

THE SUPREME COURT OF THE STATE OF NEVADA

Vinco Ventures, Inc.,

Petitioners,

v.

The Eighth Judicial District Court, in and
for the County of Clark,
State of Nevada, and Timothy C.
Williams, District Judge,

Respondents,

and

Theodore Farnsworth, Lisa King,
Roderick Vanderbilt, Erik Noble, and
Ross Miller,

Real parties in interest.

Case No.

District Case No. A-22-836404-B

Dept No. XVI

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

**Appendix Vol. II to Interlocutory Appeal as of Right or, in the Alternative,
Emergency Petition for Writ of Mandamus and/or Prohibition under NRAP
27(e) from the Eighth Judicial District Court
The Honorable Timothy C. Williams**

Relief requested under NRAP 27(e) by September 26, 2022

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CERTIFICATE OF SERVICE

I hereby certify that this **Appendix to Interlocutory Appeal as of Right or, in the Alternative, Emergency Petition for Writ of Mandamus and/or Prohibition under NRAP 27(e)** was filed electronically with the Nevada Supreme Court on September 12, 2022. Case participants who are registered with Eflex will be served by the Eflex system and other parties, listed below, who are not registered with the Eflex will be served with a copy of the foregoing via hand delivery or U.S. Mail

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1 after the July 24th meeting when they lock up the SEC Codes, they
2 can't -- the company can't file the SEC forms.

3 Now what you have is you have NASDAQ that suspended
4 trading okay. That's when the loan default comes into play.

5 The loan default comes into play. Defendant's own actions
6 and their contumacious behavior in refusing to comply with the terms of
7 the TRO.

8 They sit here and say, well, we didn't think we could
9 participate in board meetings despite the fact that their counsel was told
10 how I do -- how are we supposed get information to these board
11 members?

12 And it's silence. And then they come in here and complain
13 about it. That's the one thing that they complied with. I mean, they don't
14 want to comply with the other provisions as we laid out in the motion for
15 contempt.

16 So I mean, it's rewarding bad behavior for them to come in.
17 And if the Court wants to fashion something that preserves the status
18 quo --

19 THE COURT: But see, the thing about it is and understand
20 this. I understand your position and respect it.

21 They're kind of arguing the same thing regarding bad
22 behavior. And so, my question is this. This is how I look at it --

23 MR. CONNOT: Yeah.

24 THE COURT: -- as far as both parties are concerned with bad
25 behavior kind of like this until I hear all the facts. I mean, so and that is

1 my point. I don't, but I have to be very cautious.

2 MR. CONNOT: Yes, and several things. Several things have
3 happened. Now a lot of it, you know, there's -- as you've noted, there's
4 allegations on both sides as to --

5 THE COURT: Right.

6 MR. CONNOT: -- who's feet that lies at. But the fact of the
7 matter as is the Court is focused on is preserving a status quo.

8 THE COURT: Thank you.

9 MR. CONNOT: What that status quo looks like. What that
10 status quo looks like. What is their proposal? Repeal the entire thing.
11 Just set it aside and go back to the chaos that existed in the month of
12 July starting on July 8th with the unauthorized unlawful board meeting.
13 That's what they want to go to.

14 Now I hear today for the first time let's even roll it clear back to
15 June and get Mr. Colucci off the board even he was put on there by
16 these other four directors. So I mean, but so I think the Court's task --

17 THE COURT: Right, yeah.

18 MR. CONNOT: -- certainly is to come up --

19 THE COURT: Yeah.

20 MR. CONNOT: -- with the status quo --

21 THE COURT: Yeah.

22 MR. CONNOT: -- that makes sense and [indiscernible].

23 THE COURT: Well, that's one of the things I was looking at
24 because in a general sense, I think the 48 hour notice is fine.

25 However, for example, there's a carve-out right here. And

1 understand this. I don't mind telling you this. Your business court, right,
2 we're a little bit different than other courts because normally, you can't
3 get in front of a trial judge you know, very quickly. You know, and this is
4 important, too. I have to keep my thumb on this case, right, as it
5 progresses through litigation.

6 And my point is this. If there's an emergency, I can be
7 contacted very quickly, right? I can. And for example, it doesn't matter if
8 I -- and I'm not going on over any vacations any time soon for at least
9 the next 60, 90 days. So I'll be in the jurisdiction.

10 And my point is this. If hypothetically you needed some board
11 action quickly, it could happen really quick. And all I mean by that is
12 this. You could call -- you could call Mr. Kemp or Mr. Parker and say,
13 look, I have to get in front of the judge. We need to get in front of the
14 judge now because we have an emergency coming up and we need
15 board action that makes the 48 hours impractical.

16 And you get Mr. Kemp or Mr. Parker on the phone because I
17 can't have ex parte discussions.

18 MR. CONNOT: Uh-huh.

19 THE COURT: And then we're on the phone. And you say,
20 Judge, this is what we need.

21 And then, if I'm in Court, this is how I handle that. I go ahead
22 and we've done this many times. Is this correct, staff? I will come in
23 and said, okay, we're going to do it this way. You might be remote but
24 you might bring your phone, but I'll to it in open court so we have a
25 record. That's how I do everything.

1 MR. CONNOT: Uh-huh.

2 MR. PARKER: Okay.

3 THE COURT: And I've done that on multiple occasions.

4 MR. CONNOT: I don't think this, which was originally
5 designed to get the employees paid --

6 THE COURT: Right.

7 MR. CONNOT: -- was really what the original design of this
8 was. That was where it was left yesterday with the, you know, the
9 insistence that we get this employees paid by Friday addresses enough
10 of the status quo.

11 I mean, my suggestion would be that the parties submit
12 something that carves out what the continuing status quo might be --

13 THE COURT: I have no problem with that.

14 MR. CONNOT: -- and come back to the Court tomorrow and
15 the Court can decide.

16 MR. KEMP: Judge, I don't mind submitting more orders, but I
17 think this one we need to get out there, because --

18 THE COURT: Oh, this one we're going to get out today.

19 MR. KEMP: Yeah, I just think the only issue is whether it's
20 two days --

21 THE COURT: I mean, we've done the carve-out.

22 MR. KEMP: -- as they've proposed.

23 THE COURT: Yeah.

24 MR. KEMP: Yeah, Mr. Rulis can put the carve-out in.

25 THE COURT: Yeah.

1 MR. KEMP: The only issue left is on 5 whether it's two days,
2 30 days, or 60 days. They propose 2 days. I think it should be 60 days.

3 MR. CONNOT: But the question is is what happens with the
4 rest of the terms of the existing TRO or are there other provisions that
5 the Court envisions might be appropriate to maintain the status quo of
6 the company?

7 THE COURT: Now I understand this.

8 MR. CONNOT: You know, resolving --

9 THE COURT: Mr. Connot, I don't want -- trust me, I don't
10 want to cut you off on this --

11 MR. CONNOT: Yeah.

12 THE COURT: -- but those other provisions, I'm going to need
13 your assistance on. I'm going to need Mr. Kemp --

14 MR. CONNOT: Yes.

15 THE COURT: -- and Mr. Parker. Because I can't come up
16 with those other provisions without your assistance. You see what I'm
17 saying?

18 MR. CONNOT: Yes, no, I don't disagree. And maybe that's
19 something we can come back to Court tomorrow with.

20 THE COURT: Yeah.

21 MR. CONNOT: With other provisions that either there's 10
22 provisions or 3 provisions or 9 provisions. And we agree on 30 percent
23 of them and put the rest of them before the judge and you decide. I
24 mean, I think you've heard enough arguments for counsel.

25 THE COURT: Oh, yeah, I've heard a lot of discussion.

1 MR. CONNOT: Yeah, a lot of arguments, a lot of allegations.
2 You've got a lot of documents. And we simply give it to you. And if you
3 have questions, you could say, Mr. Connot, I've got a question about this
4 or Mr. Parker or Mr. Kemp.

5 Tell me why I should have this rather than have us continue to
6 consume Court's time just, you know, throwing back allegations and
7 putting what lawyers do with facts, put the best light possible on our
8 facts and the worst light possible on facts for the other side. So I don't
9 think that's helpful to the Court. I mean --

10 THE COURT: No, I understand.

11 MR. CONNOT: -- if the Court wants, you can certainly ask us
12 to do it, but I don't think that's where you're at. So maybe that's the best,
13 you know, approach at this point.

14 THE COURT: I think -- I'm thinking something like that. .

15 MR. PARKER: So Your Honor, it's -- I know it's 5:00 and I'm
16 mindful of the time of Your Honor as well as your staff. I know there's
17 rules here in terms here of overtime. So I don't want to keep your staff
18 longer than need be.

19 THE COURT: Oh, no. I'm just going to make -- I'm thinking
20 about this for the TRO.

21 MR. PARKER: The -- we're -- I just want correct as kind of a
22 couple of small points. Number 1, Mr. Noble sent over to the Plaintiff the
23 codes. So that suggestion that they were -- that we did not abide by the
24 TRO and kept the codes is ridiculous. It was sent over.

25 Again, Your Honor mentioned the wane of the likelihood of

1 success. And if the Court just said a few moments ago perhaps Mr.
2 Connot did not take note of it.

3 But given what you've already heard, the likelihood of success
4 for the Plaintiff is in question. And you actually referred us to the scales,
5 which appear to be pretty even.

6 And since there has to be a showing of a likelihood of success
7 to maintain this TRO, that TRO in our belief and given what the Court
8 has said should be set aside.

9 The final thing I would mention, Your Honor, looking at the
10 criteria for issuing a TRO and maintaining it is the Clark County School
11 District versus Buchanan case, 112 Nev. 1146, 1996 case.

12 And the Ellis versus McDaniel, 95 Nev. 455, 1979 case. Both
13 indicate Nevada Supreme Court, you have to weigh the interests, the
14 public interest and the relative hardships of the parties in deciding to
15 grant the preliminary injunction as well as maintain the TRO.

16 Certainly, given how much you've heard today and how much
17 you've read between yesterday and today, the Plaintiff's position does
18 not satisfy the prongs required to either issue a TRO, perhaps it did at
19 the time, but certainly not now and certainly not maintaining it, Your
20 Honor.

21 So we ask that -- because that's why we're here. We're here
22 because the Court has the scheduled our opposition -- is hearing our
23 opposition to the Plaintiff's TRO and the TRO not be allowed to continue,
24 Your Honor.

25 MR. CONNOT: So --

1 THE COURT: Mr. Connot, go ahead.

2 MR. CONNOT: -- correction, factual correction. Now Mr.
3 Noble up there on the screen, you know, did not turn over the codes.
4 On Saturday, August 6th, he sent an email to the officers and directors
5 saying he was going to.

6 He immediately followed up a few hours later, in fact, 45
7 minutes later, said I'm amending my last email, based on advice
8 received after being served the TRO.

9 All Vinco Ventures admin rights or Vinco Ventures for servers,
10 SEC codes, and [indiscernible] responsibilities have been handed to co-
11 CEO of Vinco Ventures, Ted Farnsworth.

12 Mr. Farnsworth never provided them, nor did any of the other
13 ones. So --

14 MR. PARKER: You --

15 MR. CONNOT: -- the facts of the situation are that they have
16 failed to comply with it. But beyond that, this Court has wide discretion
17 in making sure that this company stays intact and is sincere --

18 THE COURT: Absolutely.

19 MR. CONNOT: -- is sincere concern and desire.

20 THE COURT: Exactly.

21 MR. CONNOT: To make sure of that. This Court has the
22 authority to fashion some sort of remedy to ensure that the status quo of
23 this company goes forward.

24 THE COURT: Right.

25 MR. CONNOT: And that's what we're requesting is come

1 back tomorrow, submit our competing position.

2 THE COURT: Well, and this is --

3 MR. CONNOT: What we can agree on --

4 THE COURT: -- this is what we're going to do. I'm going to
5 make it actually a little easier for you as far as this issue's concerned,
6 because I'm going to put some heat on you, too.

7 MR. PARKER: Your Honor, I actually got the paperwork
8 proving Mr. Connot wrong in his last comment. This is a email of the
9 codes to Mr. Colucci. So I'm really concerned that Mr. Connot either
10 doesn't know his file or he's not taking heed to Rules of Professional
11 Conduct 3.4 and 3.3.

12 We also have another email where Ms. King I believe sent
13 over the codes. So --

14 MR. CONNOT: And then, they changed the codes.

15 MR. PARKER: You know, so hopefully, he's just not being
16 given all this information from his client, but Your Honor, we can
17 continue going back and forth, but certainly, the prong of prevailing,
18 likelihood of prevailing on the merits has not been satisfied by this
19 Plaintiff.

20 THE COURT: All right. This is what I'm going to do. Number
21 one, as far as paragraph 4 is concerned, they'll be a carve-out exactly
22 like I indicated as it pertained to participation in the calling of the note
23 and just as important making sure that that can be remedied in some
24 form or fashion.

25 Sir?

1 MR. RULIS: Your Honor, if I might?

2 THE COURT: Absolutely.

3 MR. RULIS: Plaintiff proposed that this shall not apply to the
4 notice of default of the Hudson Bay note, I believe. Is that sufficient?

5 MR. CONNOT: Read that again, I'm sorry, Nate.

6 MR. RULIS: So paragraph 4, this shall not apply to the notice
7 of default of the Hudson Bay note.

8 THE COURT: Right, that's the carve-out?

9 UNIDENTIFIED SPEAKER: [Indiscernible.]

10 MR. CONNOT: Well, for right now.

11 THE COURT: You guys work the language out, but I want a
12 carve-out. I'm just telling you that. I want a carve-out, I do, because I'm
13 concerned.

14 MR. CONNOT: Where are at in having a meeting this
15 evening?

16 THE COURT: When I come here tomorrow, when you guys
17 come tomorrow, I expect to see a carve-out. Just telling you that. I want
18 a carve-out.

19 MR. KEMP: We would like to get the order signed tonight, if
20 it's --

21 THE COURT: And you know what's great about that, Mr.
22 Kemp? I don't mind telling you this, what's great about getting order
23 signed tonight, we now have the capabilities to do that. We have -- what
24 is it called, OIC order of the -- what is that -- yes, where I can sit at home
25 on my laptop and my Law Clerk calls me, Judge, we need a order

1 signed and I can log on, and I can sign that order right then and there.

2 MR. PARKER: Like Docusign.

3 THE COURT: Well, it's similar, except for us. A little different
4 than that, but so that's a non-issue. I just want to tell you that, Mr.
5 Kemp. If I get a call and our Law Clerk knows there's an order, then
6 submit it, he'll look at it and if everyone agrees it's a joinder, I'll sign it
7 tonight.

8 MR. KEMP: And the only other issue is whether it's 2 days,
9 30 days, or 60 days.

10 THE COURT: Well, I got a slight change to that.

11 MR. KEMP: Okay.

12 THE COURT: This is what I'm going to do and this where I'm
13 going to put heat on you, because understand this. I can't arbitrarily go
14 out and fashion what's the status quo, because to be candid with you, I
15 have no understanding what the business models are. I don't know
16 what the challenges are for this company. I don't. I'm not a CEO. I'm a
17 judge, right? But I know there's issues that have to be addressed.

18 And so, this is what we're going to do. As far as number 5 is
19 concerned, Mr. Kemp, and they'll be of course somewhere down the
20 road in an amendment to this, but I'm going to -- I'm not going to say 60
21 days, 30 days. It's going to be simply this.

22 This order will be in effect for two weeks. And the temporary
23 restraining order previously entered by this Court will be dissolved within
24 24 hours. And provided no action is taken by any of the parties until the
25 Court reaches a decision as to the finding or a definition of what

1 maintaining the status quo will be.

2 I'm going to have you tomorrow at 1:30. And we're going to
3 work that out together. And so, by the time we're done, we're going to
4 have an order in place that protects what I hopefully will be the interest
5 of the parties in this case. And that's everybody.

6 MR. KEMP: The only question I have and I think the Hudson
7 Bay carve-out should also be -- because they've already indicated they
8 wanted Mr. Farnsworth involved both at this Board meeting and with
9 Hudson Bay on this default. And if you're keeping the TRO in effect,
10 he's precluded from doing that.

11 THE COURT: No, we want to make sure -- I don't want to do
12 anything like that, that --

13 MR. CONNOT: We'll stipulate.

14 THE COURT: Yeah, we want to -- Mr. Kemp, you can put that
15 in the order. Mr. Farnsworth can participate in any meetings and/or
16 decisions or whatever. Whatever's appropriate as far as the Hudson
17 Bay note is concerned.

18 MR. CONNOT: And just from a housekeeping matter --

19 THE COURT: Yes.

20 MR. CONNOT: You know, we don't agree with the language
21 dissolving, but I understand what the Court said. And the Court felt --

22 THE COURT: Well, it doesn't mean I'm going to dissolve --

23 MR. CONNOT: No, I know, but the Court --

24 THE COURT: -- it, but it's in place, but I want to have
25 something in place.

1 MR. CONNOT: I understand, but the -- so the only comment I
2 was going to make from a housekeeping sort of matter is that this will
3 then become an order submitted to the Court. We still have, you know,
4 our objections to that provision of it. I want it to be a stipulation and an
5 order.

6 THE COURT: Okay, that's okay.

7 MR. CONNOT: I'd rather have it be an order with our
8 objections to that -- at least that provision noted, so that it's preserved,
9 so it's not [indiscernible] that you agreed with that.

10 THE COURT: Okay, and what you can do, if that's a problem,
11 it can be noted in the order that this was entered or whatever the specific
12 provision over the objection of either side.

13 MR. CONNOT: Okay.

14 MR. KEMP: Thank you, Your Honor.

15 THE COURT: But what I want to do is I want to put this to bed
16 and then conduct discovery.

17 MR. CONNOT: We're back at 1:30 tomorrow?

18 THE COURT: 1:30.

19 MR. KEMP: I think Mr. Rulis can get this thing printed out in
20 short course.

21 THE COURT: I'm not going anywhere.

22 MR. RULIS: I say we're working on it right now, Your Honor,
23 so.

24 MR. KEMP: Your Honor, the other issue, I thought I heard
25 you say we're going to have a special master in the expedited discovery,

1 but I --

2 THE COURT: I mean, we got to talk about that.

3 MR. CONNOT: Talk about it.

4 THE COURT: And talk -- we can talk about that tomorrow,
5 too.

6 MR. CONNOT: Yeah.

7 MR. KEMP: Okay, yeah, because as Your Honor knows, we
8 filed a motion on order shortening time.

9 MR. CONNOT: The OST hasn't been granted. We haven't
10 been served after the OST's been granted. I mean, there's one day
11 notice period after the OST.

12 MR. KEMP: No, actually, I emailed it to you on Monday night.

13 MR. CONNOT: Right, but --

14 THE COURT: Gentlemen, understand this, right?

15 MR. KEMP: [Indiscernible.]

16 MR. CONNOT: I understand, but once the OST's been
17 granted.

18 THE COURT: Guys.

19 MR. CONNOT: We're still entitled to one day's notice.

20 MR. KEMP: No.

21 THE COURT: I think this case would meet the definition of
22 complex litigation, right?

23 MR. KEMP: I [indiscernible].

24 MR. CONNOT: I tend to think so.

25 THE COURT: Okay, and so, what does that do? They give

1 the trial court a lot of discretion on those specific issues, right?

2 MR. KEMP: They do.

3 THE COURT: Because once again, all I want to do is move
4 the case forward and --

5 MR. CONNOT: Let's talk about it tomorrow.

6 THE COURT: Yes, yes, yes, yes. And we have a whole
7 afternoon we're spending together. And tomorrow. And that's why I
8 think when you go to business court, you pay an extra filing fee.

9 MR. KEMP: Yeah, Judge.

10 MR. CONNOT: To get your smiling faces.

11 THE COURT: Yes.

12 MR. KEMP: Not to get lost, we also filed a motion on order
13 shortening time for the appointment of counsel to take a look at the
14 disclosures.

15 THE COURT: I understand.

16 MR. KEMP: Okay.

17 THE COURT: Okay, I understand.

18 MR. KEMP: So it's not lost.

19 THE COURT: And we'll -- I know you're going to do this, Mr.
20 Kemp, but I don't know if that's been said or not, but if it hasn't, remind
21 me.

22 MR. KEMP: Okay.

23 THE COURT: That's all I can say. Remind me, and I'll make
24 sure it's get set tomorrow.

25 MR. KEMP: Okay.

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THE COURT: Okay, it's not too bad. It's 5:10.

MR. CONNOT: Okay.

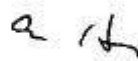
THE COURT: 1:30 tomorrow.

THE MARSHAL: All rise.

[Proceedings concluded at 5:12 p.m.]

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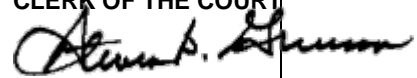
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Chris Hwang
Court Reporter

TAB 17

TAB 17



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

VINCO VENTURES, INC.,

Plaintiff,

vs.

THEODORE FARNSWORTH, et
al,

Defendants.

CASE#: A-22-856404-B

DEPT. XVI

BEFORE THE HONORABLE TIMOTHY WILLIAMS, DISTRICT COURT JUDGE
THURSDAY, AUGUST 18, 2022

RECORDER'S TRANSCRIPT OF HEARING
PLAINTIFF VINCO VENTURES INC.'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION

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APPEARANCES (continued):

Also Appearing:

ADELE HOGAN, ESQ.
LISA KING
THEODORE FARNSWORTH
RODERICK VANDERBILT
ERIK NOBLE [BlueJeans]

RECORDED BY: MARIA GARIBAY, COURT RECORDER

1 Las Vegas, Nevada, Thursday, August 18, 2022

2
3 [Case called at 1:37 p.m.]

4 THE COURT: Please be seated. All right, good afternoon.
5 Let's go ahead and set forth our appearances for the record?

6 MR. CONNOT: Good afternoon, Your Honor.

7 THE COURT: Let's start first with the Plaintiff and move to the
8 Defense.

9 MR. CONNOT: Thank you, Your Honor. Good afternoon,
10 Your Honor, Mark Connot and Rex Garner for the Plaintiff. Also present
11 is Adele Hogan, who had -- not yet admitted.

12 THE COURT: All right.

13 MR. KEMP: Your Honor, Will Kemp from Kemp Jones on
14 behalf of Defendant Farnsworth.

15 MR. PARKER: Good afternoon, Your Honor, Theodore
16 Parker on behalf of Ms. King and Mr. Vanderbilt. Thank you very much.

17 MR. RULIS: Good afternoon, Your Honor, Nate Rulis on
18 behalf of Defendant Farnsworth and especially appearing Defendant
19 Erik Noble, who's also here on BlueJeans.

20 THE COURT: All right. And have --

21 MS. ZORNES-VELA: Good afternoon, Your Honor, Madison
22 Zornes-Vela on behalf of Defendants Farnsworth and Noble.

23 THE COURT: Good afternoon. Does that cover everyone?

24 MR. CONNOT: Yes, Your Honor.

25 THE COURT: All right, okay, so where do we go from here? I

1 see this Vinco Ventures organizational chart. How is that going to help
2 me this afternoon?

3 MR. CONNOT: Well, I don't know, but I think maybe a
4 housekeeping matter to begin with and the Court may have noticed the
5 vacant seat here.

6 First of all, the company had successful discussions,
7 unanimous consent last night, was able to achieve a major restructuring
8 of the financial issue that was pressing. So that's the positive news.

9 There's an 8-K that's been filed. That issue has been
10 resolved. I think most everyone was up most if not the entire night,
11 including Mr. Colucci.

12 Mr. Colucci has had a grave family emergency that he has
13 had to attend to. And he's not going to be present. We had requested,
14 and understandingly so, we requested of the Defendants that the
15 hearing be vacated -- be continued because of that to early to mid next
16 week.

17 And the response we received was while expressing
18 condolences for and concern for Mr. Colucci's family situation, and I
19 think, you know, unfortunately, it resulted in an attempt to leverage that
20 into, well, now we should put Ms. King back in as an interim CEO
21 because he's unable to attend to duties.

22 As we've advised the Defendants, just has with any situation
23 whether it's attorneys, whether it's litigants, whether it's CEOs of
24 companies, or any employee or person out there, we have family issues
25 that sometimes you have to tend to. That doesn't mean, you know, even

1 CEOs have family emergencies.

2 And for example, Ms. King herself, while she served as CEO,
3 took several days off while her -- apparently there was a death in the
4 family of an aunt or someone of that ilk.

5 So, I mean, I think it's unfortunate that that's the situation
6 we're presented with. As we advised Defendants immediately after we
7 received that response, Mr. Colucci simply because he has to attend to
8 a family emergency doesn't mean that he's not still acting as CEO.

9 And as he often does, he's back in the saddle on Saturday.
10 He's available by cell phone, but he's not available today. He's got to
11 attend to a family emergency.

12 And you know, that will likely tie him up today and tomorrow,
13 but he's ready to continue if the Court wanted to resume, you know, any
14 further hearing next week. I don't know what the Court's availability is or
15 the parties' availability, but that's the situation that, you know, sort of
16 advise the Court what the situation is currently.

17 THE COURT: All right, and thank you, sir.

18 MR. KEMP: And, Judge, last night, the emergency was this
19 Hudson thing, which as counsel's indicated, has been solved and we
20 signed the managed consent on it.

21 And I don't want go through it, but Mr. Farnsworth, again, is
22 the principal that deals with Hudson, so he had a lot of conversations
23 and such and such to get this resolved. But anyway, so that's last
24 night's emergency.

25 Today, Mr. Colucci has an emergency. Your Honor, we're not

1 taking live testimony. There's nothing that he --

2 THE COURT: Well, actually, Mr. Kemp, and I don't mind
3 saying this, I thought this would be some sort of continuation of our
4 discussions yesterday to try to work something work out --

5 MR. KEMP: Right.

6 THE COURT: -- regarding what would be defined the status
7 quo.

8 MR. KEMP: That's exactly right, Your Honor.

9 THE COURT: And at the end of the day, it really comes down
10 to this. I always -- the reason why I do this, I like to invite counsel to
11 educate me on those issues because I can be -- we can be sure of this
12 one fact. I don't know all the facts and intricacies of the transactions and
13 the business operations in place.

