR. SHANBHAG: Okay.

19 MS. STINE: Thank you, your Honor. Bye-bye.

02:39:34 20 THE COURT: Bye.

21 MR. SHANBHAG: Thank you, your Honor.

22 THE COURT: You're welcome.

23 (Proceedings were concluded.)

24 * * * * *

25

REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

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