14 I do understand there's a significant dispute as it pertains to
15 control. I get that, but like I indicated yesterday, my main concern right
16 now is making sure that nothing occurs to the detriment of the
17 corporation, more -- nothing more, nothing less.

18 I'm not making any final determinations. I'm not taking
19 evidence. I was hoping everyone would work together.

20 And I don't mind saying this. If you can't work it out, I'll just
21 issue an order placing everything in status quo and maybe I'll just
22 appoint a receiver that will report to me as to how we should handle this
23 case, I mean, really.

24 MR. KEMP: Judge, directly addressing your comment about
25 status quo --

1 THE COURT: Yeah.

2 MR. KEMP: -- as I said yesterday, I think the status quo is
3 that Lisa King is the CEO or the co-CEO. That's what Mr. Colucci
4 himself voted on. He voted for that on July 8, 2022 at the board
5 meeting.

6 They don't deny he voted on it. They're trying to say, oh, well,
7 his vote doesn't count because of some other reason, but he voted on
8 that at that point in time.

9 And so, in his judgment, being a director, exercising his
10 fiduciary duty, he said that Lisa King was appropriate to be a CEO on
11 July 8th.

12 And I don't want to get into what changed, you know, the
13 independent investigation by Gibson & Dunn, but this is -- this was the
14 status quo.

15 And I think this recent development of his family emergency,
16 you know, when somebody uses the term grave family emergency,
17 personally, I don't use that unless someone's near death, but I don't
18 know the circumstance. I don't think it's appropriate that counsel fills us
19 on the circumstance.

20 I will take him at the word -- at his word that there's something
21 so important going on, that even though they started this proceeding,
22 even though they filed a request for temporary restraining order, even
23 though they dragged us all the way out here and we're on the third day
24 of the hearing, that there's something so important that he can't come to
25 Court and participate.

1 Well, if there's something so important that he can't come to
2 Court to finish the proceeding that he started, I would suggest that
3 there's a crying need to appoint Lisa King as -- or to affirm that she's the
4 co-CEO.

5 And I'm not asking it be done forever, Your Honor. I would
6 just ask it be done for four to six weeks until such time as you could set
7 the hearing.

8 But you know, this company seems to have an emergency
9 every day. And now that they're admitting that he can't attend to it, I
10 think it really makes the argument easy.

11 And when you balance the equities, the needs of this
12 company, the needs of the company are to have someone attend to
13 matters.

14 And she's been the CEO since October 14th, 2021. He's
15 been involved, like I already said, for eight weeks. So why not get
16 someone who knows the company and has been operating involved at
17 this time who as opposed to someone else?

18 And so, for that reason, we think, you know, the Court's
19 handled the TRO. The TRO expires today at 6:00.

20 The Court's handled the first part of the payroll problem, which
21 is getting everyone paid for tomorrow.

22 You know, they're taking the position that the Court's order is
23 expired on Monday, that they can continue to fire everyone on Monday.
24 I just don't see that being a remedy here, but --

25 THE COURT: I mean, well, I thought and maybe I was wrong,

1 but I thought we were going to maintain the status quo as far as
2 employees and the like for two weeks.

3 MR. KEMP: I thought so, too, Your Honor, but the way that
4 reads --

5 THE COURT: And I'll be clear on this. And I've already
6 thought that through. And I understand and this is what I guess -- and I
7 give Justice Hardesty credit in this regard. He came up with the model
8 for it in business court. And he wants the judges they, you know, be
9 hands on and easy access and those types of things.

10 And so, I was looking at it from this perspective. I said two
11 weeks, but before the two-week time period ran, I said a status check
12 maybe on Day 13 versus you have to file something or run down to the
13 Court.

14 That way, it's like continuous. And if something comes up, I
15 said, okay, we'll continue another two weeks. We're going to see it in
16 two weeks. Those are things I thought about.

17 MR. KEMP: And Your Honor, I mean, we're acting in good
18 faith. Like I've already said, Mr. Farnsworth dropped everything and got
19 on this Hudson Bay thing. He was on the phone last night till 1:00 in the
20 morning, was up again at 4:00, 4:30.

21 And the Hudson Bay thing got resolved under the time
22 constraint that Hudson Bay gave. And even the other side says that the
23 resolution was "extremely beneficial to Vinco and all its shareholders",
24 which we agree.

25 So, Your Honor, we're trying, but I think we should restore the

1 status quo and put Lisa King in as the CEO at least for, I mean, who
2 knows what Mr. Colucci's situation is? He may be out of pocket for
3 weeks, months, longer, I don't know it's this great family emergency, but
4 those usually don't resolve themselves in an hour. So, for that reason,
5 Your Honor, I would submit that what we should do for the status quo is
6 enter an order.

7 And as you notice, I backed off the request to add Mr.
8 Farnsworth as well. I'm just saying because I don't -- even though he
9 dropped everything and he did what he did with Hudson Bay, I'm not
10 asking for that because I know there's going to be a lot of pushback from
11 the other side on that.

12 So I was hoping that maybe we could get Lisa King in there
13 and --

14 THE COURT: Well, I even had a question like that. How is
15 the company harmed with Farnsworth being called co-CEO?

16 MR. KEMP: I don't think there's a harm at all, Your Honor,
17 because --

18 THE COURT: I mean, I thought these are the things --

19 MR. KEMP: -- look what happened last night, okay? They got
20 the problem with Hudson Bay that -- and this was a serious problem.

21 THE COURT: I understand.

22 MR. KEMP: How it was created, I think we're going to get into
23 a little later, it's not necessary today, but it was a serious problem. \$96
24 million loan that was in default and now it's solved. Now it's solved.

25 And I don't want to say Mr. Farnsworth's a miracle worker, but

1 that's a pretty heavy duty problem to resolve in three or four hours.

2 THE COURT: Well, that was my question as a result of
3 finding out because I did a copy get a copy. Is it the K-8?

4 MR. KEMP: 8-K.

5 MR. CONNOT: 8-K.

6 THE COURT: Oh, form 8-K, yes, I got a copy of that. And I
7 thought about it. I said, well, how's the company harmed with him being
8 named co-CEO, that little sticker on that?

9 MR. KEMP: Well, you know, the guy that has contact with the
10 money, Your Honor, that's the one you do want --

11 THE COURT: That's usually the most important guy in the
12 room.

13 MR. KEMP: Yeah, so Your Honor, I think having them both be
14 --

15 THE COURT: Right?

16 MR. KEMP: -- co-CEO for minor time period is not a big ask.

17 THE COURT: I understand, but I wouldn't go beyond the
18 request. I think the request is for Ms. King. Is that correct, Mr. Kemp?

19 MR. KEMP: Yes, Your Honor.

20 MR. PARKER: Well, Your Honor, you wouldn't be going
21 beyond my request.

22 THE COURT: I understand.

23 MR. PARKER: My request is June 9th, so we'll keep that in
24 play hopefully.

25 MR. CONNOT: Your Honor, it's quite interesting that, you

1 know, they want to pick and choose board meetings, you know, and
2 decide which ones are valid and which ones aren't before the Court's
3 heard much in the way of any real testimony or evidence on it.

4 But there's no dispute. There's five directors of this company,
5 five directors. Ms. King, Mr. Vanderbilt, two of those five directors.

6 Mr. Colucci's a director. Mr. Distasio, Mr. Goldstein. That's
7 how the company's run, okay? There's five directors that make these
8 decisions.

9 So if you want to go back to the board meeting, the July 24th
10 board meeting, properly noticed, all five people attended. All five people
11 attended.

12 Mr. Vanderbilt continually objected and interjected that it
13 wasn't a valid meeting, refused to participate or vote.

14 But the vote of that meeting, the vote of that meeting ended up
15 being three directors voted to terminate Ms. King and terminate Mr.
16 Farnsworth, make Mr. Colucci the CEO interim, CEO of the company,
17 okay? The vote carried, okay?

18 Even if you eliminate, even if you were to eliminate Mr.
19 Colucci's vote, which you shouldn't because every other vote at that
20 meeting, there's no dispute he could vote on those, okay?

21 Because all you have is NRS 78.140. He could vote on those.
22 The NASDAQ rule about independent directors that they were having at
23 Gibson Dunn supposed investigation that never went anywhere -- that
24 went -- that had nothing to do with his ability to vote as a Board member,
25 okay? It had to do with the NASDAQ independence rule and what

1 committees he could serve on. So he could vote at that meeting.

2 But even if you interpret, which you cannot interpret in NRS
3 78.140 to say naming him CEO was somehow an interested transaction,
4 when there's a plethora of case law that says that's not the case, maybe
5 raising compensation is another thing.

6 But even if you do that, so now you have Mr. Goldstein and
7 Mr. Distasio voting yes. If you eliminate Mr. Colucci's vote, you then
8 have Ms. King voting no and you have Rodney Vanderbilt refusing to
9 participate and resulted in an abstention. He didn't vote. He didn't cast
10 the vote one way or the other.

11 THE COURT: But here's my question, why didn't he vote?
12 Was it a protest vote based upon the composition of the Board?

13 MR. CONNOT: No not the composition of the Board. He
14 didn't like the fact of how the meeting was held --

15 THE COURT: Right.

16 MR. CONNOT: -- and that the Zoom link wasn't there, but the
17 issues were presented to the Board.

18 THE COURT: But I mean --

19 MR. CONNOT: The Board voted on those issues.

20 THE COURT: -- if there was a problem with the Zoom link or
21 any sort of procedural or technical problem, shouldn't the Board have
22 considered that in moving forward?

23 MR. CONNOT: It wasn't a problem with the Zoom link, Your
24 Honor. It was a problem with the conduct of that. And we can play the
25 tape of that. We can play you excerpts of the recording of that.

1 It was utter chaos. And it was repeatedly by Mr. Vanderbilt
2 shouting invalid meeting, invalid meeting, invalid meeting, invalid
3 meeting to the point that the discussion couldn't even occur.

4 You've got five directors here, Your Honor, running a nine-
5 figure company, a nine-figure company. And they can't even conduct
6 business because one of the Board members is -- because they don't
7 like what's on the agenda. They don't like what's being voted on.

8 That's not appropriate conduct, Your Honor. And you can't
9 say the meeting's invalid because you want to shout down everybody. I
10 mean, you know, unfortunately that's where some of the political arena's
11 gone to, but that shouldn't -- it should not be the case there, but certainly
12 should not be the case in a company like this, where there are fiduciary
13 duties to the shareholders. There's multitudes of shareholders and
14 investors out there who's rights are impacted here.

15 These directors are all five directors of the company. They
16 decide the business of the company.

17 Ms. King, the reason Ms. King was terminated, she was
18 terminated for cause along with Mr. Farnsworth were terminated for
19 cause from the company.

20 One of those reasons, they spent \$10 million at EDC, \$10
21 million, Your Honor, without authorization from the Board. I mean, that's
22 just one of the litany of things.

23 They want to come in here and talk about, oh, they want to fire
24 people, it's a reduction in force. In fact, the other day, they even fired
25 the head of HR.

1 Well, guess what? That RIF started -- that reduction in force
2 plan started back in June, even into July. And Ms. King herself had that
3 very same person's name on one of her lists of people to cut.

4 So they come in here and make all these allegations, oh, my
5 gosh, you know, after July 24th, after they couldn't sustain the votes that
6 they needed as directors, after July 24th, this company just went
7 completely in the toilet.

8 Absolutely not. The problem is is that these problems were
9 endemic to the company. Part of the reason why these two weren't
10 there.

11 THE COURT: But here's my question. When did these
12 problems become endemic to the company, because from a historical
13 perspective, and it's my understanding in listening and reading and I
14 don't have all the briefing right in front of me --

15 MR. CONNOT: I --

16 THE COURT: -- the company was progressing fairly well as
17 far as this matter's concerned with the prior Board.

18 MR. CONNOT: Yeah, absolutely not, Your Honor. And I
19 know the Court --

20 THE COURT: When you say absolutely not, what do you
21 mean by that?

22 MR. CONNOT: Well, I know the Court said it didn't intend to
23 hear live testimony, but I could put the CFO, who's here, Mr. Jones,
24 Phillip Jones, on the stand and he can tell you what he was going
25 through and what this company has been going through for months.

1 That's why the reduction in force was there. That's why it was
2 so ridiculous that Mr. Farnsworth and --

3 THE COURT: Reduction in force because --

4 MR. CONNOT: -- and Ms. King spent \$10 million.

5 THE COURT: Wait, wait. Reduction in force because of
6 what?

7 MR. CONNOT: Because the company didn't have the money.
8 The burn rate was exceeding. They were putting together cash flow
9 analysis.

10 Ms. King was directed to do so, did so at the beginning of July,
11 gave some of her cash flow analysis. And the Board was insisting that
12 cuts be made, the Board.

13 You know, before there were these disputes, early July, late
14 June, they were making -- this company was having financial issues.
15 Despite the pictures they want to paint, the company was having serious
16 financial issues with the fact that they didn't have the revenue or the
17 margins to be able to sustain what they were doing.

18 Part of that is because they're paying part of the payroll for a
19 company, Magnify You [phonetic], that is basically Ms. King's family
20 business. They don't receive a benefit at Vinco of that. So, I mean,
21 you've got a host of issues out there.

22 And to come in here and basically say, well, you know, Mr.
23 Colucci's grave family emergency, you know, he --

24 THE COURT: Sure, but you're missing my point. That didn't
25 concern me.

1 MR. CONNOT: Okay.

2 THE COURT: I mean, really and truly. If none of the other
3 Board members were here, we can still get business done.

4 MR. CONNOT: Exactly, but --

5 THE COURT: I mean, that's not an issue for me. My issue is
6 this. I understand your position and your client has their side of the
7 story.

8 The Defendants have their side of the story. When we were to
9 come back today, it's my recollection we were going to make some
10 decisions as to what would be the status quo. Nothing more, nothing
11 less, right?

12 MR. CONNOT: Right.

13 THE COURT: And I wanted to give everyone breathing room,
14 so we can come in and we can deal with the facts of the case. And we
15 can't do it now.

16 It's like I said yesterday, and I don't mind saying this, there's
17 issues regarding whether or not there's a likelihood of success on the
18 merits from either side, because all I have is argument of counsel. I
19 think I said that yesterday, right?

20 And so, it's a tough situation. So if -- and this is how I look at
21 it. I'm not going to be here all day. I don't mind telling everybody this. If
22 you can't come to some sort of accord, I'll just make some decisions.
23 That's all.

24 And when I make decisions, you might not like it, but it -- I'll
25 look at it from this perspective from a business perspective, I don't want

1 anything done. I don't want any action. I just want the company to
2 move forward the best they can until we can make decisions.

3 I could set it up. If you're going to make a major decision in a
4 Board meeting, then it has to go through me first. I mean, if we want to
5 do it -- and I want to do that. I really and truly don't.

6 Maybe I can appoint an independent -- I looked at the receiver
7 statute. Maybe it covers it, I'm not sure. I can have someone appointed
8 to report to me.

9 MR. CONNOT: Maybe suggestion.

10 THE COURT: And -- but I don't want to do any of that.

11 MR. CONNOT: I don't blame you, Your Honor.

12 THE COURT: I don't.

13 MR. CONNOT: I -- you know --

14 THE COURT: I'm not a CEO.

15 MR. CONNOT: -- in your shoes, that's the last thing I'd want
16 to do. Maybe a suggestion. I don't know if it's worthwhile if counsel see
17 for 20 or 30 minutes if there's a roadmap --

18 THE COURT: That's what --

19 MR. CONNOT: -- at least for the 14 minutes.

20 THE COURT: I wanted -- isn't that what I wanted to everyone
21 to come back here and do, right?

22 MR. PARKER: Agree, agree, Your Honor.

23 THE COURT: That's all I wanted. I mean, I don't want to
24 make any -- what I want to do is this. And you have to understand this.
25 And I respect both sides, but I have wonderful argument today,

1 wonderful argument yesterday, but I'm not going to make a rash
2 decision based upon that. My -- the decisions will be based upon the
3 evidence, right?

4 And so, yesterday, my thoughts were that we would come
5 back, maybe work something out for the next 2 weeks, 30 days, 60
6 days. I have a busy trial calendar.

7 Is that correct, sir?

8 THE CLERK: Correct, Judge.

9 THE COURT: Yeah, and so, I got to squeeze you in. I don't
10 want to harm the shareholders based upon any decision I make. I'm
11 concerned about the employees, you know, and those types of things.

12 And I realize there's a lot of acrimony here and -- but it's like in
13 any piece of civil litigation, and everyone knows this, it just takes time.

14 MR. CONNOT: Yeah, and I think given the speed at which
15 the landscape can change at times --

16 THE COURT: Uh-huh.

17 MR. CONNOT: -- that maybe and, you know, if we come back
18 in, you know, a week or two weeks.

19 THE COURT: Yeah, but I want you to --

20 MR. CONNOT: But --

21 THE COURT: I want something worked out today.

22 MR. CONNOT: That's what I was going to say.

23 THE COURT: I'm just going to tell you right now.

24 MR. CONNOT: To come in with a plan for at least the next 7
25 to 14 days --

1 THE COURT: Well --

2 MR. CONNOT: -- when the Court has us back because I think
3 enough may shift in that interim or could shift in that interim.

4 And, you know, as the Court well knows, you know, the
5 specter of trial or the specter of coming back to the courtroom
6 sometimes, you know, convinces the parties to reassess their positions
7 --

8 THE COURT: Absolutely.

9 MR. CONNOT: -- that if we map out a roadmap for the next
10 14 days to at least give that sense with coming back to the Court, if we
11 can map it out between the parties --

12 THE COURT: I'm going to tell you, sir.

13 MR. CONNOT: And then, if we can't, we can't.

14 THE COURT: Sir, and I'm going to say this to you.

15 MR. CONNOT: Yeah.

16 THE COURT: I can't think of any time in 17 years where the
17 parties have come to some sort of accord as far as how they want to
18 handle their case pursuant to the Rules of Civil Procedure and case law
19 that I said no. I've never said no. Never, right?

20 MR. KEMP: Judge, we're willing to talk. Like I said --

21 THE COURT: Yeah.

22 MR. KEMP: -- we dropped everything.

23 THE COURT: I mean, I'm the only judge in this courtroom -- I
24 mean, this whole building that doesn't require motions to change or
25 modify a Rule 16 scheduling order and get a new trial date.

1 MR. CONNOT: Yeah.

2 MR. KEMP: Yeah --

3 THE COURT: I don't even want -- I mean, the way I look at it,
4 and I'm not here unless there's a pitch thrown. That's probably the best
5 way to say it --

6 MR. CONNOT: Yeah.

7 THE COURT: -- because I'm here to call balls and strikes. If
8 there's no pitch, and you agree, why do I get involved?

9 MR. KEMP: I would point out, though, Your Honor, Mr. Parker
10 sent -- because we foolishly thought that us bailing them out of this
11 Hudson Bay mess would at least get a better appreciation for Mr.
12 Farnsworth's value and Ms. King's value.

13 So Mr. Parker sent a letter today saying why not make Lisa
14 King the co-CEO or CEO pending this problem with Mr. Colucci? And
15 that was rejected immediately.

16 So we did try to work something out, but --

17 MR. CONNOT: That doesn't preserve the status quo. I mean,
18 the status quo was the July 24th -- I mean, once again, we want to go
19 back and pick the board meetings they like and disregard the board
20 meetings they don't like.

21 MR. KEMP: So what are we going to talk about, Your Honor,
22 if he's not going to entertain our suggestion?

23 MR. CONNOT: Well, he's saying that's the deal breaker?

24 THE COURT: Well, I don't know if it's a deal breaker or not.
25 I'm not going to get involved in the negotiations. That's up to the parties

1 and their learned counsel.

2 I'm not going to get involved in that, but I'm going to give you a
3 chance to work it out. If you can't, then, you can make proposals to me.
4 I'm going to look at it from a 30-day perspective give or take and make a
5 decision.

6 Try to give you an opportunity to potentially work it out
7 because it's really important to point out -- I'm not familiar with all the
8 details regarding corporate governance of this --

9 MR. CONNOT: Yeah.

10 THE COURT: -- organization.

11 MR. KEMP: Your Honor, I really do think it's going to take us
12 10 minutes. And I don't want this to turn into some kind of guise to get
13 this matter continued --

14 THE COURT: Yeah, no, no.

15 MR. KEMP: -- under the pretext that we're going to --

16 THE COURT: No there's nothing to continue because
17 yesterday, I said what?

18 MR. KEMP: You made a plain --

19 THE COURT: Come back, work something out. If you can't,
20 I'll make a decision.

21 MR. CONNOT: My --

22 MR. PARKER: Your --

23 MR. CONNOT: Sorry, Teddy.

24 MR. PARKER: Can I jump in for a second, Mr. Connot?

25 MR. CONNOT: Absolutely, sorry.

1 MR. PARKER: -- counsel?

2 MR. CONNOT: Didn't realize you were about to speak.

3 MR. PARKER: No worries. I have a pretty quiet thus far.

4 MR. CONNOT: Surprisingly.

5 MR. PARKER: Well, you know, I like to throw you a curve
6 every once and a while.

7 Judge, just to kind of help guide these conversations,
8 hopefully it won't take, you know, a few minutes to either come to some
9 type of agreement or not.

10 What level of detail -- this morning I sat down for quite a bit of
11 time trying to create an order, something that I foresee competing orders
12 coming to the Court and the Court creating from that or deciding how it
13 chooses to decide how to create the appropriate status quo. And then,
14 the duration of that status quo until things from an evidentiary standpoint
15 can be presented to the Court.

16 And I'm stumbling a little bit on how far into the details do we
17 get? I'll give the Court an example because it may help us in our
18 conversations.

19 The Court is familiar with ordinary and routine business
20 expenditures.

21 THE COURT: Right.

22 MR. PARKER: And we may want to list those that we
23 consider to be routine insurance, for example, for the employees. Lease
24 payments for space, things like that.

25 And I'm sure as the Court has been on the -- has been a part

1 of the business court for a while, you're familiar with those types of line
2 items that have to get paid for the business to continue being a going
3 concern.

4 So that was a concern that these -- everybody on this side of
5 the table had yesterday. And with the exception of the payroll, I don't
6 think we got beyond that point.

7 And so, I thought we could use some -- a little indication,
8 some inkling, you know, get a feeling for the Court's inclination of how
9 deep in the weeds she wants to get because I don't foresee something
10 coming together in the next 10 minutes because of how things went
11 down -- broke down yesterday. Do you foresee something that detailed?

12 THE COURT: I would hope that wouldn't be necessary.
13 However, we talk about maintaining the status quo. I look at it from this
14 perspective.

15 I want to make sure that Vinco Ventures is an ongoing
16 concern without any risk regarding defaults on loans. I want to make
17 sure the day-to-day operation expenses are paid ongoing. If there's any
18 insurances due and owing, that's done, too.

19 I just want to make sure that it's a viable entity and because
20 there's been it's my understanding quite a few people invested in this
21 business and --

22 MR. PARKER: Absolutely.

23 THE COURT: -- the Board has fiduciary responsibilities to the
24 company. And that's my concern, Mr. Parker.

25 MR. PARKER: Right, the other --

1 THE COURT: And I don't -- I mean, I don't know what the
2 answer is, but it's one of those things where there's a significant dispute
3 ongoing on and no one's willing to work. And so, while you're in the
4 interim, maybe I should go and read the receiver --

5 MR. PARKER: And I --

6 THE COURT: -- statute. All right, and I mean, really and truly,
7 if you can't come to some accord, I'll just appoint somebody that
8 appoints to me. And he'll just take all the books and do what a receiver
9 does and make sure this business keeps ongoing.

10 Now I don't want to do a radical. I don't want to anything
11 radical like that. I don't, but what was the loan that almost went into
12 default? How much was that again? \$80 million?

13 MR. CONNOT: 96 million, Your Honor.

14 MR. PARKER: 96.

15 THE COURT: 96 million?

16 MR. CONNOT: \$80 million loan.

17 THE COURT: 80?

18 MR. CONNOT: \$16 million penalty.

19 THE COURT: Yeah, okay.

20 MR. CONNOT: So the default would result in a \$96 million --

21 THE COURT: Okay I don't -- but my point is that's of concern.

22 MR. CONNOT: Yeah.

23 MR. PARKER: So yesterday, I thought I want was a good
24 demonstration of how committed these three people are. And also, I
25 thought was a demonstration of how long Mr. Colucci held in his

1 pocket --

2 THE COURT: And understand --

3 MR. PARKER: -- this default.

4 THE COURT: -- but here's the thing. Understand, I don't
5 mind saying this. I don't like to do anything *sua sponte*. I don't think I've
6 ever just made decisions that way in cases. You know, I don't.

7 But sometimes I have to make -- in a situation like this,
8 because that is of grave concern, the \$96 million.

9 MR. PARKER: Uh-huh.

10 THE COURT: Right, that's a big -- that shouldn't get to that
11 point.

12 MR. PARKER: That's my -- what's where I was headed.

13 THE COURT: Yeah.

14 MR. PARKER: So they were aware of that. Mr. Colucci was
15 aware of that on Monday, then informed us or the Court on Tuesday
16 when we were here.

17 And Wednesday at the 11th hour, we're confronted with him.
18 But these three people, who came expecting to hear one day stayed and
19 stayed and stayed, and then worked all night to get it done.

20 Mr. Farnsworth called in favors to get it done. And so, I don't
21 know how you -- I can't see how Mr. Connot can suggest to this Court or
22 advance such a ridiculous position that these three people aren't helpful
23 to this company, the shareholders, and to its employees. It makes no
24 sense.

25 So I guess the bottom line is, Your Honor, we'll step out, for a

1 few --

2 THE COURT: No, no, I'll step out.

3 MR. PARKER: You'll step out.

4 THE COURT: Yeah, I'll step out.

5 MR. PARKER: We got the Marshal here.

6 THE COURT: When I step out, I'm going to -- when I step out,
7 I'll start reading the receiver statute.

8 MR. PARKER: Well, that puts a lot of pressure on us.

9 MR. CONNOT: Well, I would just, you know, in response to
10 Mr. Parker about this Hudson Bay note, the Hudson Bay note was 80
11 million. It was called because of the suspension of NAS -- I mean, the
12 whole history there.

13 Maybe the best way. My suggestion, Your Honor, is we see
14 what we can resolve. I -- you know, if the Court wants to hear argument
15 certainly, but I think, you know, you've heard plenty of argument from the
16 three us.

17 THE COURT: I have.

18 MR. CONNOT: We come in and give you the positions we
19 can agree on, those we can't. And if you have questions or want to hear
20 argument on a position, we do it. Otherwise, we're going to argue till
21 5:00.

22 THE COURT: Well, I agree with that. And anyway, but I'm
23 going to give you an opportunity to do that. And I'll go read the receiver
24 statute.

25 THE MARSHAL: All rise.

1 MR. CONNOT: Thank you, Your Honor.

2 THE COURT: Yeah.

3 [Recess taken at 2:08 p.m.]

4 [Proceedings resumed at 3:30 p.m.]

5 THE MARSHAL: Please be seated.

6 THE COURT: Okay, let's go ahead and set forth our
7 appearances for the record?

8 MR. CONNOT: Thank you, Your Honor, Mark Connot and
9 Rex Garner for the Plaintiff.

10 MR. KEMP: Will Kemp for Mr. Farnsworth.

11 MR. PARKER: Teddy Parker for Lisa King and Rod
12 Vanderbilt.

13 MR. RULIS: Good afternoon, Your Honor, Nate Rulis on
14 behalf of Defendants Farnsworth and specially appearing Noble.

15 MS. ZORNES-VELA: Good afternoon, Your Honor, Madison
16 Zornes-Vela on behalf of the Defendants Farnsworth and Noble.

17 THE COURT: All right, did that cover all appearances? I think
18 so.

19 MR. CONNOT: Yeah.

20 THE COURT: Okay, gentlemen?

21 MR. CONNOT: We tried, unable to. So I think the consensus
22 is we'll submit competing orders by 8:00 p.m. tonight through the
23 department inbox.

24 And you'll let us know and -- would you like us also to provide
25 a Word version so that if you want to pick and choose from each of them

1 or?

2 THE COURT: You can.

3 MR. CONNOT: Okay.

4 THE COURT: But as far as the inbox is concerned, you do
5 that in a regular form, but I guess you can send the Word version to my
6 Law Clerk.

7 MR. CONNOT: Okay.

8 THE COURT: Is that fine?

9 THE LAW CLERK: Yeah.

10 MR. CONNOT: Okay. And then, I think one, I don't want to
11 interrupt, but one other issue is there was an issue with the admin codes
12 for the servers.

13 We've had some discussions and the party's going to
14 cooperate to make sure that, you know, that the company has the ability,
15 however we resolve that issue, but at least the company has the ability
16 to have the admin codes for the -- at least the Microsoft Exchange
17 maybe servers.

18 MR. RULIS: Yes, Your Honor. We're having some
19 discussions trying to iron out that issue. We're not trying to withhold
20 anything. Want to make sure that appropriate people have the
21 appropriate control and the appropriate codes to the company servers.

22 MR. KEMP: Yes, Judge. And I just wanted you to be aware,
23 so you wouldn't be surprised, that I'm going to modify our proposal
24 slightly.

25 And what we're going to propose is that I'm having Mr.

1 Farnsworth -- Mr. Parker's got a different idea, but my proposal is going
2 to be that Mr. Colucci, Lisa King, and then, a third-party, who just
3 happened to wander in the courtroom today, because he was a witness
4 in the case next door, Mr. Ross Miller, be appointed as co-CEO.

5 And the reason we're suggesting that is we vetted Mr. Miller.
6 He said he'll do it. He used to be the Secretary of State of Nevada. If
7 you remember, his father was the governor for 10 years not even 8, but
8 10 years. And he does do corporate law. And he says he's interested in
9 it. So we're going to propose him as the co-CEO.

10 And the reason we thought it'd be better to have three instead
11 of two is that if there's a disagreement as to what to do, at least we have
12 a, you know, 2 to 1 potential as opposed to a 1 to 1.

13 So that's going to be in our proposal. And I just want to alert
14 the Court of that, so it didn't come out of left field.

15 THE COURT: I understand. Sir, anything you want to
16 comment on that?

17 MR. CONNOT: You know, I think the concern is, you know,
18 my clients certainly view that as, you know, somebody -- as litigation
19 goes, parties get in their positions is, that's being proposed by someone
20 else.

21 I think they're -- I think if we were even going to look at
22 something, like in that scenario, it ought to be a situation where, you
23 know, certain names are presented to the Court. And the Court may
24 select from that.

25 But I mean, and I'm not -- I mean, I know what Mr. Kemp

1 wanted to foreshadow for the Court. And I don't criticize him for that.

2 I don't want to get into, you know, argument of our position
3 where we say we weren't going to do that, but I just -- I kind of want to
4 just comment on that.

5 THE COURT: I mean, and here's, you know, what I find
6 fascinating about that concept. It's it would be akin to having someone
7 independent from the transactions, ownership, and all those things, that
8 has a background in these types of things and can have an independent
9 voice and just as important to if there's something that has to be done.

10 And it would be not quite like a receivership, but just a third
11 party there that's neutral, right, and can help the business move along?
12 And so, I understand that concept.

13 And -- but here was my point. I was listening and I was saying
14 to myself, well, you think the appropriate way to do it would be to submit
15 names under that concept? Would the Plaintiff want to submit a name
16 or two for me to look at?

17 MR. CONNOT: Well, I mean, I don't have any authority for
18 that concept.

19 THE COURT: Okay, I understand. That's fine.

20 MR. CONNOT: But I think the concept would get there.

21 THE COURT: I'm just telling -- I don't mind you this, we're
22 going to come back again in it's 13 days.

23 THE CLERK: Oh, 13, not 30 days?

24 THE COURT: No.

25 THE CLERK: Then that would be --

1 THE COURT: 8/31, right?

2 THE CLERK: It's actually 14. Well, it's from the order date?

3 THE COURT: From the order date, which is today.

4 THE CLERK: It is, oh, yes, that would be the 31st.

5 THE COURT: Okay, all right.

6 THE CLERK: Any time?

7 THE COURT: 9:00.

8 MR. KEMP: Judge, we did -- when we discussed it with Mr.

9 Miller, we told him it would be an interim gig. We didn't say that he's

10 been doing this forever.

11 THE COURT: Okay.

12 MR. KEMP: And I bring that up, because I have talked to

13 counsel about continuing to explore another solution that both people

14 could live with. But our position was we just can't --

15 MR. CONNOT: So --

16 MR. KEMP: Can't be an in vacuum for --

17 THE COURT: I see.

18 MR. CONNOT: So just for sake of clarity then, Will, you

19 wouldn't be advocating necessarily at this point for Ross to do anything

20 beyond a 14-day period? I'm not saying you couldn't actually at this

21 point.

22 MR. KEMP: I was going to put 30 -- yeah, I was going to put

23 30 in the order, but I wasn't saying a limited time period.

24 MR. CONNOT: I mean, if we're back in 14 days anyway, but.

25 MR. KEMP: Right.

1 THE COURT: Yeah. I mean, that's something to think about.
2 That's something I would contemplate because to be candid with
3 everyone, the order that's currently entered will expire in 14 days. I'm
4 going to have you come back in 13 days. This is the status check. You
5 can appear by BlueJeans or live as far as that's concerned.

6 But all right, I understand that. And both of those orders will
7 be submitted by 8:00 tonight?

8 MR. CONNOT: Actually, I think there may be three orders
9 because --

10 MR. KEMP: Mr. Parker has a different view.

11 THE COURT: I was going to next to Mr. Parker.

12 MR. CONNOT: Mr. Parker's got his own perspective.

13 THE COURT: Yes.

14 MR. PARKER: Absolutely.

15 THE COURT: Yes, Mr. Parker?

16 MR. PARKER: No, I have two clients, Your Honor, so.

17 THE COURT: Yes.

18 MR. PARKER: The only other thing I wanted to ask Your
19 Honor what Mr. Connot said and Mr. Kemp said, I understand their
20 positions and certainly my position is more in line with Mr. Kemp's.

21 The order that you're expecting and the orders that you will
22 review, again, you don't need so much detail that we're talking to you
23 about the actual bills that have to be paid. You expect that however you
24 handle this order, those you put in place to be able to handle the routine
25 and necessary bills, correct?

1 THE COURT: Yes, absolutely.

2 MR. PARKER: Okay, good. That will save us all some time, I
3 believe.

4 MR. CONNOT: Yeah.

5 MR. PARKER: And then, in terms of duration, is there an
6 anticipated duration that you would like to see something? Because Mr.
7 Kemp was thinking at one point 30 days. Mr. Connot, I can't recall how
8 long the time, but I thought it was somewhere --

9 MR. CONNOT: 14ish.

10 MR. PARKER: 14ish. And certainly, I was trying to avoid
11 having to come back and trouble the Court, you know, every 14 -- every
12 2 weeks because we're looking at the salaries every two weeks.

13 THE COURT: Well, and I'll be candid with you, Mr. Parker. I
14 wasn't necessarily contemplating coming back every two weeks
15 because that takes time, but I just have the first orders in place of 14
16 days. Then I was thinking it would be best to come back and potentially
17 re-visit those issues as far as time.

18 And I just want to make sure that there's an ongoing concern
19 here and there's no problems paying vendors and salaries and those
20 types of things.

21 Just as important, too, I mean, I look at it. And there's a lot of
22 issues going on. For example, I wonder -- I contemplate, okay, what
23 decisions I make, what impact do they have on stock prices and
24 valuations?

25 MR. PARKER: Right.

1 THE COURT: Because this is a publicly-traded corporation,
2 right, on NASDAQ?

3 MR. PARKER: Well, I think we all recognize that there's
4 a -- perhaps negative connotation that goes with the word receiver.

5 THE COURT: I mean, I thought about that. I don't
6 mind -- and here's the thing. If we went with a 2:1 setup, one director
7 from Plaintiff's perspective, one from the Defense perspective, and then
8 one neutral that's there for an interim basis, that -- I thought about it.
9 And that gets away from the negative connotation of the "R" word.

10 MR. PARKER: Absolutely.

11 THE COURT: It really does. And so, and under those
12 circumstances, it would be a court-appointed independent.

13 MR. PARKER: Right.

14 THE COURT: Isn't that a different -- that changes the whole --

15 MR. PARKER: Complexion.

16 THE COURT: -- dynamics from a public relations perspective.

17 MR. PARKER: Right.

18 THE COURT: I'm not a business guy. I mean, I do have a
19 degree in business, but it's been a long time. But I'm just looking at it
20 through that lens. And actually, I don't mind saying this, I really do like
21 that idea.

22 MR. PARKER: All right, well, then you may only get two
23 orders then.

24 THE COURT: Yeah, I mean.

25 MR. CONNOT: Well, and I think the concept of why I was

1 thinking the 14-day time frame since we're going to be back here
2 anyway --

3 THE COURT: Yeah.

4 MR. CONNOT: -- whatever order the judge.

5 THE COURT: Yeah.

6 MR. CONNOT: -- you go with, Your Honor, I mean, we may
7 all --

8 THE COURT: Because I know the receiver word, you know, it
9 has a negative connotation --

10 MR. PARKER: Sure.

11 MR. CONNOT: Yeah.

12 THE COURT: -- like the business is going under.

13 MR. CONNOT: Right.

14 THE COURT: And this isn't going under. It's going to
15 continue on.

16 MR. CONNOT: But I think the --

17 THE COURT: I get it.

18 MR. CONNOT: -- the reason for picking a 14-day time period
19 is, you know, we may all by Tuesday go you know what? This is in the
20 order and in, you know, the real world, the consequences aren't that
21 great.

22 Either agree among ourselves the stipulated or have to come
23 back to the Court as the Court has indicated. Well, you don't want to be
24 involved in this, some of those decisions, but you know, we can see
25 where we're at in 14 days, not just with the order that the Court's put in

1 place. And we have our objections to that that we've noted.

2 THE COURT: Yeah.

3 MR. CONNOT: But not just with the order that's in place, but
4 whatever order the Court puts in place now, we can re-visit that. The
5 Court may very well say --

6 THE COURT: Every order --

7 MR. CONNOT: -- I'm going to continue that.

8 THE COURT: Yeah, every order can be re-visited. The only
9 reason I went with the 14 days is to make it more convenient --

10 MR. CONNOT: Uh-huh.

11 THE COURT: -- you know, where you have a short time
12 period. And then, later on -- and then, at that time, I might extend it 30
13 days. I may extend it 60 days, but that was more of an interim --

14 MR. CONNOT: Understood.

15 THE COURT: Right?

16 MR. PARKER: Makes sense.

17 THE COURT: But yes --

18 MR. PARKER: Very well, Your Honor.

19 THE COURT: -- I do like that concept. I will say that. So
20 they're coming back October -- I'm sorry, August 31st at 9:00 a.m.

21 THE CLERK: Correct.

22 THE COURT: Is that fine with everyone?

23 MR. PARKER: Sounds great, Your Honor. Thanks so much.

24 MR. CONNOT: Sounds great.

25 THE COURT: Okay, and everyone enjoy your day.

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MR. PARKER: You, too.

MR. KEMP: Thank you.

MR. CONNOT: Thank you, Your Honor.

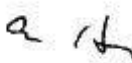
MR. RULIS: Thank you, Your Honor.

THE MARSHAL: All rise.

[Proceedings concluded at 3:41 p.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Chris Hwang
Court Reporter

TAB 18

TAB 18

Heather S. Hume

CLERK OF THE COURT

MOT

Joel E. Tasca
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*Attorneys for Plaintiff
Vincov Ventures, Inc.*

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

VINCO VENTURES, INC.,

Plaintiff,

v.

THEODORE FARNSWORTH; LISA
KING; RODERICK VANDERBILT;
AND ERIK NOBLE,

Defendants.

Case No. A-22-856404-B

Dept. No. 16

**VINCO VENTURES, INC.'S MOTION ON ORDER SHORTENING TIME TO
MODIFY ORDER APPOINTING ROSS MILLER AND LISA KING AS CO-CEOs**

The appointment of Ross Miller and Lisa King as co-CEOs with John Colucci has created an unworkable governing structure that does not serve the best interests of Vincov Ventures, Inc. ("Vincov" or the "Company"). The Court's decision to appoint Mr. Miller as a neutral co-CEO has been foiled by his reliance on Jesse Law, an advisor who is employed by defendant Ted Farnsworth. The result of Mr. Law's influence on Mr. Miller has been a two-against-one group of CEOs with defendants

1 always having the upper hand. The lack of a truly neutral third party contravenes
2 the Court's order appointing Mr. Miller and undercuts Vinco's best interests.

3 Ms. King's position as co-CEO likewise imperils the Company. As more fully
4 detailed below, Ms. King has consistently demonstrated an utter disregard for her
5 duties as a fiduciary. She has funneled millions of Vinco-shareholder dollars to her
6 own company, Magnifi U, and has caused Vinco to pay hundreds of thousands of
7 dollars to her own non-Vinco employees. Given these serious accusations about Ms.
8 King, she cannot be permitted to remain an executive at Vinco.

9 Vinco maintains the Court should re-instate Mr. Colucci as sole interim CEO
10 due to Ms. King's valid termination on July 24, 2022. However, as the Court has
11 noted, defendants have lodged accusations against Mr. Colucci's independence as a
12 director and called into question the validity of his votes. Vinco vehemently denies
13 the accusations against Mr. Colucci's independence and asserts that his
14 independence has never been subject to reasonable dispute. However, the Company
15 acknowledges the Court's apparent hesitation to credit Vinco's allegations of Ms.
16 King's wrongdoing over defendants' allegations against Mr. Colucci.

17 Thus, to the extent that the Court does not find it proper to allow Mr. Colucci
18 to retain his position as sole interim CEO, Vinco proposes that the Court remove all
19 three co-CEOs and allow the current CFO, Phil Jones, and COO, Steve Garrow, to
20 manage Vinco's day-to-day operations. These executives have an intimate
21 understanding of the Company's emergent needs and are well-equipped to handle
22 them in Vinco's best interests. This reasonable alternative to the currently
23 unworkable governing body will promote stability and maintain the status quo
24 through the pendency of this litigation.

1 ORDER SHORTENING TIME

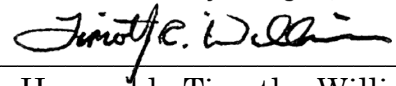
2 IT IS HEREBY ORDERED that the time for hearing on Vinco Ventures Inc.'s
3 Motion on Order Shortening Time to Modify Order Appointing Ross Miller and Lisa
4 King as Co-CEOs is shortened to be heard on the 31st day of August, 2022, at ~~9:00~~
5 ~~a.m. or as soon thereafter as the parties may be heard.~~ 1:30 p.m.

6
7 Defendants may file an Opposition on or before August ³¹____, 2022;

8 ~~Plaintiff may file a reply on or before August _____, 2022.~~

9
10 ~~Dated this _____ day of August, 2022.~~

11 Dated this 29th day of August, 2022

12 

13 The Honorable Timothy Williams

14 EB9 E38 C0F9 8341
15 Timothy C. Williams
16 District Court Judge

17 JM

**DECLARATION OF JOEL E. TASCA, ESQ. IN SUPPORT OF VINCO'S MOTION
TO MODIFY ORDER APPOINTING ROSS MILLER AND LISA KING AS CO-
CEOs**

1. I am an attorney and partner at the law firm Ballard Spahr LLP, counsel for plaintiff Vinco Ventures, Inc., and I submit this declaration in support of Vinco's Motion to Modify the Court's Order Appointing Ross Miller and Lisa King as Co-CEOs.

2. I make this declaration based on my own personal knowledge except where stated on information and belief, and to those matters, I believe them to be true.

3. I make this motion under EDCR 5.514, on Vinco's behalf, and in good faith. As set forth in the memorandum of points and authorities, there are several factors supporting the modification of the Court's August 19, 2022 Order appointing Mr. Miller and Ms. King as co-CEOs with interim CEO, John Colucci.

4. Accompanying this motion is the declaration of John Colucci in support and documentary evidence supporting the claims made in the motion.

5. As set out in those declarations and the documentary evidence submitted in support of Vinco's motion, Mr. Miller's neutrality in this matter has been threatened by his reliance on Jesse Law, an employee of defendant Farnsworth's entity, Zash Managers.

6. Also attached hereto is documentary evidence of Ms. King's serious and repeated breaches of her fiduciary duty as a director and co-CEO of Vinco.

7. Given the immediate harm that Ms. King's fiduciary failures will cause Vinco, she must be removed as co-CEO.

8. Counsel for defendants indicated during the Court's August 24 hearing that they would consent to this motion being heard on an expedited basis.

/s/ Joel E. Tasca
Joel E. Tasca, Esq.

1 **I. RELEVANT FACTS**

2 **A. Vinco is a publicly traded company in a capital crisis.**

3
4 Vinco is a public company in the digital media, advertising, and content space,
5 which was formed in Nevada in July, 2017. (Compl. ¶ 1) As a public company, the
6 board of directors and executives are subject to fiduciary duties to the shareholders,
7 which are set out in the Company's articles of incorporation and Nevada corporate
8 law. (*Id.* ¶ 23) Vinco's board of directors is comprised of five individuals. Three of
9 the five-member board of directors—John Colucci, Michael DiStasio, and Elliot
10 Goldstein—concerned about the continuing viability of a public company and
11 upholding their fiduciary duties, decided to terminate a number of the Company's
12 executives, including fellow board members Roderick Vanderbilt (Chair of the Board)
13 and Lisa King (former CEO), as well as Erik Noble (former CSO) and Ted
14 Farnsworth. (*Id.* at ¶ 67.).

15 The directors did not take this action lightly. Those former executives had
16 engaged in and were continuing to engage in misconduct and breaches of fiduciary
17 duty that would be catastrophic to the Company if allowed to continue. Indeed, as
18 reported by the Company in its last Form 10-Q financial report filed with the SEC in
19 May, “[f]or the three months ended March 31, 2022, our operations lost
20 \$378,400,000.” The Company spent transaction costs of \$8.2 million related to the
21 acquisition of AdRizer, \$6.75 million of which was paid to Farnsworth's separate
22 company ZASH Global Media and Entertainment Corporation (“Zash”). *Id.* In its
23 latest Form 10-K filed in April, the Company reported “related party” loans (primarily
24 to Zash and King's separate entity Magnifi U) of just shy of \$16 million. It also is
25 continuing to fund the operations of those businesses monthly, despite not receiving
26 a signed loan agreement from King for Magnifi U (“Magnifi”). (Ex. 1 Colucci Dec.) at
27 ¶ 14–16.) The Company is bleeding money and has less than a year of cash available
28 to continue operations unless significant reductions in spending occur. (*Id.* ¶ 12.)

1 Yet, King and Farnsworth have continued extracting money for their separate
2 entities undaunted. (*Id.*)

3 Specific misconduct pre-dating and following the termination of the executives
4 by the Board that warrant revising this Court's order and removing King as co-CEO
5 are detailed below:

6 1. King's self-dealing and misconduct as the Company's CEO

7 King became the Company's CEO and a member of its Board of Directors (the
8 "Board") in October 2021. (Compl. at ¶ 39.) As the Company's last press release
9 reported, before joining the Company, "[f]rom January 2021 until October 2021, Ms.
10 King served as the Chief Executive Officer of Zash, where she, with Zash's corporate
11 founders [including Farnsworth], led the development of its short- and long-term
12 business strategies. Ms. King is currently the Chairman, CEO and controlling
13 stockholder of Magnifi U Inc., a Company that provides a learning experience
14 platform for personal and professional development, which she founded in August
15 2020."¹ During her tenure at the Company, King has repeatedly demonstrated that
16 her allegiance remains with Farnsworth, Zash and Magnifi, rather than the
17 Company.

18 a. The Company Provides benefits to King's private
company: Magnifi

19 As the press release makes clear, the Company does not own or control
20 Magnifi. (Ex. 1, Colucci Dec. at ¶ 13) Still, under King's tenure as the Company's
21 CEO, the Company engaged in several transactions that directly benefited both
22 Magnifi and King. (*Id.*)

23 First, in October 2021—i.e., the same month King became the Company's
24 CEO—the Company loaned \$1.5 million to Magnifi. The purported loan matures in
25

26
27 ¹ Vinco Ventures Announces Executive Leadership Changes, VINCO VENTURES, INC.
28 (Aug. 26, 2022), available at <https://investors.vincoventures.com/press-releases/detail/124/vinco-ventures-announces-executive-leadership-changes> (last accessed Aug. 26, 2022).

1 October 2023, and its stated purpose was to enable Magnifi “to engage in the creation
2 and distribution of digital media content.” *Id.*

3 Second, at King’s request, asserting “operational efficiency” in December 2021,
4 the Company allowed Magnifi’s employees to come under the umbrella of Vinco
5 Shared Services, LLC, which manages payroll for the Company. (Ex. 1, Colucci Dec.
6 ¶ 15.) Over 25% of the payroll expenses incurred monthly through Vinco Shares
7 Services goes to pay salaries of Magnifi employees who do not work for the Company.
8 (*Id.*) Magnifi was therefore responsible for those payments. (*Id.*)

9 Again based on King’s requests, the Company considered providing yet another
10 loan to Magnifi, this time for \$2.75 million. (*Id.* ¶ 16; Ex. 6 [email from Lisa King].)
11 The audit committee of the Board recognized that there were substantial risks in
12 making any loan to Magnifi, since it was “essentially a start-up that could fail” and
13 that the Company should “mitigate such risks” by “requiring Magnifi U to grant to
14 the Company a security interest.” (Ex. 7 (May 19, 2022 Audit Committee meeting
15 minutes).) The audit committee resolved to “recommend that the Board approve the
16 \$2.75 million loan” but specified that the loan should be “secured” and required
17 “completing diligence and cleaning up and consolidating existing loans.” (*Id.*) The
18 Company’s counsel then presented King with a proposed secured loan agreement to
19 execute on behalf of Magnifi, consistent with the audit committee’s recommendation.
20 (Ex. 1, Colucci Dec. ¶ 16). King failed to do so, questioning the security interest the
21 Company sought. (*Id.*) Indeed, to this day Magnifi has not executed any agreement
22 relating to the \$2.75 million loan. (*Id.*; Ex. 7 [May 19 minutes].)

23 Despite the absence of a written agreement, within days after the audit
24 committee meeting, King caused the Company to wire hundreds of thousands of
25 dollars so that Magnifi could cover its payroll expenses. (Ex. 1, Colucci Dec. at ¶ 17).
26 King continued to have additional funds delivered by the Company to Magnifi or on
27 its behalf, purportedly pursuant to the unsigned \$2.75 million loan, from May
28 through the date of her termination and even since (including insisting on the

1 continued payment of Magnifi’s employees). (*Id.*) To be clear, this is taking money
2 from a public company for use by a privately owned start-up without documentation
3 or any security for potential loss.

4 Separate from these issues, King considers Tuesdays to be her “Magnifi U Day”
5 where King works exclusively on matters related to Magnifi, despite getting paid for
6 full-time employment as the Company’s CEO. (*Id.* ¶ 18) Further, King continually
7 directs Company employees to perform work on behalf of Magnifi without
8 reimbursement from Magnifi. (*Id.*)

9 b. King Supports Farnsworth’s separate business, Zash, over
10 the Company

11 As discussed above, King has a long-term relationship with nonparty Zash and
12 its founder defendant Farnsworth. The Company entered into a joint venture with
13 Zash to form nonparty ZVV Media Partners, LLC (“ZVV”). (*Id.* ¶ 19) As part of the
14 joint venture, the Company and Zash each appointed individuals to manage ZVV on
15 their behalf. (*Id.*)

16 During King’s tenure as the Company’s CEO, King repeatedly authorized (and
17 instructed the Company to pay) questionable expenses incurred by Zash, purportedly
18 as part of its joint venture through ZVV. (*Id.* ¶ 20) Since Colucci’s appointment to
19 the Board in June 2022, the Board and management raised serious concerns about
20 the propriety of certain expenses invoiced to the Company, including potential
21 payments to Farnsworth’s personal attorneys, and more. (*Id.*) These expenses—
22 incurred during King’s tenure—should have been borne by Zash alone because they
23 are decidedly not in furtherance of the joint venture. (*Id.*) King repeatedly authorized
24 and approved paying these exorbitant expenses. (*Id.*)

25 King also attempted to misappropriate for Zash certain software paid for by
26 the Company. In particular, in January 2022, the Company began discussions to hire
27 nonparty AI-Pros to create an artificial intelligence product. (*Id.* ¶ 21) Immediately
28

1 before the Company effected payment for the first license of the product, King asked
2 AI-Pros's CEO to name Zash—not the Company—as the licensee. (*Id.*)

3 King has also urged the Company to engage in transactions that were
4 beneficial to Zash and harmful to the Company. For example, Zash has just recently
5 demanded payment from the Company of \$6.6 million, without documenting reasons
6 for the payment and despite the Company's precarious financial position. (*Id.* ¶ 22)
7 During a meeting just this week of the three Co-CEOs, the CFO advised the group
8 that the reason or support for the \$6.6 million payment was not documented and
9 pointed out that the payment would reduce the Company's cash position by more than
10 one-third at a time when the Company needed to preserve cash. (*Id.*) Despite this,
11 King supported making the payment to Zash. (*Id.*) King suggested that the payment
12 was a valid request for funds from a credit facility provided to ZVV (even though the
13 demand was made by Zash directly, not ZVV). (*Id.* ¶ 23) Even if that were the case,
14 the CFO pointed out that the credit facility with ZVV had been breached because
15 Farnsworth had failed to attend meetings that were a specific condition to the loan.
16 (*Id.*) Rather than protect the interests of the Company (and its public shareholders),
17 King immediately jumped to Farnsworth's defense, questioning whether he had
18 notice of the meetings and trying to justify his failure to attend. (*Id.*) Despite her
19 fiduciary duties to the Company and its precarious financial position, King refused to
20 even discuss the possibility of calling the ZVV loan if the Company determined there
21 was a breach. (*Id.*) (A copy of video from this meeting is being provided to the Court).

22 2. King fails to implement the Board's reduction in force

23 Because of the Company's rampant spending, largely on related party
24 transactions for the benefit of King, Farnsworth, and their separately owned private
25 companies, as reported in the Company's last Form 10-Q, "[f]or the three months
26 ended March 31, 2022, our operations lost \$378,400,000" including \$8.2 million
27
28

1 related to the acquisition of AdRizer, \$6.75 million of which was paid directly to Zash.²
2 Since that filing reporting financials from less than six months ago, the Company's
3 cash balance has shrunk to less than \$18 million. (Ex. 1, Colucci Dec. at ¶ 24) At the
4 Company's cash burn rate from excess spending (including on "loans" and advances
5 for related parties), the Company faces an uncertain future. (*Id.*)

6 Therefore, the Board ordered a Company-wide cost-reduction plan, including a
7 reduction in force described above ("RIF"). (*Id.* ¶ 25) The RIF is and continues to be
8 crucial to the cash-strapped Company's success. (*Id.*) King, as CEO, was tasked by
9 the Board with implementing the RIF—including terminating certain Magnifi
10 employees. (*Id.*) Despite the direction of the Board, King failed to implement any
11 reduction in force or make other cost-saving changes the Board sought. (*Id.*) This
12 evidenced for the Board King's complete lack of ability to lead a public company. (*Id.*)

13 **B. The Board Terminated King for Cause (Twice)**

14 On July 8, 2022, King purported to convene a special meeting of the Board with
15 less than one hour's notice (the "Invalid Meeting"). (Compl. at ¶ 44.) At the Invalid
16 Meeting, King moved the Board to appoint Farnsworth as the Company's Co-CEO.
17 (*Id.* ¶ 46.) King explained that during her tenure as CEO, she had been taking
18 direction from Farnsworth all along. (*Id.*)

19 Shortly after the meeting, the Board's counsel advised the Board that the
20 Invalid Meeting violated the 48-hour notice requirement and, therefore, any action
21 taken by the Board at the meeting was void. (*Id.* ¶ 47.) Counsel further advised that
22 if the Board desired to legally effect a change in the Company's management, it must
23 convene a properly noticed meeting. (*Id.*) Despite this, King, who was aware of the
24 invalidity of the meeting and without Board review or approval, filed a Form 8-K with
25

26 _____
27 ² Vinco Ventures, Inc., Annual Report (Form 10-Q) (April 15, 2022) available at
28 https://investors.vincoventures.com/all-sec-filings/content/0001493152-22-014779/form10-q.htm?TB_iframe=true&height=auto&width=auto&preload=false
(last visited Aug. 26, 2022).

1 the SEC reporting the appointment of her and Farnsworth as co-CEOs (the “First
2 Incorrect 8-K”). (*Id.* ¶ 47.)

3 On July 14, 2022, because of King’s ongoing misconduct, the majority of the
4 Board determined to terminate King as CEO. That evening, the three independent
5 directors convened a joint meeting of the Company’s audit, compensation, and
6 nominating and corporate governance committees, each of which passed a resolution
7 approving King’s termination as CEO and recommending the full Board’s approval of
8 these resolutions. (*Id.* ¶ 52.) The Board did so at a duly convened July 17 meeting.
9 (*Id.*)

10 The following week, after discussion on the potential negative impact on King,
11 on July 21, 2022, the Board had another meeting. To soften the blow of its earlier
12 termination of King, at that meeting, the Board appointed Farnsworth as the
13 Company’s Co-CEO and rescinded King’s termination, but moved her from the role
14 of the Company’s CEO to President of ZVV. (*Id.* ¶ 55.)

15 Despite the Board’s good faith in trying to accommodate King, on July 22, King
16 again, without consulting the Board or the Company’s counsel, filed a Form 8-K (the
17 “Second Incorrect 8-K”) that failed to correct the misstatements in the First Incorrect
18 8-K and materially misrepresented the chain of events that led to King’s termination
19 as the Company’s CEO and Farnsworth’s appointment as Co-CEO. (*Id.* ¶ 58.)

20 Because of this and other improper conduct, on July 24, 2022, the Board
21 terminated King a second time in addition to the other defendants at a duly noticed
22 meeting. (*Id.* ¶ 60.) King received written notice of her termination the following
23 morning. (*Id.* ¶ 62.)

24 King’s termination by the majority of the Board was an exercise of the Board
25 members’ fiduciary duties to protect the on-going operations of a public Company and
26 prevent harm to its public shareholders. (Ex. 1, Colucci Dec. at ¶ 26) In the Court’s
27 August 19, 2022 order, the Court reinstated King to a co-CEO position. (Aug. 19
28 Order at 3.) As discussed above, since King was restored as co-CEO, she continues

1 to pursue transactions that favor Magnifi, herself, and Zash, all to the Company's
2 detriment. (*Id.*) The Company and its shareholders cannot afford for this to continue.
3 (*Id.*)

4 C. Vinco brought this action to prevent King from exhausting the limited
funds the Company has left.

5 King's actions since refusing to accept her valid termination have forced Vinco
6 to bring this action against her. King responded to the action by accusing Mr. Colucci
7 of being a non-independent director and claims that Mr. Colucci's director vote is
8 invalid. On August 19, 2022, the Court issued an order "recognize[ing] . . . Lisa King
9 as co-CEO[] of Vinco Ventures pending further order of the Court." (Aug. 19 Order
10 at 3.) Under the order, King shares equally in the decision-making authority for and
11 responsibilities of running the Company. (*Id.*).

12 D. Ross Miller was appointed co-CEO to be a neutral, independent third
13 party.

14 In the same Aug. 19 Order, the Court determined that Mr. Colucci and Ms.
15 King were likely to disagree on the best interests of the Company, as reflected in their
16 divergent positions in this litigation. The Court, therefore, appointed Mr. Miller as
17 "interim, neutral, and independent . . . third co-CEO of Vinco Ventures" in an effort
18 to maintain the status quo by appointing a tie-breaking vote between King and
19 Colucci. (Aug. 19 Order ¶ 2) The Court admonished Mr. Miller and the other co-
20 CEOs to act in Vinco's best interests and "take all reasonable steps necessary to
21 ensure Vinco Venture's ongoing business operations." (*Id.* ¶¶ 4–5).

22 The August 19 Order did not give any additional guidance as to the powers or
23 limitations of Mr. Miller's appointment or detail whether he was vetted to act as co-
24 CEO. Nor did Mr. Miller's appointment arise in the ordinary course, through written
25 motion and argument. Instead, he was appointed after a brief discussion at the
26 August 18, 2022 hearing concerning the Court's hesitance to appoint a receiver due
27 to the negative implications that a receivership could have with shareholders. (*See*
28 *id.* at 35).

1 Seemingly out of nowhere, defendants proposed that Mr. Miller who “just
2 happened to wander in the courtroom” be appointed as co-CEO. (*See* Trans. Of Aug.
3 18, 2022 Hearing (“8/18 Hearing”), at 29–30). Defense counsel assured the court that
4 Mr. Miller had been vetted and that he was willing to be appointed as co-CEO. (*Id.*
5 at 30:5).

6 Venco’s counsel objected to Mr. Miller’s appointment, arguing that if the court
7 were to consider the appointment of a third CEO, the parties should at least have a
8 chance to submit names for the Court’s consideration. (*Id.* at 30:21). Nevertheless,
9 defendants submitted their proposal to appoint Mr. Miller through a proposed order
10 under the Court’s direction.

11 **E. Mr. Miller has not been the independent, neutral party the Court’s**
12 **order requires**

13 Mr. Miller attended his first meeting as co-CEO on Monday, August 22, 2022.
14 There, Mr. Miller disclosed to Venco for the first time that he had selected two
15 advisors to assist him in getting up to speed with the inner workings of the company.
16 Among the two advisors was Jesse Law, the manager of defendant Mr. Farnsworth’s
17 entity, Zash Managers. (*See* Exhibit 2, Meeting of Co-CEOs, Aug. 22, 2022, at 12:00–
18 17:00). Mr. Law had been appointed manager of Zash Managers on July 28, 2022—
19 four days after the acrimonious board meeting that resulted in Ms. King’s
20 termination. (*See* Exhibit 3, Designation of Managers by Zash Members). The
21 advisor upon whom Mr. Miller relied to familiarize himself with the company was
22 employed, compensated, and beholden to the defendant Farnsworth. (*Id.*)

23 Mr. Colucci and current-CFO Phil Jones, who were present at the meeting,
24 immediately raised the inherent conflict that Mr. Miller’s relationship with Mr. Law
25 posed. (Ex. 2, Video of Meeting of Co-CEOs at 16:00). Mr. Colucci questioned how
26 they could proceed with Mr. Law present, knowing that he was hired and employed
27 by defendant Farnsworth’s company. (*Id.* at 16:22). Mr. Miller responded that Mr.
28

1 Law's involvement was "up for discussion." (*Id.*) But nothing has changed. Vinco
2 believes Mr. Law continues to advise Mr. Miller to this day.

3 The results of Mr. Law's influence have been predictable. King continues to
4 advocate for expenditures that would benefit her own interests over the Company's.
5 And Defendants now have a 2-1 vote on contested issues, with split votes swinging in
6 favor of the interests of the defendants. (Colucci Dec. ¶ 30). The situation has further
7 deteriorated in recent days. At the conclusion of a virtual meeting of CEOs on August
8 25, after Mr. Colucci stated that he would disconnect from the call, an unknown voice
9 from Mr. Miller's screen can be heard stating first, "he's a real motherfucker,"
10 presumably referring to Mr. Colucci, and then, "when [Mr. Colucci] drops off, we still
11 have quorum." (Exhibit 4, Video OPEX Financial Review Call, Aug. 25, 2022 at 3:50–
12 4:00). Vinco is unaware of what decisions Mr. Miller's camp intended to make once
13 Mr. Colucci disconnected the call, but any attempts to purposefully vote in Mr.
14 Colucci's absence betrays Mr. Miller's lack of neutrality.

15 **II. LEGAL STANDARD**

16 The Court has inherent authority to modify or correct prior orders when
17 substantially different evidence supports the modification. *Masonry & Tile Contrs.*
18 *v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741 (1997) (citations omitted); *accord*
19 *R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 138 Nev. Adv. Op. 55, 2022 WL
20 3008304, at *8 (2022). The Court's inherent power to reconsider its prior decisions
21 arises from the common law and is not dependent upon court rules. *Rhyne v.*
22 *McDaniel*, No. 3:06-cv-00082-LRH-VPC, 2007 U.S. Dist. LEXIS 60374 at *1–*2 (D.
23 Nev. Aug. 14, 2007). Nevertheless, the Nevada rules of civil procedure also allow
24 revision of prior orders based on "newly discovered evidence that, with reasonable
25 diligence, could not have been discovered" in time to challenge the original finding.
26 NRCP 60(b)(2).

1
2 **III. ARGUMENT**

3 **A. Mr. Miller must be removed as co-CEO because he is not an**
4 **independent, neutral third party.**

5 The Court's August 19 order is clear: Mr. Miller was appointed to act as a
6 "neutral, and independent" third vote to ensure that disagreements among the two
7 other CEOs did not derail Vinco's day-to-day operations. (Aug. 19 Order ¶ 2
8 (emphasis added)). The requirement that Mr. Miller be neutral and independent is
9 consistent with similar equitable appointments of third parties (like receivers or
10 custodians) to assist the Court during pending litigation. *See Anes v. Crown P'ship,*
11 *Inc.*, 113 Nev. 195, 199 (1997) (appointment of a third-party receiver must be "neutral
12 party"); *Johnson Utils., LLC v. Ariz. Corp. Comm'n*, 249 Ariz. 215, 238 (2020)
13 (citations omitted) (appointment of receiver must be a disinterested, neutral party).

14 Mr. Miller's advisory relationship with Mr. Law, however, materially inhibits
15 Mr. Miller's ability to serve as a neutral and disinterested third-party. This became
16 apparent during Mr. Miller's first meeting with Vinco on Monday, August 22, 2022.³
17 Mr. Colucci and current-CFO, Phil Jones, however, immediately highlighted the
18 obvious conflict inherent in a member of defendant Farnsworth's team advising the
19 court-appointed neutral. Mr. Jones asked "I'm not sure why he [Mr. Law] would be
20 attending" given his status as an employee of the defendant. (Ex. 2, Meeting of Co-
21 CEOs, at 13:15). And Mr. Colucci similarly asked how the court-appointed co-CEO
22 could continue, knowing that his advisor on company matters was hired and
23 employed by a defendant's company. (*Id.* at 16:22).

24
25 ³ Defendant Erik Noble, who was also present at the meeting appears to feign
26 ignorance as to who Jesse is, asking Mr. Miller to confirm Mr. Law's last name. Vinco
27 has since discovered that Mr. Noble was perfectly familiar with Mr. Law and that the
28 two have had several interactions as part of defendant Farnsworth's circle. In fact,
as recently as May 22, 2022, Mr. Noble attended an exclusive company-sponsored
event in Las Vegas with Mr. Law. (Exhibit 5, Photograph of E. Noble and J. Law at
company-sponsored event in Las Vegas, May 22, 2022). Yet, despite knowing that
Mr. Law was intimately intertwined with defendant Farnsworth, Mr. Noble raised
no concerns about Mr. Miller's neutrality.

1 The simple answer is he cannot. The neutrality and independence of a court-
2 appointed third party is paramount to the fundamental fairness of the underlying
3 proceeding because the appointee assumes incredible authority and acts as the arm
4 of the Court in administering the affairs of the business. *Fullerton v. Second Jud.*
5 *Dist. Ct.*, 111 Nev. 391, 400 (1995) (noting the “broad powers” of a court-appointed
6 receiver); *Jepsco, Ltd. v. B.F. Rich Co.*, C.A. No. 7343-VCP, 2013 Del. Ch. LEXIS 45,
7 at *23 (Del. Ch. Feb. 14, 2013) (an entity is “placed in the hands of the Court” through
8 the appointment of a custodian).

9 Here, however, neither the Court nor Vinco had the chance to vet Mr. Miller’s
10 neutrality to serve as co-CEO. Mr. Miller was not required to disclose any potential
11 conflicts or financial interests that he may have in the company, its subsidiaries,
12 competitors, or disclose any other information bearing on his neutrality and
13 independence. In fact, the extent of Mr. Miller’s vetting was the assurance of defense
14 counsel that “we vetted [Mr. Miller]” and “He said he’ll do it.” (See Trans. of
15 Proceeding, Aug. 18, 2022, at 30:5).

16 Respectfully, “He said he’ll do it” is not the standard to appoint a third-party
17 as co-CEO, who will be vested with authority to make monumental decisions on
18 behalf of a publicly traded company. Vinco’s counsel objected to that fact during the
19 hearing, arguing that “*if we’re even going to look at something [like appointing an*
20 *unrelated third party as co-CEO]*, it ought to be a situation where . . . certain names
21 are presented to the Court. And the Court may select from that.” (*Id.* at 30:21–25).
22 Had the parties been allowed to select from a list of names instead of being stuck with
23 a co-CEO whom defense counsel acknowledged just “happened to wander into the
24 courtroom” (*Id.* at 30:3), they could have evaluated whether Mr. Miller’s advisory
25 team would taint his view of Vinco and several of its directors. Yet, Vinco never had
26 the chance.

27 Moreover, this tripartite co-CEO structure simply is not working. The point of
28 the Court’s decision to appoint a third co-CEO was to be a neutral tiebreaking vote

1 when Mr. Colucci and Ms. King inevitably disagree on material decisions. That setup
2 only works if the third co-CEO is actually neutral. Here, however, Mr. Miller's
3 reliance on Mr. Law's perception of Vinco and its non-defendant directors and officers
4 has predictably resulted in a 2-1 simple majority for the outcomes Ms. King and Mr.
5 Farnsworth decide. And, as the August 25, 2022 CEO call shows, Mr. Miller's camp
6 has poisoned his neutrality as it relates to Mr. Colucci. (Ex. 4 OPEX Financial Review
7 Call, Aug. 25, 2022 Video at 3:50–4:00). This result is the opposite of the status quo
8 that the Court intended to preserve, and Mr. Miller must be removed from his
9 position as co-CEO.⁴

10 **B. King must also be removed as co-CEO.**

11 In Nevada, "[t]he fiduciary duties of directors and officers are to exercise their
12 respective powers in good faith and with a view toward the interests of the
13 corporation." NRS 78.138(1). These fiduciary duties give rise to the duty of care.
14 *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632 (2006), *overruled on other grounds*
15 *by Guzman v. Johnson*, 137 Nev. Adv. Rep. 13, 483 P.3d 531 (2021). The duty of care
16 creates "an obligation to act on an informed basis . . ." *Id.*

17 Here, by exercising its equitable authority to recognize Co-CEOs, the Court
18 steps into the shoes of the Board tasked with filling an officer vacancy. King's
19 terminations were the direct result of the Board's obligation under Nevada law to act
20 on an informed basis.

21 The informed bases for King's terminations included King's self-dealing tenure
22 as the Company's sole CEO, during which she elevated the interests of her private
23 company, Magnifi, to the detriment of Vinco and its shareholders. While King was
24 sole CEO, the Company made documented and undocumented loans to Magnifi to
25

26 ⁴ As the recent events explained above make clear, it would not be sufficient for the
27 Court to simply enjoin Mr. Law from advising Mr. Miller. Mr. Law's involvement has
28 poisoned the well, so to speak, and he has materially and irreparably affected Mr.
Miller's perception of Mr. Colucci. Alternatively, such an order would be virtually
impossible to police.

1 cover Magnifi's payroll and expenses. Shockingly, at King's direction the Company
2 wired \$750,000 to Magnifi supposedly as part of a \$2.75 million loan agreement that
3 has not been finalized—mostly because King was unsatisfied with the security
4 interest sought by the Company—or publicly reported to the SEC. King's use of
5 public money to fund her private venture constitutes a gross abdication of her
6 fiduciary duties to the Company and its shareholders and played in a key role in the
7 Board's decision to twice terminate her employment.

8 Further, the Board found it significant that King was unable to execute or
9 follow through on the Board's RIF cost-reduction plan. King failed to implement any
10 reduction in force or otherwise effect any cost-saving changes. King's failure proved
11 to the Board that King either cannot or is not interested in making the tough
12 decisions attendant to running a public company, and it was not lost on the Board
13 that the RIF would have included many of Magnifi's employees. Worse, King proved
14 to be a recalcitrant CEO. She directed the filing of the First and Second Incorrect 8-
15 Ks—secretly and against the advice of counsel and the Board—despite her knowledge
16 that they contained incorrect and misleading statements.

17 Finally, King's tenure was marked by an inordinate desire to elevate the
18 interests of Zash and Farnsworth over the Company. While CEO, King authorized
19 the coverage of expenses that were decidedly not in furtherance of the Company,
20 including payments for and potentially to Farnsworth's personal attorneys. Now that
21 the Court's order has reinstalled King as a Company CEO, she has picked up right
22 where she left off by urging the cash-strapped Company to pay \$6.6 million to Zash
23 despite the absence of documentation sufficient to support Zash's claimed expenses.

24 At bottom, the Board twice lost faith in King's ability to lead the Company.
25 When the Court recognized King as Co-CEO, it lacked an informed basis of King's
26 self-dealing, dilatory, and harmful actions. If the Board today faced a vote on whether
27 to appoint King as CEO, the Board would violate its fiduciary duties by voting in
28 favor. By re-installing King, the Court's order places the Company back at King's

mercy at a time when the Company's future is uncertain. In order to safeguard the interests of the Company and its shareholders, the Court should modify its August 19 order and cease recognizing King as Co-CEO.

C. The Court should remove all three co-CEOs and transfer Company management to the current CFO and COO.

Given the serious concerns that Vinco has raised about Mr. Miller and Ms. King's actions as co-CEOs, they must be removed. Vinco believes the Court should uphold the decision of the board and reinstate Mr. Colucci as sole interim CEO. The board would then have the time and resources to find a new permanent CEO who would be suited to the job and benefit the Company and its shareholders. Nonetheless, in light of the Court's apparent concern about upholding the board's decision in the face of defendants' challenge to Mr. Colucci's independence, Vinco alternatively proposes that the court appoint current CFO, Phil Jones, and current COO, Steve Garrow, to serve in the CEO role pending the Court's decision on the injunction. Mr. Jones and Mr. Garrow are intimately familiar with the struggles Vinco faces and have the knowledge and experience to quickly and efficiently navigate the coming months.

IV. CONCLUSION

For the reasons above, the Court should grant Vinco's motion and remove the co-CEOs.

Dated this 26th day of August, 2022.

BALLARD SPAHR LLP

By: /s/ Joel E. Tasca

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Attorneys for Plaintiff

Vinco Ventures, Inc.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I hereby certify that on the 26th day of August, 2022,
3 an electronic copy of **VINCO VENTURES, INC.'S MOTION ON ORDER**
4 **SHORTENING TIME TO MODIFY ORDER APPOINTING ROSS MILLER AND**
5 **LISA KING AS CO-CEOS**, was served on counsel of record via the Court's electronic
6 service system.

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An employee of BALLARD SPAHR LLP
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VINCO'S LIST OF EXHIBITS

1.	Declaration of John Colucci
2.	Video of Meeting of Co-CEOs, August 22, 2022
3.	Designation of Zash Managers by Zash Member, July 28, 2022
4.	Video OPEX Financial Review Call, August 25, 2022
5.	Photograph of E. Noble and J. Law in Las Vegas, Nevada, May 22, 2022
6.	Email from Lisa King to Board Member
7.	May 16, 2022 Audit Committee Meeting Minutes

EXHIBIT 1

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**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA**

VINCO VENTURES, INC.,

Plaintiff,

v.

THEODORE FARNSWORTH; LISA
KING; RODERICK VANDERBILT;
AND ERIK NOBLE,

Defendants.

Case No. A-22-856404-B

Dept. No. 16

**DECLARATION OF JOHN COLUCCI IN SUPPORT OF VINCO VENTURES'
MOTION TO REMOVE ROSS MILLER AND LISA KING AS CO-CEOs ON
ORDER SHORTENING TIME**

John Colucci declares as follows:

1. I am Vincov Ventures, Inc.'s ("Vincov" or "the Company") interim chief executive officer. I am over 21 years of age, and I am competent to testify to these matters based upon personal knowledge or on Vincov's business records, with which I am familiar and with Vincov keeps in the regular course of its business.

2. I make this declaration in support of Vinco's Motion to Remove Ross Miller and Lisa King as Co-CEOs on Order Shortening Time.

3. Vinco is a publicly traded company formed in 2017 with a principal place of business in New York.

4. On July 24, 2022, at 11:00 a.m. Eastern Standard Time, Vinco's board of directors convened a duly noticed board meeting.

5. Each of the five board members were present for the meeting—Vanderbilt as Chairman, King, DiStasio, Elliott Goldstein, and Colucci.

6. The meeting satisfied both the quorum and notice requirements of the Company's bylaws as set out in §§ 3.7 and 3.8.

7. Acting as chairman, Vanderbilt called the meeting to order.

8. The board then began discussion of several agenda items that had been provided in advance of the meeting.

9. The board voted 3-1 in favor of the following items: (1) the termination of Farnsworth as co-Chief Executive Officer for cause, effective immediately; (2) the termination of defendant King as President of ZVV Media Partners, LLC for cause, effective immediately; (3) the termination of Noble as the Company's Chief Security Officer; (4) the termination of defendant Vanderbilt for cause and his removal as chairman of the board; and (5) the appointment of me as interim Chief Executive Officer. Vanderbilt refused to participate in the meeting and did not vote. King voted against each agenda item. Both were disruptive throughout the meeting, causing the host to mute them at various points throughout.

10. On July 25, 2022, written termination notices were distributed to all of the defendants.

11. The directors did not take this action lightly. Those former executives had engaged in and were continuing to engage in misconduct and breaches of fiduciary duty that would be catastrophic to the Company if allowed to continue.

1 12. For example, although Vinco is bleeding money and has less than three
2 months of cash available to continue operations, King has continued to extract
3 money from Vinco for her and Farnsworth separate, respective companies.

4 13. Upon information and belief, King is the CEO and controlling
5 stockholder of Magnifi U Inc. Vinco does not own or control Magnifi. Still, under
6 King's tenure as the Company's CEO, the Company engaged in several transactions
7 that directly benefited both Magnifi and King.

8 14. First, in October 2021—i.e., the same month King became the
9 Company's CEO—the Company loaned \$1.5 million to Magnifi. The loan matures
10 in October 2023, and its stated purpose was to enable Magnifi to engage in the
11 creation and distribution of digital media content.

12 15. Second, at King's request for "operational efficiency," in December
13 2021, Magnifi's employees came under the umbrella of Vinco Shared Services, LLC,
14 which manages payroll for the Company. Over 25% of the payroll expenses
15 incurred monthly through Vinco Shares Services goes to pay salaries of Magnifi
16 employees who do not work for the Company. Magnifi was therefore responsible for
17 those payments.

18 16. Again based on King's requests, the Company considered providing
19 yet another loan to Magnifi, this time for \$2.75 million. The audit committee of the
20 Board recognized that there were substantial risks in making any loan to Magnifi,
21 since it was essentially a start-up that could fail and that the Company should
22 mitigate such risks by requiring Magnifi U to grant to the Company a security
23 interest. The Company's counsel then presented King with a proposed secured loan
24 agreement to execute on behalf of Magnifi, consistent with the audit committee's
25 recommendation. King failed to do so, questioning the security interest the
26 Company sought. Indeed, to this day Magnifi has not executed any agreement
27 relating to the \$2.75 million loan.

28

1 17. Despite the absence of a written agreement, within days after the
2 audit committee meeting, King caused the Company to wire \$750,000 to Magnifi's
3 account so that Magnifi could cover its payroll expenses. King continued to have
4 additional funds delivered by the Company to Magnifi or on its behalf, purportedly
5 pursuant to the unsigned \$2.75 million loan, from May through the date of her
6 termination for cause and even since (including insisting on the continued payment
7 of Magnifi's employees). To be clear, this is taking money from a public company for
8 use by a privately owned start-up without documentation or any security for
9 potential losses.

10 18. Separate from these issues, King considers Tuesdays to be her
11 "Magnifi U Day" where King works exclusively on matters related to Magnifi,
12 despite getting paid for full-time employment as the Company's CEO. Further,
13 King continually directs Company employees to perform work on behalf of Magnifi
14 without reimbursement from Magnifi.

15 19. King has a long-term relationship with nonparty ZASH Global Media
16 and Entertainment Corporation ("Zash") and its founder defendant Farnsworth.
17 Venco entered into a joint venture with Zash to form nonparty ZVV Media Partners,
18 LLC ("ZVV"). As part of the joint venture, the Company and Zash each appointed
19 individuals to manage ZVV on their behalf.

20 20. During King's tenure as the Company's CEO, King repeatedly
21 authorized (and instructed the Company to pay) questionable expenses incurred by
22 Zash, purportedly as part of its joint venture through ZVV. Since my appointment to
23 the Board in June 2022, the Board and management raised serious concerns about
24 the propriety of certain expenses invoiced to the Company, including potential
25 payments to Farnsworth's personal attorneys, and more. These expenses—incurred
26 during King's tenure—should have been borne by Zash alone because they are
27 decidedly not in furtherance of the joint venture. King repeatedly authorized and
28 approved paying these exorbitant expenses.

1 21. King also attempted to misappropriate for Zash certain software paid
2 for by the Company. In particular, in June 2022, the Company began discussions to
3 hire nonparty AI-Pros to create an artificial intelligence product. Immediately
4 before the Company effected payment for the first license of the product, King asked
5 AI-Pros's CEO to name Zash—not the Company—as the licensee.

6 22. King has also urged the Company to engage in transactions that were
7 beneficial to Zash and harmful to the Company. For example, Zash has just
8 recently demanded payment from the Company of \$6.6 million, without
9 documenting reasons for the payment and despite the Company's precarious
10 financial position.

11 23. During a meeting just this week of the three Co-CEOs, the CFO
12 advised the group that the reason or support for the \$6.6 million payment was not
13 documented and pointed out that the payment would reduce the Company's cash
14 position by more than one-third at a time when the Company needed to preserve
15 cash. Despite this, King supported making the payment to Zash. King suggested
16 that the payment was a valid request for funds from a credit facility provided to
17 ZVV (even though the demand was made by Zash directly, not ZVV). Even if that
18 were the case, the CFO pointed out that the credit facility with ZVV had been
19 breached because Farnsworth had failed to attend meetings that were a specific
20 condition to the loan. Rather than protect the interests of the Company (and its
21 public shareholders), King immediately jumped to Farnsworth's defense,
22 questioning whether he had notice of the meetings and trying to justify his failure
23 to attend. Despite her fiduciary duties to the Company and its precarious financial
24 position, King refused to even discuss the possibility of calling the ZVV loan if the
25 Company determined there was a breach.

26 24. Because of Vinco's rampant spending, largely on related party
27 transactions for the benefit of King, Farnsworth, and their separately owned private
28 companies, Vinco reported on its latest Form 10-Q operational losses of

1 \$378,400,000 for the three months ending March 31, 2022. This huge acceleration in
2 spending and disregard for SEC rules and even this Court's TRO in my view
3 mirrors the ramped up spending and disregard for authority that occurred in the
4 MoviePass / Helios closure and bankruptcy in which Ted Farnsworth and Rod
5 Vanderbilt were involved and which resulted in a 20 year order restricting
6 Farnsworth's activities to avoid a repeat of that debacle. Since that filing reporting
7 financials from less than six months ago, Vinco's cash balance has shrunk to less
8 than \$18 million. At Vinco's cash burn rate from excess spending (including on
9 "loans" and advances for related parties), the Company faces an uncertain future.

10 25. Therefore, the Board ordered a Company-wide cost-reduction plan,
11 including a reduction in force ("RIF"). The RIF is and continues to be crucial to
12 cash-strapped Vinco's success. King, as CEO, was tasked by the Board with
13 implementing the RIF—including terminating certain Magnifi employees. Despite
14 the direction of the Board, King failed to implement any reduction in force or make
15 other cost-saving changes the Board sought. This evidenced for the Board King's
16 complete lack of ability to lead a public company.

17 26. The Board's termination of King on July 14 and again on July 27,
18 2022, was an exercise of the Board members' fiduciary duties to protect the on-going
19 operations of a public Company and prevent harm to its public shareholders. Since
20 King was restored as co-CEO, she continues to pursue transactions that favor
21 Magnifi, herself, and Zash, all to the Company's detriment. The Company and its
22 shareholders cannot afford for this to continue.

23 27. The Court's appointment of Mr. Miller as a neutral and independent
24 third co-CEO has not resolved matters.

25 28. On August 22, 2022, during the first call between co-CEOs, I learned
26 that Mr. Miller intended to rely upon the advice and counsel of Jesse Law who is
27 currently employed by Zash Managers, a company controlled by defendant
28 Farnsworth.

29. I objected to Mr. Law's presence on the co-CEO call, but to my knowledge, Mr. Miller has continued to rely on Mr. Law's counsel despite his involvement with defendants.

30. The result of Mr. Law's influence and effectively created a 2-1 system, where I am consistently outvoted on contested matters. Those contested matters include many items including blocking the \$6.6 Million payment to Zash (Farnsworth's company), blocking payments advocated by Ross and King to other companies Vinco does not own, attempting to appoint Defendant Erik Noble, the former and fired chief security officers (who also resigned in July) to a new unauthorized role as Chief of Staff (despite a \$4 Million cyber theft by three separate wire transfers in July where the funds were taken using King's email account and then mysteriously and in a completely unheard of (according to governmental authorities) situation returned, with Noble harassing the CFO and threatening the CFO's job, and refusing to implement a very necessary RIF. I do not believe this was the Court's intent when it appointed Mr. Miller.

31. Plaintiff also requests that the information in the proposed order provided by Farnsworth and signed by the Court on August 19, 2022, that stated that Farnsworth arranged the latest financing agreement related to the default by Vinco's main lender be stricken. I assert that a factual presentation will prove that information to be inaccurate, and the gratuitous insertion of it in the proposed order submitted by Farnsworth was an egregious overstep.

32. However, the working relationship between the three co-CEOs has become untenable in the short period of time.

Executed on August 26, 2022.



JOHN COLUCCI

EXHIBIT 2

EXHIBIT 3

DESIGNATION OF ZASH MANAGERS

BY THE ZASH MEMBER

OF

ZVV MEDIA PARTNERS, LLC

Effective as of July 28, 2022

As of this July 28, 2022 (the “**Effective Date**”), the undersigned Zash Member of ZVV Media Partners, LLC, a Delaware limited liability company (the “**Company**”), in accordance with Section 5.1 of the Second Amended and Restated Limited Liability Company Agreement of the Company (the “**LLC Agreement**”), makes the designations and appointments of Zash Managers to the Board, as specified herein (this “**Designation**”). Capitalized terms used and not defined herein shall have the meanings ascribed to them in the LLC Agreement.

WHEREAS, pursuant to Section 5.1.1 of the LLC Agreement, the Zash Member has the right to designate three (3) Managers (the “**Zash Managers**”) to the Board of the Company;

WHEREAS, pursuant to Section 5.1.4(a) of the LLC Agreement, the initial Zash Managers appointed to the Board by the Zash Member were (i) Theodore Farnsworth, (ii) Roderick Vanderbilt and (iii) Lisa King;

WHEREAS, pursuant to Section 5.1.(b) of the LLC Agreement, a Manager may resign at any time by giving written notice to the Members of the Company and upon the resignation of a Manager, a new Manager may be appointed by the Member entitled to appoint such Manager;

WHEREAS, the Zash Member received written resignations of (i) Roderick Vanderbilt and (ii) Lisa King, each in their respective capacity as a ZASH Manager, effective as of December 30, 2021, thereby creating two (2) vacancies among the Zash Managers;

WHEREAS, as a result of the resignations of (i) Lisa King and (ii) Roderick Vanderbilt as the ZASH Managers, the ZASH Member is entitled to and desires to appoint two (2) successor Managers to serve as the ZASH Managers pursuant to Section 5.1.4(b) of the LLC Agreement;

NOW, THEREFORE, BE IT RESOLVED, that effective as of the Effective Date, the Zash Member hereby designates and appoints each of (i) Brian Hart and (ii) Jesse Law as Zash Managers in accordance with the Zash Member’s designation rights pursuant to Section 5.1.4(b) of the LLC Agreement; and

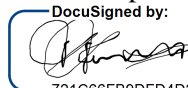
RESOLVED FURTHER, that as of the Effective Date, the ZASH Managers be and hereby are (i) Theodore Farnsworth, (ii) Brian Hart and (iii) Jesse Law.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the undersigned Zash Member, has executed this Designation as of the date first set forth above.

ZASH MEMBER:

ZASH GLOBAL MEDIA AND ENTERTAINMENT
CORPORATION,
a Delaware corporation

DocuSigned by:


By: 721C66FB9DFD4D2...

Name: Theodore Farnsworth

Title: Chief Executive Officer

[Signature Page to Designation of Zash Manager by Zash Member]

EXHIBIT 4

EXHIBIT 5



May 22, 2022 in Las Vegas in exclusive event
Jesse Law close relationship with defendant Erik Noble

EXHIBIT 6

Chavez, David (LV)

From: Giovanni Colucci <john@hwydata.com>
Sent: Thursday, August 25, 2022 3:53 PM
To: Tasca, Joel (LV); Clark, Andrew S. (LV)
Subject: Lisa

△ EXTERNAL

----- Forwarded message -----

From: Lisa King <lking@zash.global>
Date: Thu, Aug 25, 2022 at 1:33 PM
Subject: Proper documentation request
To: Ross Miller <rmiller@vincoventures.com>, Ross Miller <ross4miller@gmail.com>, John Colucci <jcoluccivincoventures@gmail.com>
Cc: Philip Jones <pjones@vincoventures.com>

Ross and John,

As co-CEOs I'd like to address an open item regarding the related party transactions surrounding the relationship with Magnifi U, Inc, which despite my repeated attempts, has still not been properly documented. The transaction was approved by the Audit Committee on May, 19, 2022 but as of today, the documents have not been finalized or executed after repeated requests to Lucosky Brookman, which as counsel was charged with creating documentation. The timeline of events, supported by the attached pdf is as follows:

December 29, 2021 - Philip Jones requested a Board meeting for 12/30/21 and among other agenda items, the Board discussed migrating all ZASH employees, including Magnifi U employees. He provided a list of employees to the board for review.

December 30, 2021 - the Board approved moving all employees listed to Vinco Shared Services effective with the January 15, 2022 payroll cycle.

April 27, 2022 - the Board met to discuss several topics, including a \$2,750,000 loan to Magnifi U.

May 19, 2022 - the Audit Committee met and approved the \$2,750,000 loan to Magnifi U.

May 20, 2022 - Philip Jones, CFO instructed Erik Schmolk, Controller to wire \$750,000 to the Magnifi U account.

May 30, 2022 - Lucosky provides first draft of the security agreement.

May 31, 2022 - Magnifi U payroll tracking was discussed as it was intended to be accrued against the loan

June 1, 2022 - Controller Ken Slack reaches out to Phil Jones to align on booking Magnifi U payroll. See his follow-up note stating he never got a response from Phil.

June 7, 2022 - After reviewing the proposed security agreement from Adele & Jon, I provided the previous note between Magnifi U and Vinco and inquired about the difference in approach. I sought additional guidance from other counsel and provided a new draft.

June 12, 2022 - Audit Committee meeting confirms commitment to Magnifi U note.

June 17, 2022 - formation documents provided and discussion between Phil Jones, Adele Hogan and Jon Monna about the approach to the loan

June 19, 2022 - request to Adele & Jon for an update on several outstanding items, including the Magnifi U note

June 29, 2022 - received redline draft from Adele & Jon

June 30, 2022 - I responded with redlines and never received another response from Adele or Jon to this day

July 5 & 6, 2022 - Vinco's Board and officers meet offsite to align on spending priorities. See follow-up cash overview provided by Philip Jones and shared with all members in attendance, dated 7/9/22 with Magnifi U note listed.

At this juncture, I would like to ensure Vinco Ventures, Inc. and Magnifi U have proper documentation. Given that Lucosky Brookman has never responded after the June 30, 2022 email, we need to assign new counsel to finalize documentation. Given that CFO, Phil Jones has already wired \$750,000, of his own initiative and volition, and payroll is being accrued on a monthly basis, we need to ensure proper documentation is executed.

Thank you for your attention to this important matter.

Kind Regards,
Lisa King
P + (315)-420-8036

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**MINUTES OF COMPENSATION
COMMITTEE MEETING
OF
VINCO VENTURES, INC.**

A Zoom meeting of the Audit Committee (the “Audit Committee”) of the Board of Directors (the “Board”) of Vinco Ventures, Inc., a Nevada corporation (the “Company”), was held on May 19, 2022, at 2:00 p.m.

The following members of the Board were present:

Michael J. DiStasio, Chair of the Audit Committee
Elliott Goldstein

The following persons were present by invitation:

Philip Jones, CFO
Adele Hogan, Partner, Lucosky Brookman LLP
Jon Monna, Associate, Lucosky Brookman LLP

The meeting was called to order.

Phil Jones recapped prior Board discussions regarding the potential funding of \$2.75 million, through a loan, to Magnifi U, a company in which Lisa King is a founder, executive and holds a substantial equity stake. Phil Jones presented and discussed Magnifi U’s business plans, strategy and how Magnifi U compliments services and future plans associated with AdRizer and Lomotif. Phil Jones discussed that in October 2021, under prior management, the Company loaned Magnifi U \$1.5 million and that the Company shares office space and other expenses with Magnifi U.

Phil Jones explained to the Board that Zash currently has rights to obtain up to 15% of the equity interests in Magnifi U in connection with a \$5 million commitment that Zash made to Magnifi U. As of today, Zash has approximately \$750K left in its commitment to obtain the full 15% equity interest of Magnifi U.

Phil Jones and the Board discussed a proposal in which the Company would (i) acquire Zash’s rights in Magnifi U (15% equity stake) in exchange for a reduction in the Vinco/Zash loan and (ii) work out a mechanism in which Vinco could acquire 55% of Magnifi U’s equity interests.

Phil Jones presented the Board with a detailed discussion about Magnifi U’s business streams, plans for generating revenue and how Magnifi U needs capital to continue operating and growing.

The Audit Committee considered the pre-revenue nature of Magnifi U and how it is essentially a start-up that could fail. The Audit Committee also discussed the strategic value of obtaining ownership in, and lending to, Magnifi U and how, in their judgment, it fits into and pairs with the Company’s current business and future plans, including the potential of generating and driving content to both AdRizer and Lomotif.

Lawyers from Lucosky Brookman LLP advised the Audit Committee on the conflicts inherent in the proposed transactions and the related party nature given Lisa King’s current and prior roles with the Company, Magnifi U and Zash.

The Audit Committee discussed the risks of lending to Magnifi U and how to mitigate such risks.

such as requiring Magnifi U to grant to the Company a security interest.

A motion was made and duly seconded to approve and recommend that the Board approve the \$2.75 million loan to Magnifi U.

RESOLVED, the Audit Committee (i) approved the Company entering into a secured loan with Magnifi U for up to \$2.75 million upon completing diligence and cleaning up and consolidating existing loans, with \$750K to be immediately funded so that Magnifi U can continue operating while the full loan is structured and completed, (ii) found the Magnifi U transaction to be fair, at arms-length and in line with the Company's current and future business plan, (iii) after being fully informed of the conflicts of interest inherent in the proposed Magnifi U transactions, found the proposed Magnifi U transactions to be fair and approves such transactions in compliance with the Company's Code of Business Conduct and Ethics, and (iv) recommended the full Board approve the Magnifi U transactions.

There being no further business before the Audit Committee, upon a motion duly made and seconded, the Audit Committee adjourned the meeting around 3:00 p.m.

Jon Monna
Acting Secretary of the Meeting

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Jon Monna
Acting Secretary of the Meeting

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Vinco Ventures, Inc., Plaintiff(s) | CASE NO: A-22-856404-B
7 vs. | DEPT. NO. Department 16
8 Theodore Farnsworth,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 8/29/2022

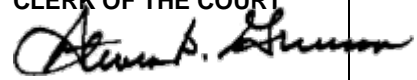
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TAB 19

TAB 19



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Theodore Farnsworth

DISTRICT COURT

CLARK COUNTY, NEVADA

VINCO VENTURES, INC.,

Plaintiff,

vs.

THEODORE FARNSWORTH, LISA
KING, RODERICK VANDERBILT, and
ERIK NOBLE,

Defendants.

CASE NO.: A-22-856404-B
DEPT. NO.: 16

**DEFENDANT THEODORE
FARNSWORTH'S ANSWER**

Defendant Theodore Farnsworth ("Defendant" or "Farnsworth"), by and through his attorneys of record, the law firm of Kemp Jones, LLP, hereby answer the Complaint filed by Plaintiff Vinco Ventures, Inc. ("Vinco Ventures") as follows:

INTRODUCTION

1. Defendant admits that Vinco Ventures is a digital media, advertising, and content technologies company formed in Nevada. As to the remaining allegations in paragraph 1 of the Complaint, Defendant is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations and on that basis denies them.

2. To the extent that paragraph 2 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is

necessary, Defendant denies the allegations contained in paragraph 2 of the Complaint.

3. To the extent that paragraph 3 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant denies the allegations contained in paragraph 3 of the Complaint.

4. To the extent that paragraph 4 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that Vinco Ventures spent time and negotiations on an amendment to defer a \$33 million payment on a secured convertible note. As to the remaining allegations in paragraph 4 of the Complaint, and to the extent a response is necessary, Defendant denies them.

5. To the extent that paragraph 5 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant denies the allegations contained in paragraph 5 of the Complaint.

6. To the extent that paragraph 6 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that Farnsworth was appointed as CEO for Vinco Ventures; that John Colucci ("Colucci") and Philip Jones ("Jones") were placed on administrative leave due to allegations against them in whistleblower complaints; and that an interim CFO was hired. As to the remaining allegations in paragraph 6 of the Complaint, and to the extent a response is necessary, Defendant denies them.

7. To the extent that paragraph 7 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant denies the allegations contained in paragraph 7 of the Complaint.

8. To the extent that paragraph 8 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that payroll and benefits continue to be due and owing to Vinco Ventures employees every two weeks. As to the remaining allegations in paragraph 8 of the Complaint, and to the extent a response is necessary, Defendant denies them.

9. To the extent that paragraph 9 of the Complaint contains legal conclusions, non-

1 factual argumentative statements, and/or statements regarding the content of the Order to Show
2 Cause referenced, no response is necessary and the document speaks for itself. To the extent a
3 response is necessary, Defendant admits that Vinco Ventures – at the instruction of John Colucci
4 (“Colucci”) sought a temporary restraining order from a New York State Supreme Court Judge,
5 in *Vinco Ventures, Inc. v. Theodore Farnsworth, et al.*, Case No. E2022005847, which was
6 denied. Defendant also admits the New York State Supreme Court Judge, after interlineating and
7 amending Vinco Ventures’s proposed Order, set a briefing schedule and a hearing on Vinco
8 Ventures’s request for an order to show cause. As to the remaining allegations in paragraph 8 of
9 the Complaint, and to the extent a response is necessary, Defendant denies them as the allegations
10 offer Plaintiff’s interpretation of the New York Supreme Court Judge’s Order to Show Cause.

11 10. Defendant admits that a brief filed in the New York Supreme Court action
12 discussed Nevada as a proper forum. As to the remaining allegations in paragraph 10 of the
13 Complaint, Defendant is without sufficient knowledge or information upon which to base a belief
14 as to the truth of the allegations and on that basis denies them.

15 11. To the extent that paragraph 11 of the Complaint contains legal conclusions and/or
16 non-factual argumentative statements, no response is necessary. To the extent a response is
17 necessary, Defendant admits that Vinco Ventures has an obligation to file a Form 10-Q. As to
18 the remaining allegations in paragraph 11 of the Complaint, and to the extent a response is
19 necessary, Defendant denies them.

20 12. To the extent that paragraph 12 of the Complaint contains legal conclusions, non-
21 factual argumentative statements, and/or statements regarding the content of the Vinco Ventures
22 Bylaws, no response is necessary and the document speaks for itself. To the extent a response is
23 necessary, the allegations offer Plaintiff’s interpretation of the Bylaws and, therefore, Defendant
24 denies the allegations.

25 13. To the extent that paragraph 13 of the Complaint contains legal conclusions and/or
26 non-factual argumentative statements, no response is necessary. To the extent a response is
27 necessary, Defendant denies the allegations contained in paragraph 13 of the Complaint.

28 14. To the extent that paragraph 14 of the Complaint contains legal conclusions and/or

1 non-factual argumentative statements, no response is necessary. To the extent a response is
2 necessary, Defendant denies the allegations contained in paragraph 14 of the Complaint.

3 **THE PARTIES**

4 15. Defendant admits the allegations in paragraph 15 of the Complaint that Vinco
5 Ventures is a publicly traded Nevada corporation that is duly authorized to do business in this
6 State, and has a principal place of business located in Rochester, New York.

7 16. Defendant admits the allegations in paragraph 16 of the Complaint that he is a
8 natural person. Defendant Farnsworth is not individually the title holder of the property located
9 at 491 State Highway 10, Caroga Lake, Fulton County, New York and, on that basis, denied the
10 remaining allegations in paragraph 16 of the Complaint.

11 17. Defendant is without sufficient knowledge or information upon which to base a
12 belief as to the truth of the allegations contained in paragraphs 17-19 of the Complaint and,
13 therefore, denies them.

14 **JURISDICTION AND VENUE**

15 18. To the extent that paragraph 20 of the Complaint contains legal conclusions and/or
16 non-factual argumentative statements, no response is necessary. To the extent a response is
17 necessary, Defendant denies the allegations contained in paragraph 20 of the Complaint.

18 19. To the extent that paragraph 21 of the Complaint contains legal conclusions and/or
19 non-factual argumentative statements, no response is necessary. To the extent a response is
20 necessary, Defendant denies the allegations contained in paragraph 21 of the Complaint.

21 20. To the extent that paragraph 22 of the Complaint contains legal conclusions or
22 statements regarding the content of the Vinco Ventures Articles of Incorporation referenced, no
23 response is necessary and the document speaks for itself. The allegations offer Plaintiff's
24 interpretation of the Articles of Incorporation and, therefore, Defendant denies the allegations.

25 21. To the extent that paragraph 23 of the Complaint contains legal conclusions or
26 statements regarding the content of the Vinco Ventures Articles of Incorporation referenced, no
27 response is necessary and the document speaks for itself.
28

FACTUAL BACKGROUND

22. Defendant admits the allegations in paragraph 24 that from January 2017 to September 2019, Defendant served as Chairman of the Board and Chief Executive Officer of Helios and Matheson Analytics Inc. (“Helios”), a former Nasdaq listed company.

23. To the extent that paragraph 25 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits the allegations in paragraph 25 that Defendant served as a director of MoviePass, Inc. (“MoviePass”) from the time Helios acquired a controlling interest in MoviePass in December 2017 until September 2019. As to the remaining allegations in paragraph 25 of the Complaint, and to the extent a response is necessary, Defendant denies them.

24. To the extent that paragraph 26 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant denies the allegations contained in paragraph 26 of the Complaint.

25. To the extent that paragraph 27 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that Helios filed for Chapter 7 Bankruptcy. As to the remaining allegations in paragraph 27 of the Complaint, and to the extent a response is necessary, Defendant denies them.

26. To the extent that paragraph 28 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that the Federal Trade Commission filed a complaint against MoviePass, Inc., the specifics of which are contained within the complaint. As to the remaining allegations in paragraph 28 of the Complaint, and to the extent a response is necessary, Defendant denies them.

27. To the extent that paragraph 29 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that he entered a settlement with the Federal Trade Commission, the details of which are contained in the settlement agreement. As to the remaining allegations in

1 paragraph 29 of the Complaint, including footnote 1, and to the extent a response is necessary,
2 Defendant denies them.

3 28. As to the allegations in paragraph 30 of the Complaint, Defendant admits he has a
4 pre-existing personal and business relationship with Mr. Vanderbilt.

5 29. To the extent that paragraph 31 of the Complaint contains legal conclusions and/or
6 non-factual argumentative statements, no response is necessary. To the extent a response is
7 necessary, Defendant admits he has a pre-existing personal and business relationship with Mr.
8 Vanderbilt.

9 30. To the extent that paragraph 32 of the Complaint contains legal conclusions and/or
10 non-factual argumentative statements, no response is necessary. To the extent a response is
11 necessary, Defendant admits the allegations in paragraph 32 that Mr. Vanderbilt served as Brand
12 Manager for MoviePass. As to the remaining allegations in paragraph 32 of the Complaint,
13 including footnote 2, and to the extent a response is necessary, Defendant is without sufficient
14 knowledge or information upon which to base a belief as to the truth of the allegations and on that
15 basis denies them.

16 31. Defendant admits the allegations in paragraph 33 of the Complaint that Defendant
17 and Mr. Vanderbilt co-founded ZASH Global Media and Entertainment Corporation (“ZASH”)
18 and that Mr. Vanderbilt has served as the President at ZASH. Defendant also admits that Mr.
19 Vanderbilt has served as Business Development Manager at ZASH. As to the remaining
20 allegations in paragraph 33 of the Complaint, 3 and to the extent a response is necessary,
21 Defendant is without sufficient knowledge or information upon which to base a belief as to the
22 truth of the allegations and on that basis denies them.

23 32. Defendant admits the allegations in paragraph 34 of the Complaint that Mr.
24 Vanderbilt served as one of ZASH’s appointees on the board of managers for ZVV Media
25 Partners, LLC, a joint venture between Vinco Ventures and ZASH, for a period of time. As to
26 the remaining allegations in paragraph 34 of the Complaint, and to the extent a response is
27 necessary, Defendant is without sufficient knowledge or information upon which to base a belief
28 as to the truth of the allegations and on that basis denies them.

33. Defendant admits the allegations in paragraph 35 of the Complaint.

34. To the extent that paragraph 36 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits he has a pre-existing personal and business relationship with Mr. Vanderbilt.

35. Defendant is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in paragraph 37 of the Complaint, and on that basis denies them.

36. To the extent that paragraph 38 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that Vinco Ventures's business involves social media and entertainment. As to the remaining allegations in paragraph 38 of the Complaint, and to the extent a response is necessary, Defendant denies them.

37. Defendant admits the allegations in paragraph 39 of the Complaint.

38. To the extent that paragraph 40 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that Philip McFillin resigned from the Vinco Ventures Board of Directors and that John Colucci was nominated to fill that seat. As to the remaining allegations in paragraph 40 of the Complaint, and to the extent a response is necessary, Defendant is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations and on that basis denies them.

39. To the extent that paragraph 41 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that Vinco Ventures's Board of Directors consisted of Lisa King, Roderick Vanderbilt—as Chairman, Michael DiStasio, and Elliot Goldstein. As to the remaining allegations in paragraph 41 of the Complaint, and to the extent a response is necessary, Defendant denies them.

40. To the extent that paragraph 42 of the Complaint contains legal conclusions and/or

1 non-factual argumentative statements, no response is necessary. To the extent a response is
2 necessary, Defendant admits that complaints and inquiries about Board members' independence
3 and proper disclosures have been made. As to the remaining allegations in paragraph 42 of the
4 Complaint, and to the extent a response is necessary, Defendant denies them.

5 41. To the extent that paragraph 43 of the Complaint contains legal conclusions and/or
6 non-factual argumentative statements, no response is necessary. To the extent a response is
7 necessary, Defendant admits that whistleblower complaints about regarding the possible
8 misappropriation of Vinco Ventures's intellectual property by AI Pros, among other issues, have
9 been made. As to the remaining allegations in paragraph 43 of the Complaint, and to the extent
10 a response is necessary, Defendant denies them.

11 42. To the extent that paragraphs 44 and 45 of the Complaint contain legal conclusions
12 and/or non-factual argumentative statements, no response is necessary. To the extent a response
13 is necessary, Defendant admits that a meeting was convened on July 8, 2022 during which John
14 Colucci voted to appoint Defendant as co-CEO of Vinco Ventures. As to the remaining
15 allegations in paragraphs 44 and 45 of the Complaint, and to the extent a response is necessary,
16 Defendant denies them.

17 43. To the extent that paragraph 46 of the Complaint contains legal conclusions and/or
18 non-factual argumentative statements, no response is necessary. To the extent a response is
19 necessary, Defendant denies the allegations contained in paragraph 46 of the Complaint.

20 44. To the extent that paragraph 47 of the Complaint contains legal conclusions and/or
21 non-factual argumentative statements, no response is necessary. To the extent a response is
22 necessary, Defendant admits that a Form 8-K Current Report was filed with the United States
23 Securities and Exchange Commission on July 14, 2022. As to the remaining allegations in
24 paragraph 47 of the Complaint, and to the extent a response is necessary, Defendant denies them.

25 45. Defendant is without sufficient knowledge or information upon which to base a
26 belief as to the truth of the allegations contained in paragraphs 48-52 of the Complaint, and on
27 that basis denies them.

28 46. To the extent that paragraph 53 of the Complaint contains legal conclusions and/or

1 non-factual argumentative statements, no response is necessary. To the extent a response is
2 necessary, Defendant admits that meetings were held between July 14, 2022 and July 17, 2022
3 and that the legal propriety thereof is one of the issues being adjudicated in this action. As to the
4 remaining allegations in paragraph 53 of the Complaint, and to the extent a response is necessary,
5 Defendant denies them.

6 47. To the extent that paragraph 54 of the Complaint contains legal conclusions and/or
7 non-factual argumentative statements, no response is necessary. To the extent a response is
8 necessary, Defendant admits that a meeting was held on July 17, 2022 at which John Colucci
9 attempted to appoint himself as an executive of Vinco Ventures and that the legal propriety
10 thereof is one of the issues being adjudicated in this action. As to the remaining allegations in
11 paragraph 54 of the Complaint, and to the extent a response is necessary, Defendant denies them.

12 48. To the extent that paragraph 55 of the Complaint contains legal conclusions and/or
13 non-factual argumentative statements, no response is necessary. To the extent a response is
14 necessary, Defendant admits that a meeting was held on July 21, 2022 and that the legal propriety
15 thereof is one of the issues being adjudicated in this action. As to the remaining allegations in
16 paragraph 55 of the Complaint, and to the extent a response is necessary, Defendant denies them.

17 49. To the extent that paragraph 56 of the Complaint contains legal conclusions and/or
18 non-factual argumentative statements, no response is necessary. To the extent a response is
19 necessary, Defendant admits that a meeting was held on July 21, 2022 and that the legal propriety
20 thereof is one of the issues being adjudicated in this action. As to the remaining allegations in
21 paragraph 56 of the Complaint, and to the extent a response is necessary, Defendant denies them.

22 50. To the extent that paragraph 57 of the Complaint contains legal conclusions and/or
23 non-factual argumentative statements, no response is necessary. As to the remaining allegations
24 in paragraph 57 of the Complaint, and to the extent a response is necessary, Defendant denies
25 them.

26 51. To the extent that paragraph 58 of the Complaint contains legal conclusions and/or
27 non-factual argumentative statements, no response is necessary. To the extent a response is
28 necessary, Defendant admits that a Form 8-K Current Report was filed with the United States

Securities and Exchange Commission on July 22, 2022. Defendant further admits that it appears John Colucci failed to disclose certain information that may or may not have impacted his independent director status when he was nominated to the Vinco Ventures Board and may disqualify and/or invalidate his involvement on any Vinco Ventures committee and any actions taken by those committees. As to the remaining allegations in paragraph 58 of the Complaint, and to the extent a response is necessary, Defendant denies them.

52. To the extent that paragraph 59 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. As to the remaining allegations in paragraph 59 of the Complaint, and to the extent a response is necessary, Defendant denies them.

53. To the extent that paragraph 60 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that a meeting was attempted to be held on July 24, 2022 at which John Colucci once again attempted to appoint himself as an executive of Vinco Ventures and that the legal propriety thereof is one of the issues being adjudicated in this action. As to the remaining allegations in paragraph 60 of the Complaint, and to the extent a response is necessary, Defendant denies them.

54. To the extent that paragraph 61 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. As to the remaining allegations in paragraph 61 of the Complaint, and to the extent a response is necessary, Defendant denies them.

55. To the extent that paragraph 62 of the Complaint contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant admits that Phil Jones, as CFO for Vinco Ventures, sent correspondence with the subject: Termination Notice, on July 25, 2022. Mr. Farnsworth did not receive any correspondence from Vinco Ventures Human Resources on that date. The content of Phil Jones's correspondence speaks for itself and, as to the remaining allegations in paragraph 62 of the Complaint, and to the extent a response is necessary, Defendant is without sufficient knowledge

1 or information upon which to base a belief as to the truth of the allegations and on that basis
2 denies them.

3 56. To the extent that paragraph 63 of the Complaint contains legal conclusions and/or
4 non-factual argumentative statements, no response is necessary. As to the remaining allegations
5 in paragraph 63 of the Complaint, and to the extent a response is necessary, Defendant denies
6 them.

7 57. Defendant denies the allegations in paragraph 64 of the Complaint.

8 58. To the extent that paragraph 65 of the Complaint contains legal conclusions and/or
9 non-factual argumentative statements, no response is necessary. As to the remaining allegations
10 in paragraph 65 of the Complaint, and to the extent a response is necessary, Defendant is without
11 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
12 and on that basis denies them.

13 59. To the extent that paragraph 66 of the Complaint contains legal conclusions and/or
14 non-factual argumentative statements, no response is necessary. As to the remaining allegations
15 in paragraph 66 of the Complaint, and to the extent a response is necessary, Defendant denies
16 them.

17 60. To the extent that paragraph 67 of the Complaint contains legal conclusions and/or
18 non-factual argumentative statements, no response is necessary. As to the remaining allegations
19 in paragraph 67 of the Complaint, and to the extent a response is necessary, Defendant denies
20 them.

21 61. To the extent that paragraph 68 of the Complaint contains legal conclusions and/or
22 non-factual argumentative statements, no response is necessary. As to the remaining allegations
23 in paragraph 68 of the Complaint, and to the extent a response is necessary, Defendant denies
24 them.

25 62. To the extent that paragraph 69 of the Complaint contains legal conclusions and/or
26 non-factual argumentative statements, no response is necessary. To the extent a response is
27 necessary, Defendant admits that the Vinco Ventures closing share price was at \$1.02 per share
28 on July 14, 2022. As to the remaining allegations in paragraph 69 of the Complaint, and to the

1 extent a response is necessary, Defendant denies them.

2 63. To the extent that paragraphs 70-73 of the Complaint contain legal conclusions
3 and/or non-factual argumentative statements, no response is necessary. As to the remaining
4 allegations in paragraphs 70-73 of the Complaint, and to the extent a response is necessary,
5 Defendant denies them.

6 **FIRST CAUSE OF ACTION**

7 **Breach of Fiduciary Duty**

8 64. In response to paragraph 74, Defendant repeats and reincorporates all previous
9 responses to the Complaint.

10 65. To the extent that paragraphs 75-78 of the Complaint contain legal conclusions
11 and/or non-factual argumentative statements, no response is necessary.

12 66. To the extent that paragraphs 79-82 of the Complaint contain legal conclusions
13 and/or non-factual argumentative statements, no response is necessary. To the extent a response
14 is necessary, Defendant denies them.

15 **SECOND CAUSE OF ACTION**

16 **Aiding and Abetting Breach of Fiduciary Duty**

17 67. In response to paragraph 83, Defendant repeats and reincorporates all previous
18 responses to the Complaint.

19 68. To the extent that paragraphs 84-89 of the Complaint contain legal conclusions
20 and/or non-factual argumentative statements, no response is necessary. To the extent a response
21 is necessary, Defendant denies them.

22 **THIRD CAUSE OF ACTION**

23 **Civil Conspiracy**

24 69. In response to paragraph 90, Defendant repeats and reincorporates all previous
25 responses to the Complaint.

26 70. To the extent that paragraphs 91-96 of the Complaint contain legal conclusions
27 and/or non-factual argumentative statements, no response is necessary. To the extent a response
28 is necessary, Defendant denies them.

FOURTH CAUSE OF ACTION
Declaratory Relief

71. In response to paragraph 97, Defendant repeats and reincorporates all previous responses to the Complaint.

72. To the extent that paragraph 98 of the Complaint contains legal conclusions, non-factual argumentative statements, and/or statements regarding the content of the Vinco Ventures Bylaws, no response is necessary and the document speaks for itself. To the extent a response is necessary, the allegations offer Plaintiff's interpretation of the Bylaws and, therefore, Defendant denies the allegations.

73. To the extent that paragraphs 99-100 of the Complaint contain legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, Defendant denies them.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred because any and all actions taken by John Colucci on behalf of Vinco Ventures, or at John Colucci's behest, are void *ab initio*.

2. Plaintiff's claims are barred because any and all actions taken by John Colucci on behalf of Vinco Ventures, or at John Colucci's behest, are voidable.

3. Plaintiff's claims are barred because any and all actions taken by John Colucci on behalf of Vinco Ventures, or at John Colucci's behest, were *ultra vires*.

4. Plaintiff lacks appropriate authorization to bring these claims on behalf of Vinco Ventures.

5. Plaintiff's claims are barred to the extent they resulted from undue influence, duress, or exploitation.

6. Plaintiff lacks standing as it has not suffered any injury as a result of Defendant's conduct.

7. The allegations contained in the Complaint fail to state any cause of action against Defendant upon which relief can be granted.

8. Plaintiff's claims are barred by the equitable doctrines of waiver, release, laches,

unclean hands, and equitable estoppel.

9. Plaintiff's claims are barred, in whole or in part, by express waiver.

10. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

11. Plaintiff's claims are barred due to the fraud and deceit on the part of Plaintiff's agents.

12. Plaintiff's claims are barred by the applicable statute of limitations or statute of repose.

13. Plaintiff's claims are barred by the statute of frauds.

14. Plaintiff's claims are barred by the parol evidence rule.

15. Plaintiff assumed whatever risks or hazards existed at the time of the events alleged in the Complaint and, therefore, Plaintiff is responsible for the alleged damages and injuries suffered, if any.

16. Whatever damages were sustained by Plaintiff, if any, were caused in whole or in part or were contributed to by Plaintiff's own actions.

17. The damages and injuries, if any, incurred by Plaintiff are not attributable to any act, conduct or omission on the part of Farnsworth.

18. Plaintiff failed to mitigate its damages, if any.

19. Plaintiff fails to name a party necessary for full and adequate relief essential in this action.

20. Plaintiff's claims are barred, in whole or in part, because the Court lacks jurisdiction over them.

21. At all times mentioned in the Complaint, Farnsworth performed and discharged in good faith each and every obligation owed to Plaintiff.

22. Any and all actions taken by Farnsworth with regard to Vinco Ventures were required by and performed in furtherance of Farnsworth's fiduciary duties to Vinco Ventures.

23. Farnsworth committed no intentional acts meant to disrupt or harm Plaintiff.

24. Farnsworth acted in conformity with the law and with reasonableness in discharging his duties, if any.

- 1 25. Farnsworth committed no deceptive acts.
- 2 26. Farnsworth has not made any false or misleading statements in a commercial
- 3 setting.
- 4 27. Farnsworth did not conspire or enter into any relationship with anyone else with
- 5 the intention to harm Vinco Ventures or to accomplish an unlawful objective for the purpose of
- 6 harming Vinco Ventures.
- 7 28. Plaintiff's claims are barred due to Plaintiff's failure to act in good faith or deal
- 8 fairly with Farnsworth.
- 9 29. Plaintiff's acts were not conducted in the best interests of Vinco Ventures.
- 10 30. Plaintiff's claims are barred by Plaintiff's ratification and confirmation.
- 11 31. The services underling the attorney fees did not advance the interests of Vinco
- 12 Ventures.
- 13 32. Pursuant to NRCP Rule 8 and 11 all possible Affirmative Defenses may not have
- 14 been alleged herein insofar as sufficient facts were not available after reasonable inquired upon
- 15 filing of Farnsworth's Answer and, therefore, Farnsworth reserves the right to amend its Answer
- 16 to allege additional Affirmative Defenses, if subsequent investigation so warrants.
- 17 33. Farnsworth hereby incorporates by reference those affirmative defenses
- 18 enumerated in NRCP 8(c) as if fully set forth herein. In the event further investigation or
- 19 discovery reveals the applicability of any such defense, Farnsworth reserves the right to seek
- 20 leave of Court to amend their Answer to specifically assert the same. Such defenses are herein
- 21 incorporated by reference for the specific purpose of not waiving them.

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1 **WHEREFORE**, Defendant prays for judgment against Plaintiff as follows:

- 2 1. That Plaintiff takes nothing by way of the Complaint and that the same be
3 dismissed with prejudice;
4 2. For an award of attorney's fees and costs incurred by Farnsworth; and
5 3. For such other and further relief as the Court deems just and proper.

6
7 DATED this 29th day of August, 2022.

8 KEMP JONES, LLP

9
10 /s/ Nathanael Rulis

11 Will Kemp, Esq. (#1205)

12 Nathanael R. Rulis, Esq. (#11259)

13 Madison P. Zornes-Vela, Esq. (#13626)

14 3800 Howard Hughes Parkway, 17th Floor

15 Las Vegas, Nevada 89169

16 Attorneys for Defendant

17 Theodore Farnsworth
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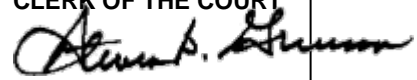
CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2022, I served a true and correct copy of the foregoing **DEFENDANT THEODORE FARNSWORTH'S ANSWER** via the Eighth Judicial District Court's electronic service system on all parties on the Court's service list.

/s/ Ali Lott
An employee of Kemp Jones, LLP

TAB 20

TAB 20



AACC
THEODORE PARKER, III, ESQ.
Nevada Bar No. 4716
PARKER, NELSON & ASSOCIATES, CHTD.
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Email: tparker@pnalaw.net
Attorneys for Defendants,
Lisa King and Roderick Vanderbilt

DISTRICT COURT
CLARK COUNTY, NEVADA

VINCO VENTURES, INC.,
Plaintiff,

v.

THEODORE FARNSWORTH, LISA KING,
RODERICK VANDERBILT, and ERIK
NOBLE,
Defendants.

CASE NO.: A-22-856404-B
DEPT. NO.: XVI

**DEFENDANTS, LISA KING AND
RODERICK VANDERBILT'S ANSWER TO
PLAINTIFF'S COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES
AND COUNTERCLAIMS**

COME NOW, Defendants LISA KING and RODERICK VANDERBILT (hereinafter collectively "Defendants"), by and through their attorneys of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER, NELSON & ASSOCIATES, CHTD., and for their Answer to Plaintiff's Complaint on file herein, admit, deny and allege as follows:

Answering the Paragraph above the "Introduction", Defendants object as the allegations contained therein call for a legal conclusion.

INTRODUCTION

1. Answering Paragraph 1, Defendants admit each and every allegation contained therein.
2. Answering Paragraph 2, Defendants object as the allegations therein call for legal conclusions and on that basis therefore, deny the allegations contained therein. To the extent Paragraph 2 contains any factual allegations against Defendants, Defendants deny each and every allegation contained therein.

1 3. Answering Paragraph 3, Defendants object as the allegations therein call for legal
2 conclusions and on that basis therefore, deny the allegations contained therein. To the extent Paragraph
3 3 contains any factual allegations against Defendants, Defendants deny each and every allegation
4 contained therein.

5 4. Answering Paragraph 4, Defendants object as the allegations therein call for legal
6 conclusions and on that basis therefore, deny the allegations contained therein. Defendants admit
7 Vinco Ventures, Inc. spent time and negotiations on an amendment to defer a \$33 million payment on
8 a secured convertible note. To the extent Paragraph 4 contains any factual allegations against
9 Defendants, other than the admissions contained in this response, Defendants deny each and every
10 allegation contained therein.

11 5. Answering Paragraph 5, Defendants object as the allegations therein call for legal
12 conclusions and on that basis therefore, deny the allegations contained therein. To the extent Paragraph
13 5 contains any factual allegations against Defendants, Defendants deny each and every allegation
14 contained therein.

15 6. Answering Paragraph 6, Defendants object as the allegations therein call for legal
16 conclusions and on that basis therefore, deny the allegations contained therein. Defendants admit
17 Fansworth was appointed as CEO for Vinco Ventures, Inc. Defendants deny all other averments on
18 the basis of its stated objection.

19 7. Answering Paragraph 7, Defendants object as the allegations therein call for legal
20 conclusions and on that basis therefore, deny the allegations contained therein. To the extent Paragraph
21 7 contains any factual allegations against Defendants, Defendants deny each and every allegation
22 contained therein.

23 8. Answering Paragraph 8, Defendants object as the allegations therein call for legal
24 conclusions and on that basis therefore, deny the allegations contained therein. To the extent Paragraph
25 8 contains any factual allegations against Defendants, Defendants deny each and every allegation
26 contained therein.

27 9. Answering Paragraph 9, Defendants object as the allegations therein call for legal
28 conclusions and the document speaks for itself, and on that basis therefore deny the allegations

1 contained therein. Defendants admit Vinco Ventures, Inc., at the instruction of Colucci, sought a
2 temporary retaining order from a New York State Supreme Court Judge, in Case No. E2022005847,
3 which was denied. Defendants further admit that the New York State Supreme Court Judge, after
4 interlineating and amending Vinco Ventures, Inc.'s proposed Order, set a briefing schedule and a
5 hearing on Vinco Ventures, Inc. request for an Order to Show Cause. Vinco Ventures, Inc. voluntarily
6 dismissed Case No. E2022005847. To the extent Paragraph 9 contains any factual allegations against
7 Defendants, other than the admissions contained in this response, Defendants deny each and every
8 allegation contained therein.

9 10. Answering Paragraph 10, Defendants allege that no response is required as Paragraph
10 10 does not contain any allegations against Defendants. To the extent Paragraph 10 contains any
11 allegations against these Defendants, Defendants admit that a brief filed in the New York Supreme
12 Court action discussed Nevada as the proper forum, but is without sufficient information or knowledge
13 upon which to form a belief as to the veracity of the remaining allegations, and on that basis therefore,
14 Defendants deny the remaining allegations.

15 11. Answering Paragraph 11, Defendants object as the allegations contained therein call
16 for a legal conclusion and on that basis therefore, deny the allegations contained therein. To the extent
17 Paragraph 11 contains any factual allegations against Defendants, Defendants admit that Vinco
18 Ventures, Inc. has an obligation to file Form 10-Q. Defendants deny each and every allegation
19 contained therein. To the extent Paragraph 11 contains any factual allegations against Defendants,
20 other than the admissions contained in this response, Defendants deny each and every allegation
21 contained therein.

22 12. Answering Paragraph 12, Defendants object as the allegations therein call for legal
23 conclusions and the document speaks for itself, and on that basis therefore, deny the allegations
24 contained therein. To the extent Paragraph 12 contains any factual allegations against Defendants,
25 Defendants deny each and every allegation and/or interpretation contained therein.

26 13. Answering Paragraph 13, Defendants object as the allegations therein call for legal
27 conclusions, and on that basis therefore, deny the allegations contained therein. To the extent

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Paragraph 13 contains any factual allegations against Defendants, Defendants deny each and every allegation contained therein.

14. Answering Paragraph 14, Defendants allege that no response is required as Paragraph 14 does not contain any allegations against Defendants. To the extent Paragraph 14 contains any allegations against these Defendants, Defendants deny each and every allegation contained therein.

THE PARTIES

15. Answering Paragraph 15, Defendant admits it is a Nevada Corporation. Defendants object to the remainder of Paragraph 1 as it calls for legal conclusions, and on that basis therefore, deny the allegations contained therein.

16. Answering Paragraph 16, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and upon said grounds, deny each and every allegation contained therein.

17. Answering Paragraph 17, Defendants admit each and every allegation contained therein.

18. Answering Paragraph 18, Defendants admit each and every allegation contained therein.

19. Answering Paragraph 19, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and upon said grounds, deny each and every allegation contained therein.

JURISDICTION AND VENUE

20. Answering Paragraph 20, Defendants object as the allegations therein call for legal conclusions, and the document speaks for itself. Defendants further allege that no response to Paragraph 20 is required as Paragraph 20 does not contain any allegations against Defendants. To the extent Paragraph 20 contains any allegations against these Defendants, Defendants deny each and every allegation contained therein.

21. Answering Paragraph 21, Defendants object as the allegations therein call for legal conclusions. Defendants further allege that no response to Paragraph 21 is required as Paragraph 21

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1 does not contain any allegations against Defendants. To the extent Paragraph 21 contains any
2 allegations against these Defendants, Defendants deny each and every allegation contained therein.

3 22. Answering Paragraph 22, Defendants object as the allegations therein call for legal
4 conclusions and the document speaks for itself. Defendants further allege that no response to
5 Paragraph 22 is required as Paragraph 22 does not contain any allegations against Defendants. To the
6 extent a response is required, Defendants deny each and every allegation contained therein.

7 23. Answering Paragraph 23, Defendants object as the document speaks for itself.
8 Defendants further allege no response is required as Paragraph 23 does not contain any allegations
9 against Defendants. To the extent Paragraph 23 contains allegations against Defendants, Defendants
10 are without sufficient knowledge or information to form a belief as to the truth of the allegations
11 contained therein, and upon said grounds, deny each and every allegation contained therein.

12 **FACTUAL BACKGROUND**

13 **A. Farnsworth's Recent History of Running Companies Into the Ground and Investigations** 14 **by Regulators.**

15 24. Answering Paragraph 24, Defendants are without sufficient information or knowledge
16 upon which to form a belief as to the veracity of the allegations contained therein, and on that basis
17 therefore, deny each and every allegation contained therein

18 25. Answering Paragraph 25, Defendants are without sufficient knowledge or information
19 to form a belief as to the veracity of the allegations contained therein, and on that basis therefore, deny
20 each and every allegation contained therein.

21 26. Answering Paragraph 26, Defendants are without sufficient knowledge or information
22 upon which to form a belief as to the veracity of the allegations contained therein, and on that basis
23 therefore, deny each and every allegation contained therein.

24 27. Answering Paragraph 27, Defendants are without sufficient knowledge or information
25 to form a belief as to the veracity of the allegations contained therein, and on that basis therefore, deny
26 each and every allegation contained therein.

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1 28. Answering Paragraph 28, Defendants are without sufficient knowledge or information
2 to form a belief as to the veracity of the allegations contained therein, and on that basis therefore, deny
3 each and every allegation contained therein.

4 29. Answering Paragraph 29, Defendants are without sufficient knowledge or information
5 to form a belief as to the veracity of the allegations contained therein, and on that basis therefore, deny
6 each and every allegation contained therein.

7 **B. Farnsworth's and Vanderbilt's Longstanding Relationship.**

8 30. Answering Paragraph 30, Defendants admit Vanderbilt and Farnsworth had a pre-
9 existing personal and business relationship. Defendants deny all other averments.

10 31. Answering Paragraph 31, Defendants admit Vanderbilt and Farnsworth had a pre-
11 existing personal and business relationship. Defendants deny all other averments.

12 32. Answering Paragraph 32, Defendants admit that from approximately December of
13 2017 through September of 2019, Vanderbilt served as Brand Manager of Movie Pass.

14 33. Answering Paragraph 33, Defendants admit that Vanderbilt and Farnsworth also co-
15 founded ZASH Global Media and Entertainment Corporation ("ZASH") together, and deny that
16 Vanderbilt served as ZASH's Business Development Manager and President from January 2021 until
17 October 2021.

18 34. Answering Paragraph 34, Defendants are without sufficient knowledge or information
19 to form a belief as to the truth of the allegations contained therein, and upon said grounds, deny each
20 and every allegation contained therein.

21 35. Answering Paragraph 35, Defendants admit each and every allegation contained
22 therein.

23 36. Answering Paragraph 36, Defendants admit Vanderbilt and Farnsworth had a pre-
24 existing personal and business relationship. Defendants deny all other averments.

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1 **C. The Company's History and the Farnsworth Group's Concerted Efforts to Usurp**
2 **Control Over the Company.**

3 37. Answering Paragraph 37, Defendants are without sufficient knowledge or information
4 upon which to form a belief as to the veracity of the allegations contained therein, and on that basis
5 therefore, deny each and every allegation contained therein.

6 38. Answering Paragraph 38, Defendants object as the allegations therein call for legal
7 conclusions, and on that basis therefore, deny the allegations contained therein. To the extent
8 Paragraph 38 contains any factual allegations against Defendants, Defendants admit Vinco Ventures,
9 Inc.'s business involves social media and entertainment, and Defendants deny each and every other
10 allegation contained therein.

11 39. Answering Paragraph 39, Defendants admit each and every allegation contained
12 therein.

13 40. Answering Paragraph 40, Defendants object as the allegations therein call for legal
14 conclusions. Defendants admit Phillip McFillin resigned from the Vinco Venture's Inc.'s Board of
15 Directors and John Colucci took the vacant seat. Defendants deny all other averments.

16 41. Answering Paragraph 41, Defendants object as the allegations therein call for legal
17 conclusions, and on that basis therefore, Defendants deny each and every allegation contained therein.

18 42. Answering Paragraph 42, Defendants object as the allegations therein call for legal
19 conclusions, and on that basis therefore, Defendants deny each and every allegation contained therein.

20 43. Answering Paragraph 43, Defendants deny each and every allegation contained therein.

21 **D. The Events Giving Rise to this Action.**

22 44. Answering Paragraph 44, Defendants object as the allegations therein call for legal
23 conclusions, and on that basis therefore, Defendants deny each and every allegation contained therein.
24 Defendants further deny all other averments.

25 45. Answering Paragraph 45, Defendants object as the allegations therein call for legal
26 conclusions, and on that basis therefore, Defendants deny each and every allegation contained therein.
27 Defendants further deny all other averments.

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1 46. Answering Paragraph 46, Defendants object as the allegations therein call for legal
2 conclusions, and on that basis therefore, Defendants deny each and every allegation contained therein.
3 Defendants further deny all other averments.

4 47. Answering Paragraph 47, Defendants object as the allegations therein call for legal
5 conclusions, and on that basis therefore, Defendants deny each and every allegation contained therein.
6 Defendants further deny all other averments.

7 48. Answering Paragraph 48, Defendants admit each and every allegation contained
8 therein.

9 49. Answering Paragraph 49, Defendants deny each and every allegation contained therein.

10 50. Answering Paragraph 50, Defendants deny each and every allegation contained therein.

11 51. Answering Paragraph 51, Defendants deny each and every allegation contained therein.

12 52. Answering Paragraph 52, Defendants deny each and every allegation contained therein.

13 53. Answering Paragraph 53, Defendants object as the allegations therein call for legal
14 conclusions. Defendants admit meetings were held between July 14, 2022 and July 17, 2022.
15 Defendants further deny all other averments.

16 54. Answering Paragraph 54, Defendants object as the allegations therein call for legal
17 conclusions. Defendants admit a meeting was held on July 17, 2022 at which Colucci attempted to
18 appoint himself as executive of Vinco Ventures Inc. Defendant further denies all other averments.

19 55. Answering Paragraph 55, Defendants object as the allegations therein call for legal
20 conclusions. Defendants admit a meeting was held on July 21, 2022. Defendant further denies all other
21 averments.

22 56. Answering Paragraph 56, Defendants are without sufficient knowledge or information
23 to form a belief as to the truth of the allegations contained therein, and upon said grounds, deny each
24 and every allegation contained therein.

25 57. Answering Paragraph 57, Defendants object as the allegations therein call for legal
26 conclusions. Defendants admit they would not approve the filing of false/misleading Form K-8.
27 Defendants further deny all other averments.

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1 58. Answering Paragraph 58, Defendants object as the allegations therein call for legal
2 conclusions. Defendants admit a Form 8-K Current Report was filed with the United States Security
3 and Exchange Commission on July 22, 2022. Defendants further admit that upon information and
4 belief Colucci failed to disclose certain information that may or may not have impacted his
5 independent director status when he was nominated by the Vinco Ventures, Inc. Board, and this may
6 disqualify and/or invalidate Colucci's involvement on any Vinco Venture, Inc. committee and any
7 actions taken by said committees. Defendants further deny all other averments.

8 59. Answering Paragraph 59, Defendants deny each and every allegation contained therein.

9 60. Answering Paragraph 60, Defendants object as the allegations therein call for legal
10 conclusions. Defendants admit that a meeting was attempted to be held, on July 24, 2022, at which
11 Colucci again tried to appoint himself as executive of Vinco Venture Inc. Defendant further denies all
12 other averments.

13 61. Answering Paragraph 61, Defendants deny each and every allegation contained therein.

14 62. Answering Paragraph 62, Defendants received more than one termination (7/14/2022,
15 7/18/2022 and 7/25/2022).

16 63. Answering Paragraph 63, Defendants deny each and every allegation contained therein.

17 64. Answering Paragraph 64, Defendants deny each and every allegation contained therein.

18 65. Answering Paragraph 65, Defendants object as the allegations therein call for legal
19 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
20 deny all other averments.

21 66. Answering Paragraph 66, Defendants object as the allegations therein call for legal
22 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
23 deny all other averments.

24 67. Answering Paragraph 67, object as the allegations therein call for legal conclusions,
25 and on that basis therefore, denies the allegations contained therein. Defendants further deny all other
26 averments.

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1 **E. The Farnsworth's Group's Action Have Prompted a 40% Decline in the Company's**
2 **Stock Price.**

3 68. Answering Paragraph 68, Defendants object as the allegations therein call for legal
4 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
5 deny all other averments.

6 69. Answering Paragraph 69, Defendants object as the allegations therein call for legal
7 conclusions. Defendants admit the share price of Vinco Ventures, Inc., on July 14, 2022, was \$1.02
8 per share. Defendants further deny all other averments.

9 70. Answering Paragraph 70, upon information and belief, Defendants allege the price
10 declined based on the actions of Colucci, Goldstein and Distasio. Defendants further deny all other
11 averments.

12 71. Answering Paragraph 71, Defendants object as the allegations therein call for legal
13 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
14 deny all other averments.

15 72. Answering Paragraph 72, Defendants object as the allegations therein call for legal
16 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
17 deny all other averments.

18 73. Answering Paragraph 73, Defendants object as the allegations therein call for legal
19 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
20 deny all other averments.

21 **FIRST CAUSE OF ACTION**

22 **Breach of Fiduciary Duty**

23 74. Answering Paragraph 74, Defendants repeat and reallege their answers to Paragraphs
24 1 through 73 and incorporate the same as though fully set forth herein.

25 75. Answering Paragraph 75, Defendants object as the allegations therein call for legal
26 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
27 deny all other averments.

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1 76. Answering Paragraph 76, Defendants object as the allegations therein call for legal
2 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
3 deny all other averments.

4 77. Answering Paragraph 77, Defendants object as the allegations therein call for legal
5 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
6 deny all other averments.

7 78. Answering Paragraph 78, Defendants object as the allegations therein call for legal
8 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
9 deny all other averments.

10 79. Answering Paragraph 79, Defendants object as the allegations therein call for legal
11 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
12 deny all other averments.

13 80. Answering Paragraph 80, Defendants object as the allegations therein call for legal
14 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
15 deny all other averments.

16 81. Answering Paragraph 81, Defendants object as the allegations therein call for legal
17 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
18 deny all other averments.

19 82. Answering Paragraph 82, Defendants object as the allegations therein call for legal
20 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
21 deny all other averments.

22 **SECOND CAUSE OF ACTION**

23 **Aiding and Abetting Breach of Fiduciary Duty**

24 83. Answering Paragraph 83, Defendants repeat and reallege their answers to Paragraphs
25 1 through 82 and incorporate the same as though fully set forth herein.

26 84. Answering Paragraph 84, Defendants object as the allegations therein call for legal
27 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
28 deny all other averments.

1 85. Answering Paragraph 85, Defendants object as the allegations therein call for legal
2 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
3 deny all other averments.

4 86. Answering Paragraph 86, Defendants object as the allegations therein call for legal
5 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
6 deny all other averments.

7 87. Answering Paragraph 87, Defendants object as the allegations therein call for legal
8 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
9 deny all other averments.

10 88. Answering Paragraph 88, Defendants object as the allegations therein call for legal
11 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
12 deny all other averments.

13 89. Answering Paragraph 89, Defendants object as the allegations therein call for legal
14 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
15 deny all other averments.

16 **THIRD CAUSE OF ACTION**

17 **Civil Conspiracy**

18 90. Answering Paragraph 90, Defendants repeat and reallege their answers to Paragraphs
19 1 through 89 and incorporate the same as though fully set forth herein.

20 91. Answering Paragraph 91, Defendants object as the allegations therein call for legal
21 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
22 deny all other averments.

23 92. Answering Paragraph 92, Defendants object as the allegations therein call for legal
24 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
25 deny all other averments.

26 93. Answering Paragraph 93, Defendants object as the allegations therein call for legal
27 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
28 deny all other averments.

1 94. Answering Paragraph 94, Defendants object as the allegations therein call for legal
2 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
3 deny all other averments.

4 95. Answering Paragraph 95, Defendants object as the allegations therein call for legal
5 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
6 deny all other averments.

7 96. Answering Paragraph 96, Defendants object as the allegations therein call for legal
8 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
9 deny all other averments.

10 **FOURTH CAUSE OF ACTION**

11 **Declaratory Relief**

12 97. Answering Paragraph 97, Defendants repeat and reallege their answers to Paragraphs
13 1 through 96 and incorporate the same as though fully set forth herein.

14 98. Answering Paragraph 98, Defendants object as the allegations therein call for legal
15 conclusions and the document speaks for itself, and on that basis therefore deny the allegations
16 contained therein.

17 99. Answering Paragraph 99, including sub-parts, Defendants object as the allegations
18 therein call for legal conclusions, and on that basis therefore, denies the allegations contained therein.
19 Defendants further deny all other averments.

20 100. Answering Paragraph 100, Defendants object as the allegations therein call for legal
21 conclusions, and on that basis therefore, denies the allegations contained therein. Defendants further
22 deny all other averments.

23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff's Complaint fails to state causes of action upon which relief can be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are barred by the statute of limitations.

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1 **THIRD AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred by the statute of repose.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred by the doctrines of waiver, release, laches, unclean hands, and/or
5 estoppel.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 Plaintiff's claims are barred because any and all actions taken by Vinco Ventures, Inc., at the
8 direction and/or behest of Colucci, are void *ab initio*.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred because any and all actions taken by Vinco Ventures, Inc., at the
11 direction and/or behest of Colucci, are voidable.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 Plaintiff claims are barred because Plaintiff lacks standing to bring the claims.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 The services underlying the attorney's fees did not advance the interest of Plaintiff.

16 **NINTH AFFIRMATIVE DEFENSE**

17 Plaintiff's lacks appropriate authorization to bring the instant claims.

18 **TENTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims are barred by the statute of frauds.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's damages, if any, were caused in whole or in part by the conduct of third parties
22 and/or outside forces over who/which Defendants had no control.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 Plaintiff's damages, if any, are not attributable to any act, conduct, or omission on the part of
25 Defendants.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are barred because any and all actions taken by, or at the behest of, Colucci,
28 on behalf of Vinco Ventures, Inc., were *ultra vires*.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred to the extent they resulted from and/or were caused by undue
3 influence, duress, or exploitation.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 Plaintiff has failed to mitigate its damages and, therefore, its recovery, if any, should be
8 reduced accordingly.

9 **SEVENTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred due to the fraud and deceit on the part of Plaintiff's agents, other
11 than these Defendants.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 Plaintiff has failed to name a party necessary for full and adequate relief essential in this action.

14 **NINETEENTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred by the parole evidence rule.

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 Plaintiff assumed whatever risks or hazards that existed at the time of the events alleged in the
18 Complaint and therefore, Plaintiff is responsible for its own alleged damages, if any.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 Plaintiff's own actions, omissions, or conduct caused Plaintiff's damages, if any.

21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 Plaintiff's damages, if any, were caused by Plaintiff's contributory negligence and its failure
23 to discover the alleged defects in the products/properties or to guard against the possibility of its
24 existence. This conduct by Plaintiff precipitated its injuries and damages, if any.

25 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

26 Plaintiff's damages, if any, are not attributable to any action, omission, or conduct on the part
27 of the Defendants.

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1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred in whole or in part because the Court lacks jurisdiction.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred by Plaintiff's ratification and confirmation.

5 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

6 At all relevant times herein, Defendants performed and discharged in good faith each and every
7 obligation owed to Plaintiff.

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9 Any and all actions taken by Defendants were required by and performed in furtherance of any
10 fiduciary duties owed to Plaintiff.

11 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12 Defendants committed no intentional actions or omissions meant to disrupt or harm Plaintiff.

13 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

14 Defendants acted in conformity with the law and with reasonableness in discharging any owed
15 duties, if any.

16 **THIRTIETH AFFIRMATIVE DEFENSE**

17 Defendants committed no deceptive acts.

18 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

19 Defendants have not made any false or misleading statements in a commercial setting.

20 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

21 Plaintiff has failed to plead fraud with specificity as required by NRCP 9.

22 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

23 Defendants did not conspire or enter into any relationship with any other individual or entity
24 with the intention to harm Plaintiff or to accomplish an unlawful objective for the purpose of harming
25 Plaintiff.

26 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

27 Defendants hereby incorporate by reference those Affirmative Defenses enumerated in Rule 8
28 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation

1 or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave
2 of Court to amend their answer to specifically assert the same. Such defenses are herein incorporated
3 by reference for the specific purpose of not waiving the same.

4 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

5 It has been necessary for Defendants to employ the services of an attorney to defend this action
6 and a reasonable sum should be allowed as and for attorney's fees, together with the costs expended
7 in this action.

8 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

9 Plaintiff's claims are barred due to Plaintiff's failure to act in good faith or deal fairly with
10 Defendants.

11 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

12 Plaintiff's acts, conduct, or omissions were not conducted in the best interest of Plaintiff.

13 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

14 Defendants did not knowingly violate any law.

15 **THIRTY-NINETH AFFIRMATIVE DEFENSE**

16 Plaintiff's acts, conduct, or omissions were not conducted in the best interest of Plaintiff.

17 **FORTIETH AFFIRMATIVE DEFENSE**

18 Defendants did not knowingly engage in any wrongful conduct.

19 **FORTY-FIRST AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are barred as Plaintiff has not overcome the presumption in NRS 138(3).

21 **FORTY-SECOND AFFIRMATIVE DEFENSE**

22 Defendants did not engage in any fraud and/or fraudulent conduct.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Defendants request judgment against Plaintiff as follows:

- 25 1. That Plaintiff take nothing by way of its Complaint;
- 26 2. That Plaintiff's claims be dismissed with prejudice;
- 27 3. That Defendants be awarded their costs and attorney's fees; and
- 28 4. For such other relief, legal or equitable, which the Court deems appropriate.

1 **COUNTERCLAIMS**

2 COMES NOW, Defendants/Counterclaimants, LISA KING (hereinafter “King”), and
3 RODERICK VANDERBILT (hereinafter “Vanderbilt”) (hereinafter collectively
4 “Counterclaimants”), by and through their attorneys of record, THEODORE PARKER, III, ESQ. of
5 the law firm of PARKER, NELSON & ASSOCIATES, CHTD., hereby assert Counterclaims against
6 Plaintiff, VINCO VENTURES, INC. (hereinafter “VINCO”), and alleges as follows:

7 **I.**

8 **THE PARTIES**

9 1. VINCO is a publicly traded Nevada corporation that is duly authorized to do business
10 in the State.

11 2. King is a natural person with a residence located at 19 Capstone Rise, Rochester,
12 Monroe County, New York.

13 3. Vanderbilt is a natural person with a residence located at 275 NE 18th St., Apt. PH 7,
14 Miami, Florida 33132.

15 **II.**

16 **JURISDICTION AND VENUE**

17 4. VINCO was incorporated in Nevada and is a Nevada Corporation.

18 **III.**

19 **GENERAL ALLEGATIONS**

20 **A. VINCO Merger and Acquisitions**

21 5. In late 2020, Theodore Farnsworth (hereinafter “Farnsworth”) negotiated a merger deal
22 between VINCO and ZASH Global Media and Entertainment Corporation (hereinafter “ZASH”).

23 6. On January 21, 2021, VINCO, and its newly formed wholly owned subsidiary, Vinco
24 Acquisition Corporation, entered into an agreement to complete a Plan of Merger with ZASH.

25 7. As part of the announced merger, it was specifically stated that “[T]he Certification of
26 Incorporation of VINCO, would be amended and restated, at and as of the Effective Time, in
27 substantial conformance with the Certificate of Incorporation of [VINCO] immediately prior to
28 Closing, and the name of VINCO will be changed to ZASH...”.

1 8. On March 30, 2021, VINCO, Vinco Acquisition Corporation, and ZASH entered into
2 a First Amendment to the Merger Agreement to complete the Plan of Merger, which amended the
3 Merger Agreement to extend the closing date of the merger.

4 9. On May 28, 2021, VINCO, Vinco Acquisition Corporation, and ZASH entered into a
5 Second Amendment to the Merger Agreement to complete the Plan of Merger to define certain
6 milestones, with dates to be completed to consummate the closing of the Lomotif Private Limited
7 (hereinafter “Lomotif”) acquisition and ZASH merger.

8 10. As part of the merger transaction, VINCO and ZASH formed a joint venture holding
9 company, ZVV Media Partners, LLC (hereinafter “ZVV”), in anticipation of a business combination
10 between the entities.

11 11. Following the announcement of the Merger Agreement, Farnsworth, as Chairman and
12 co-founder of ZASH, began to obtain investors to raise money on behalf of the merger entity.

13 12. Due to the announcement of ZASH and VINCO’s merger, and Farnsworth’s fund-
14 raising efforts, Farnsworth became responsible for the successful growth of VINCO, taking it from a
15 company with less than \$20 million market capital to a company with well over \$800 million, within
16 the past year and a half.

17 13. VINCO and ZVV, through their joint venture, purchased 80% ownership stake in
18 Lomotif, which closed in July of 2021, and purchased AdRizer, which was completed in February of
19 2022.

20 **B. VINCO’s Board and Associated Actions at Issue**

21 14. As a result of the merger transaction, both ZASH and VINCO shared the same
22 management team and employees. This included King and Vanderbilt, who were elected to the
23 VINCO Board of Directors by the shareholders at a meeting held on October 14, 2021. At this time,
24 King also became CEO of VINCO.

25 15. Additionally, in October of 2021, Vanderbilt was appointed as Chairman of the VINCO
26 Board of Directors.

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1 16. Prior to Jon Colucci (hereinafter “Colucci”) coming onto the VINCO Board, the
2 VINCO Board Members consisted of Vanderbilt as Chairman, King, Mike DiStasio (hereinafter
3 “DiStasio”), Elliot Goldstein (hereinafter “Goldstein”), and Phillip McFillin (hereinafter “McFillin”).

4 17. McFillin subsequently resigned and Colucci became a Board Member of June 10, 2022.

5 18. McFillin resigned as an independent Director after it became clear he could not meet
6 the criteria of an Independent Director.

7 19. Originally, McFillin was vetted by VINCO’s general counsel, Lucosky Brookman,
8 LLP (hereinafter “LB”).

9 20. Originally, LB was also utilized to vet Colucci as being qualified to be an Independent
10 Director of VINCO.

11 21. As part of the vetting process to determine if Colucci could be an Independent Director,
12 Colucci was required to submit a Questionnaire, detailing his connections to VINCO, with the intent
13 being “to obtain information for use in [VINCO’s] registration statements...to be filed with the
14 Securities and Exchange Commission (hereinafter “Questionnaire”).

15 22. Unbeknownst to King and Vanderbilt at the time, Colucci failed to disclose numerous
16 conflicts on the questionnaire, which would have prevented him from qualifying for service as an
17 Independent Director of VINCO.

18 23. Unbeknownst to King and Vanderbilt at the time, Colucci did not adequately disclose
19 his present or potential business interests with VINCO and/or Colucci’s business interests in VINCO
20 exceeded the amount by which Colucci may hold and still serve as an Independent Director of VINCO.

21 24. On July 8, 2022, King proposed Farnsworth be appointed as co-CEO. Appointing
22 Farnsworth as co-CEO would be beneficial for VINCO as King could focus her efforts on operations
23 and Farnsworth could focus on public relations and raising capital.

24 25. At the July 8, 2022 VINCO Board meeting, Colucci, Chairman Vanderbilt, and King
25 voted in favor of Farnsworth being appointed as co-CEO, with King.

26 26. On July 14, 2022, VINCO filed an 8k, announcing Farnsworth as co-CEO.

27 27. Just prior to VINCO’s announcement, the Compensation Committee met privately and
28 “terminated” King.

1 28. The Compensation Committee had no authority to “terminate” King and never
2 informed Chairman Vanderbilt or Farnsworth of the “termination”.

3 29. Within weeks of Colucci being appointed as an Independent Director, concerns arose
4 regarding Colucci’s disclosures on the Questionnaire and status as a Independent Director.

5 30. Due to these concerns, the Chairman of the VINCO Board of Directors, Vanderbilt,
6 retained law firm with significant experience with the Securities and Exchange Commission (“SEC”)
7 to perform a vetting of Colucci to determine whether or not he qualified as an Independent Director
8 and/or whether Colucci had mislead VINCO in his Questionnaire.

9 31. Due to Colucci’s failure to properly disclose his current and potential business interests,
10 Gibson Dunn LLP (“GD”) was selected by the VINCO Board to perform an audit of Colucci, and act
11 as independent counsel to investigate, Colucci’s Independent Director status and to advise whether or
12 not Colucci met the requirements to be an Independent Director of VINCO and/or whether Colucci
13 had concealed or provided misleading information regarding his potential or current business interests.

14 32. As VINCO is a publicly-traded company listed on Nasdaq, Nasdaq listing rules require
15 a majority of VINCO’s Directors be Independent, as that term is defined in Nasdaq’s Listing Rules.

16 33. Due to Colucci concealing information on his Questionnaire, VINCO was not in
17 compliance with Nasdaq disclosure requirements.

18 34. GD has been in business for approximately 132 years. Thomas Kim, Esq. and David
19 Burns, Esq., members of GD, specifically worked on this matter. Mr. Kim is recognized as a premier
20 SEC attorney who served as Chief Counsel and Associate Director of the division of Corporate
21 Finance at the SEC, and one year as counsel to chairman of the SEC.

22 35. GD had no prior engagements with the VINCO board, making GD truly independent.

23 36. On or about July 17, 2022, the Board of VINCO purported to convene a meeting.

24 37. Prior to the July 17, 2022 meeting, Chairman Vanderbilt advised the VINCO Board
25 that GD had been engaged to act as independent counsel to investigate Colucci’s non-disclosures and
26 failure to meet the requirements to be an Independent Director on VINCO’s Board, and that GD would
27 be in attendance at the July 17, 2022 VINCO Board Meeting.

28 38. Colucci obstructed the July 17, 2022 VINCO Board meeting.

1 39. On July 17, 2022, instead of utilizing the secure, public account previously provided
2 by Chairman Vanderbilt, Colucci and two other Directors met using Zoom and improperly kept
3 Chairman Vanderbilt, King, and GD out of the Zoom meeting.

4 40. Colucci, Goldstein, and DiStasio were attempting to hold an improper July 17, 2022
5 VINCO Board meeting via Zoom.

6 41. While Chairman Vanderbilt, King, and GD were improperly prevented from joining
7 the attempted July 17, 2022 VINCO Zoom meeting, VINCO's Board members in attendance at the
8 Zoom meeting, voted to terminate King and Farnsworth as co-CEOs and appoint Colucci as Interim
9 CEO. Vanderbilt was also terminated at the July 17, 2022 VINCO Board meeting.

10 42. Copies of the meeting minutes from the attempted July 17, 2022 VINCO Zoom Board
11 meeting were never provided to Chairman Vanderbilt or King.

12 43. Despite the meeting minutes for the attempted July 17, 2022 VINCO Zoom Board
13 Meeting not being provided to Vanderbilt or King, screenshots of meeting minutes have been posted
14 on the World Wide Web.

15 44. Colucci and others actions at the July 17, 2022 VINCO Board meeting violated
16 VINCO's Bylaws.

17 45. Actions taken at the July 17, 2022 VINCO Board meeting are invalid.

18 46. Early in the GD investigation, requests were made for Colucci to participate in
19 determining his qualifications as an Independent Director.

20 47. Colucci and other Independent Directors of VINCO failed to respond and/or cooperate
21 with GD's investigation.

22 48. GD confirmed concerns about issues related to Colucci's disclosures and potential
23 conflicts of interest.

24 49. On July 20, 2020, Chairman Vanderbilt contacted VINCO's general counsel and
25 requested the Audit Committee launch an immediate, internal investigation into the irregular actions
26 of VINCO and Colucci, and the companies Colucci represents and/or is affiliated with.

27 ///

28 ///

1 50. On behalf of the Independent Directors, Goldstein responded that the independent
2 board will take the reported information regarding Colucci under advisement, but that this does not
3 change the fact the King and Farnsworth were terminated and Colucci was elected as Interim CEO.

4 51. On or about July 20, 2022, and after beginning the investigation, GD received an email
5 from Board Member Goldstein, questioning GD's ethics.

6 52. Upon information and belief, the questioning of GD's ethics was part of a plan to
7 disrupt the independent investigation into Colucci's failure to disclose material information and further
8 the plan to improperly remove Chairman Vanderbilt and King from their positions at VINCO.

9 53. In response to Goldstein's email, GD withdrew, on July 21, 2022, just one day after
10 receiving Goldstein's email.

11 54. Despite the vetting of Colucci not being completed, Colucci has continued to act, hold
12 himself out as, and serve as an Independent Director of VINCO.

13 55. Detailing Colucci's improper takeover of VINCO, Chairman Vanderbilt demanded that
14 Colucci immediately step down as an Independent Director of VINCO, due to his failure to provide
15 complete disclosures in regard to present and potential business interests in the Questionnaire.

16 56. On July 21, 2022, the VINCO Board held a meeting, which rescinded King's prior
17 termination as co-CEO, appointed King as President of ZVV, and appointed Colucci and Farnsworth
18 as co-CEOs.

19 57. On July 22, 2022, VINCO filed an 8K disclosing the appointments made at the July 21,
20 2022 VINCO Board Meeting.

21 58. On July 24, 2020, at the request of DiStasio and Goldstein, the VINCO Board met
22 again.

23 59. At the July 24, 2022 VINCO Board meeting, Vanderbilt demanded Colucci step down
24 as an Independent Director due to Colucci's failure to disclose third-party transactions and financial
25 interests to VINCO.

26 60. At the July 24, 2022 VINCO Board meeting, Colucci engaged in disruptive behavior,
27 repeatedly muting Vanderbilt and preventing Vanderbilt from properly performing his role as
28 Chairman.

1 61. Colucci muted and prevented King and Vanderbilt from meaningfully participating in
2 the July 24, 2022 VINCO Board meeting.

3 62. The allegedly Independent Directors of VINCO terminated (again) King as co-CEO
4 and terminated Farnsworth as co-CEO. Both were replaced by Colucci.

5 63. At the improper July 24, 2022 VINCO Board meeting, Vanderbilt was prohibited from
6 any employment with VINCO and was removed as Chairman of the VINCO Board.

7 64. At the improper July 24, 2022 VINCO Board Meeting, certain members of the Board
8 who prevented King and Vanderbilt from attending and meaningfully participating, entered into and/or
9 approved to be entered into numerous agreements and indemnification agreements on behalf of
10 VINCO.

11 65. At the improper July 24, 2022 VINCO Board meeting, certain members of the Board
12 who prevented King and Vanderbilt from attending and meaningfully participating, voted to postpone
13 the Special Meeting of Stockholders, that was scheduled for July 26, 2022 to approximately August
14 23, 2022.

15 66. At the improper July 24, 2022 VINCO Board meeting, certain members of the Board
16 who prevented King and Vanderbilt from attending and meaningfully participating, voted to
17 implement VINCO's cost-reduction plan that was to result in a significant reduction of VINCO's staff
18 (approximately 80% of VINCO's staff would be let go).

19 67. At the improper July 24, 2022 VINCO Board meeting, certain members of the Board
20 who prevented King and Vanderbilt from attending and meaningfully participating, voted to appoint
21 Colucci and VINCO CFO, Phil Jones (hereinafter "Jones") to serve as VINCO's Managers at ZVV.

22 68. Actions taken at the July 24, 2022 VINCO Board meeting are invalid.

23 69. Upon information and belief, the instant litigation was instituted by Colucci, in the
24 name of VINCO, but VINCO gave no authority to Colucci to institute the instant litigation.

25 70. Upon information and belief, none of the actions taken by VINCO at improperly held
26 board meetings are valid.

27 71. Upon information and belief, none of the actions taken by VINCO's Independent
28 Director, Colucci, are valid, as Colucci is unqualified to serve as an Independent Director of VINCO.

1 72. Upon information and belief, the termination of King and Farnsworth were improper,
2 as well the attempts to remove Vanderbilt as Chairman.

3 73. Upon information and belief, on or about July 26, 2022, Colucci caused VINCO to
4 issue a press release referring to a hostile takeover, which caused the stock price of VINCO to drop
5 precipitously.

6 **C. Eric Noble's Discovery and Suspicious Transactions**

7 74. On or about May 26, 2022, Erik Noble (hereinafter "Noble"), joined VINCO and was
8 responsible for securing all information and property, and increasing VINCO's security posture and
9 limiting risk to VINCO.

10 75. Previously, Noble had served as a contractor in the U.S. intelligence community,
11 managing contractors building advanced analytical and artificial intelligence platforms.

12 76. Noble is familiar with various forms of artificial intelligence and project management
13 of engineering teams to build artificial intelligence platforms.

14 77. Noble conducts due diligence for VINCO on tech-related matters.

15 78. In June of 2022, Noble was tasked with conducting due diligence on a vendor, AI-Pros,
16 and their founder George Yang, to determine if the company could legitimately build artificial
17 intelligence products as advertised.

18 79. On or about July 27, 2022, Noble discovered that VINCO was experiencing theft of
19 trade secrets and intellectual property. Noble also discovered Colucci's illicit collusion of intellectual
20 property theft from VINCO.

21 80. Colucci's actions, acting as an Independent Director of VINCO, threatened VINCO's
22 value.

23 81. Following the discovery, Noble compared the business conversations he had with
24 George Yang, from June 21, 2022 to July 26, 2022, and realized many meetings included Colucci.

25 82. Mr. Yang's company, AI-Pros, was seeking payment from VINCO in exchange for
26 nothing.

27 83. King and Noble disapproved paying AI-Pros as AI-Pros did not provide anything to
28 VINCO.

1 84. Despite receiving no goods or services, on July 19, 2022, Colucci, Goldstein, and
2 VINCO CFO Phil Jones, pushed to pay an invoice to AI-Pros.

3 85. Colucci wrote emails urging the AI-Pros invoice be paid.

4 86. Noble voiced objections to paying AI-Pros, as nothing of value was provided to
5 VINCO in exchange for the payment.

6 87. Upon information and belief, in retaliation, on July 24, 2022, Noble was provided a
7 letter from Jones, claiming that DiStasio, Goldstein, and Colucci voted to terminate Noble without
8 cause.

9 88. Counterclaimants believe Noble was terminated due to him voicing his concerns
10 regarding the harm being done to VINCO by allegedly Independent Directors, most specifically
11 Colucci.

12 89. The VINCO Board meeting which terminated Noble is believed to have been improper
13 and not conducted in accord with VINCO's Articles of Incorporation and Bylaws.

14 90. On July 26, 2022, the CEO of Mind Tank, Mr. Harrison Colley, contacted Mr. Noble
15 to advise that Mr. Yang of AI-Pros was building a replica of Mind Tank and AdRizer's entire business
16 model.

17 91. Noble was shown proof of the alleged theft of intellectual property, in the form on live
18 online view of websites with Mind Tank intellectual property built on AI-Pros staging servers, as well
19 as overseas job postings for engineers and software developers with skills to produce and/or replicate
20 what is owned by Mind Tank and AdRizer, with direction that resumes should be sent to Colucci.¹

21 92. Noble believes AI-Pros is stealing intellectual property and trade secrets from VINCO,
22 with the assistance of certain Board Members, for AI-Pros gain.

23 93. Upon information and belief, AI-Pros is stealing intellectual property and trade secrets
24 from VINCO, with the assistance of certain Board Members, for AI-Pros gain.

25 94. Upon information and belief, VINCO has paid out AI-Pros in excess of \$1 million
26 dollars in exchange for work AI-Pros never delivered.

27
28 ¹ VINCO had acquired AdRizer in approximately February of 2022.

95. Upon information and belief, AI-Pros is seeking another \$2 million dollars from VINCO for work AI-Pros never delivered.

96. Upon information and belief, Colucci signed a two-year licensing agreement with AI Pros, on behalf of VINCO.

97. Upon information and belief, VINCO may also be improperly paying I-Heart Media invoices.

98. Upon information and belief, Colucci's wife is a representative of I-Heart Media.

99. Upon information and belief, I-Heart Media was improperly invoicing VINCO. On one specific occasion, VINCO was invoiced \$215,000.00 by I-Heart Media.

100. Upon information and belief, I-Heart Media has been improperly invoicing I-Heart Media.

101. Upon information and belief, at least five VINCO employees have now filed whistleblower complaints implicating Colucci's self-dealing and collusion with respect to VINCO. The whistleblower complaints allege that Colucci, along with DiStasio and Goldstein, breached their fiduciary duties to VINCO, colluded to steal VINCO's trade secrets, and potentially committed fraud.

102. Upon information and belief, one of the whistleblower complaints, filed by Noble alleges Colucci colluded with AI-Pros and its founder, with the intent to steal intellectual property and trade secrets from VINCO.

103. Upon information and belief, Colucci, through his own company, HwyData, was also improperly invoicing VINCO for services and goods not provided.

104. VINCO, through Colucci and others, interfered with King and Vanderbilt performing their responsibilities at VINCO and interfered with their proper financial consideration, in excess of \$15,000.00.

IV.

FIRST CAUSE OF ACTION

(Declaratory Relief)

105. Counterclaimants repeat and reallege their allegations in Paragraphs 1 through 104 above, and incorporate the same as though fully set forth herein.

1 106. A justiciable controversy exists that warrants a declaratory judgment pursuant to the
2 Uniform Declaratory Judgments Act.

3 107. Counterclaimants seek relief pursuant to the Uniform Declaratory Judgments Act, in
4 the form of a declaration that:

5 a. Colucci does not meet the requirements to be an Independent Director of
6 VINCO and is therefore removed from VINCO's Board;

7 b. That actions taken by Colucci and others, in contravention of VINCO's Articles
8 of Incorporation and Bylaws, are invalid;

9 c. That King is co-CEO of VINCO, President of ZVV, and a current VINCO
10 Board Member;

11 d. That Farnsworth is co-CEO of VINCO;

12 e. That Vanderbilt is the Chairman of VINCO's Board; and

13 f. Identifying specifically the rights, roles, and positions of King, Farnsworth, and
14 Vanderbilt in VINCO and its related entities.

15 108. There is a bona fide dispute between VINCO and the Counterclaimants as to
16 Counterclaimants current legal roles and/or positions in VINCO, under VINCO's Articles of
17 Incorporation and Bylaws.

18 109. King and Vanderbilt, are being harmed by the actions of VINCO, acting through some
19 of the VINCO board members, and will continue to be harmed until the dispute over the proper control
20 of VINCO, and actions or inactions taken by certain Board Members of VINCO are resolved.

21 110. King and Vanderbilt have been forced to retain an attorney to prosecute this matter and
22 are entitled to a reasonable sum of attorney's fees.

23 **WHEREFORE,** King and Vanderbilt pray the Court enter judgment in its favor as follows:

24 1. Granting the requested Declaratory Relief;

25 2. For damages in excess of (\$15,000.00) allowed or recoverable by law;

26 3. For prejudgment-interest allowed or recoverable by law;

27 ///

28 ///

1 4. For attorneys' fees and costs incurred; and

2 5. For other such relief as the Court may deem just and proper.

3 DATED this 29th of August, 2022.

4 **PARKER, NELSON & ASSOCIATES, CHTD.**

5 */s/ Theodore Parker, III*

6 **THEODORE PARKER, III, ESQ.**

7 Nevada Bar No. 4716

8 2460 Professional Court, Suite 200

9 Las Vegas, Nevada 89128

10 *Attorneys for Defendants*

11 *Lisa King & Roderick Vanderbilt*

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/s/ Staci D. Ibarra
An employee of Parker, Nelson & Associates, Chtd.

TAB 21

TAB 21

Heather S. Smith

CLERK OF THE COURT

MOT

Joel E. Tasca
Nevada Bar No. 14124
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Nevada Bar No. 14854
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*Attorneys for Plaintiff
Vincov Ventures, Inc.*

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

VINCO VENTURES, INC.,

Plaintiff,

v.

THEODORE FARNSWORTH; LISA
KING; RODERICK VANDERBILT; AND
ERIK NOBLE,

Defendants.

Case No. A-22-856404-B

Dept. No. 16

**VINCO VENTURES, INC.'S MOTION FOR CLARIFICATION OF THE
COURT'S AUGUST 17, 2022 ORDER PERTAINING TO MEETINGS OF THE
BOARD OF DIRECTORS**

ON ORDER SHORTENING TIME

Vincov Ventures Inc. seeks clarification of Section 5 of the Court's August 17, 2022 Order, concerning the unanimity requirement for scheduling a meeting of the Board of Directors with more than 48-hours' notice. As Vincov interprets the Order, the plain text only requires unanimous consent by the Board if a meeting is

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1 scheduled less than 48 hours in advance. Defendants, on the other hand, contend
2 that unanimous consent for every Board meeting is required by the Court's Order.
3 Defendants' interpretation is unworkable as it would (a) allow any single board
4 member to unilaterally prevent the remaining Board members from fulfilling their
5 fiduciary duty to stay reasonably apprised of Company matters; (b) clash with
6 Section 2 of the same Order, which requires the Board to approve any expenditure in
7 excess of \$250,000; and (c) force the parties back to Court every time the Board needs
8 to make a decision. The Court should reject defendants' absurd interpretation.

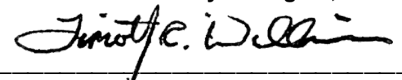
ORDER SHORTENING TIME

9
10 Good cause appearing, IT IS HEREBY ORDERED that the time for hearing
11 the above-captioned Vinco Ventures Inc.'s Motion for Clarification of the Court's
12 August 17, 2022 Order Pertaining to Meetings of the Board of Directors will be
13 shortened and heard on the 7th day of September, 2022 at 1:30 ~~a.m.~~/p.m., or as soon
14 thereafter as the matter may be heard.

15 Opposition by defendants must be filed and served by September 5, 2022.

16 ~~Reply by plaintiff must be filed and served by _____, 2022.~~

Dated this 31st day of August, 2022



The Honorable Timothy Williams

OCB 076 7F09 A137
Timothy C. Williams
District Court Judge

JM

**DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR CLARIFICATION
ON ORDER SHORTENING TIME**

I, Joel E. Tasca, Esq., declare as follows:

1. I am an attorney and partner at the law firm Ballard Spahr LLP, counsel for plaintiff Vinco Ventures, Inc., and I submit this declaration in support of Vinco's Motion for Clarification of the Court's August 17, 2022 Order.

2. I make this declaration based on my own personal knowledge except where stated on information and belief, and to those matters, I believe them to be true.

3. I make this motion on Vinco's behalf, and in good faith.

4. On August 17, 2022, the Court issued an Order Directing Vinco Ventures, Inc. to Pay all Payroll Amounts and . . . Setting Limitations and Conditions Regarding Vinco Ventures Board Meetings.

5. As relevant here, Section 5 of the Order provides that Vinco "shall not hold any Board of Director meetings without 48 hours' notice and an agenda must accompany the notice, absent unanimous agreement of the parties, which agreement will not be unreasonably withheld in the event of emergency, or order of the Court."

6. Vinco seeks clarification of the phrase "absent unanimous agreement of the parties" in Section 5, specifically that the Order does not require unanimous consent to duly noticed meetings of the Board.

7. On August 26, 2022, Director Mike DiStasio attempted to notice a meeting of the Board to be held on Monday, August 29, 2022. Mr. DiStasio provided more than 48-hours' notice to the other directors. *See* Exhibit A, Email from M. DiStasio, Aug. 26, 2022.

8. On August 27, 2022, defendant King responded to Mr. DiStasio, stating that she was not available for the proposed meeting and that she understood the Court's August 17 Order to prohibit any board meeting unless there was unanimous consent to the meeting. *See* Exhibit B, Email from L. King, Aug. 27 2022.

10. On Monday, August 29, 2022, counsel for Ms. King filed a Motion for Order to Show Cause Why Plaintiff Should Not Be Held In Contempt and/or Admonished for Violating August 17, 2022 Order. In that motion, defendants argued that Vinco had violated the Court's August 17 Order by attempting to hold a Board meeting absent the consent of all directors.

11. On Monday, August 29, 2022, out of an abundance of caution, Vinco postponed the board meeting scheduled that day and elected to seek clarification from the Court on the correct interpretation of Section 5 of the Court's Order. *See* Exhibit C, Email from J. Colucci, Aug. 29, 2022.

12. The Board's ability to hold meetings and continue the operations of the Company is imperative to maintaining the status quo as determined by the Court. Thus, given Vinco's emergent situation and the necessity that that the Board be allowed to make vital decisions on the Company's behalf, Vinco respectfully requests that the Court provide clarification on its August 17, 2022 Order during the hearing scheduled on August 31, 2022, at 1:30 p.m.

8 I declare under the penalty of perjury under the laws of the State of Nevada
9 that the foregoing is true and correct.

0|| Dated this 30th day of August, 2022.

/s/ Joel E. Tasca
Joel E. Tasca, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

Section 5 of the Court's August 17, 2022 Order does not require unanimous consent for any meeting of the Board of Directors. To hold otherwise would contradict the provision's plain language, clash with Section 2 of the same Order, and allow any of the five directors to hold Vinco hostage on every decision needing Board approval. Neither the Court's Order nor Vinco's governing documents give individual directors absolute veto power over duly noticed meetings, and the Court should not accept defendants' contention to the contrary.

I. RELEVANT FACTS

A. The Text of the Order and Transcript Do Not Support Unanimous Consent for Every Board Meeting

The Court's August 17, 2022 Order reads:

Plaintiff shall not hold any Board of Director Meetings without 48 hours' notice and an agenda must accompany the notice, absent unanimous consent of the parties, which agreement will not be unreasonably withheld in the event of an emergency, or order of the Court.

August 17 Order ¶ 5. Vinco reasonably interprets Section 5 to require unanimous consent of the Board only if a meeting is called less than 48 hours' notice. Vinco's interpretation of the unanimity requirement has been consistent since the August 17 hearing. At that hearing, Mr. Connot noted that, as with any public company, Vinco's "directors have fiduciary duties and if they need to hold a board meeting, they need to hold a board meeting." *See* Transcript of Proceeding, Aug. 17, 2022, at 12:25–13:1 ("Aug. 17 Trans.").

The issue that the Court sought to remedy with Section 5 was that special meetings were being called on little notice—and sometimes as little as one hour beforehand—without a proper agenda. *See id.* at 23:11. This was expressly prohibited by the Company's bylaws. Mr. Connot acknowledged that problem and clarified that the unanimous-consent requirement should apply "[o]n less than 48

1 hours' notice,' but "upon 48 hours' notice, [the Board] should be able [to] . . . properly
2 notice . . . a directors meeting and transact business that's properly before the
3 company." *Id.* at 13:6–10.

4 The Board's ability to hold duly noticed meetings became even more important
5 when the Court also ordered that any expenditure in excess of \$250,000 must be
6 approved by a unanimous Board. *See* Aug. 17 Order ¶ 2. The Board, therefore,
7 must be allowed to meet upon adequate notice to discuss and vote on those important
8 expenditures.

9 The Court did not reject Vinco's interpretation of the unanimous-consent
10 provision during the hearing. It merely created a carve out to the notice
11 requirements for the impending Hudson Bay default. *See* Aug. 17 Trans. at 73. The
12 carve out for Hudson Bay ensured that the Board would be allowed to meet on less
13 than 48 hours' notice to prevent the imminent threat of default of which all the
14 parties were aware. The Court's comments on the carve out do not mandate Section
15 5's unanimous-consent requirement or require such consent for every proposed board
16 meeting.

17 **B. Defendant Directors Refuse to Participate in Properly Noticed Board**
18 **Meeting**

19 On August 26, 2022, director Mike DiStasio attempted to notice a directors
20 meeting for Monday, August 29, 2022. *See* Exhibit A. Ms. King objected to the
21 meeting, claiming (a) that she was not available at the proposed time and (b) that the
22 Court's August 17 Order prohibited all board meetings absent unanimous consent of
23 the directors. Exhibit B. Although Vinco is confident that the Board of Directors
24 may hold properly noticed meetings under the bylaws and the Court's Order, Mr.
25 Colucci elected to postpone the August 29 director meeting pending the resolution of
26 this motion for clarification. *See* Exhibit C. Mr. Colucci has tried to work with Ms.
27 King to find a date and time convenient for her so that the Board may continue to
28 meet as needed to direct the affairs of the company. *See* Exhibit C.

On August 29, 2022, Ms. King and Mr. Vanderbilt filed a motion to show cause why Vinco should not be held in contempt for violating the so-called unanimous-consent requirement for director meetings. In its motion, defendants argue that Section 5 definitively requires unanimous consent of the Board for any meeting, regardless of whether it was properly noticed. *See* Defs’ Motion for Order to Show Cause, at 6–7 (Aug. 29, 2022). Vinco, therefore, seeks clarification to the unanimous-consent requirement of the Court’s August 17 Order.

II. LEGAL STANDARD

A motion for clarification is a procedurally proper vehicle to seek explanation of a court’s prior order. *See, e.g., Bronneke v. Martin Rutherford*, 120 Nev. 230, 234 (2004); *see also State v. Eighth Jud. Dist. Ct.*, 116 Nev. 374, 377 (2000). Clarification is also available under NRCP 60. *See Earth Island Inst. v. Ruthenbeck*, 459 F.3d 954, 966 (9th Cir. 2006) (recognizing that a motion for clarification is available under FRCP 60).¹

III. ARGUMENT

When interpreting the language of a court order, “courts should consider the plain meaning of the language and the normal usage of the terms in question.” *Positive Software Sols., Inc. v. New Century Mortg. Corp.*, 337 F. Supp. 2d 862, 870 n.11 (N.D. Tex. 2004); *Walt v. City of Brookfield*, 359 Wis. 2d 541, 550 (Wis. Ct. App. 2014) (citation omitted) (“We interpret court orders as we do other written instruments.”). The Court, therefore, begins with the Order’s plain text and structure to determine its meaning. *See Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 488 (2005).

The plain text of the August 17 Order’s unanimous-consent requirement does not apply to duly noticed board meetings that provide 48 hours’ notice. Section 5

¹ The Nevada Supreme Court has consistently held that federal-court decisions interpreting the federal rules of civil procedure are persuasive in the interpretation of Nevada’s corresponding procedural rules. *See Nelson v. Heer*, 121 Nev. 832, 834 (2005).

1 provides "Plaintiff shall not hold any Board of Director meetings without 48 hours'
2 notice and an agenda must accompany the notice, absent unanimous agreement of
3 the parties." Aug. 17 Order ¶ 5. Section 5 creates two requirements: a notice
4 requirement and an agenda requirement and then provides the modifier "absent
5 unanimous agreement of the parties." *Id.*

6 By its terms, the August 17 Order only precludes the Board from holding
7 meetings without 48 hours' notice or without an agenda unless there is unanimous
8 approval by the Board. This interpretation is consistent with both parties' objections
9 to the hastily called board meetings that lacked an adequate agenda and gave rise to
10 this case. By reinforcing the bylaws' 48-hour notice requirement, the Order prevents
11 the type of inadequate notice that both sides have complained of.

12 Moreover, the August 17 Order cannot reasonably require unanimous consent
13 of the Board for every Board meeting as that would allow a single director to
14 hamstring the Board's ability to satisfy its fiduciary duties to the Company. The
15 Board is under a fiduciary duty to stay reasonably apprised of Company issues. *See*
16 NRS 78.138; *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632 (2006). However, under
17 defendants' interpretation of Section 5, each director holds inherent veto power on
18 the issues that Board can consider and vote upon. By simply refusing to hold a
19 meeting, King, Vanderbilt, and any other director can prevent the others from
20 satisfying their statutory duty to remain informed. The Court's Order does not
21 enable such interference with the Board's fiduciary duties.

22 The absurdity of the unanimous-consent requirement is even more apparent
23 when read in context with other provisions of the Court's orders. For example,
24 Section 2 of the same August 17 Order requires the Board to unanimously approve
25 every expenditure in excess of \$250,000. By requiring unanimous Board approval for
26 such expenditures, the Court must have contemplated the Board's ability to meet
27 without unanimous consent of the directors to discuss the issues, while explicitly
28 prohibiting the Company from taking certain actions (making expenditures

1 exceeding \$250,000) unless each member approves. Likewise, the Court's
2 supplemental order on August 19, 2022, specified that "[t]he Board and Plaintiff's
3 executives shall take all reasonable steps necessary to ensure Vinco Venture's
4 ongoing business operations." August 19, 2022 Order ¶ 5. Clearly, the Court's
5 supplemental order contemplates—as does the August 17 Order—that the Board will
6 continue to function and can hold meetings without being foiled by defendants
7 refusal to provide unanimous agreement for any meeting to occur.

8 Vinco and its Board understand the Court's intent to preserve the status quo.
9 To that end, the Board must have the authority to schedule meetings with adequate
10 48 hours' notice and an agenda as required by their fiduciary duty to the Company.

11 IV. CONCLUSION

12 For the reasons above, Vinco seeks clarification that the Court's August 17,
13 2022 Order.

14 DATED August 30, 2022

BALLARD SPAHR LLP

17 By: Joel E. Tasca

18 Joel E. Tasca

19 Nevada Bar No. 14124

20 Andrew S. Clark

21 Nevada Bar No. 14854

22 David E. Chavez

23 Nevada Bar No. 15192

24 Joseph E. Dagher

25 Nevada Bar No. 15204

26 1980 Festival Plaza Drive, Suite 900
27 Las Vegas, Nevada 89135

28 *Attorneys for Plaintiff Vinco Ventures,
Inc.*

CERTIFICATE OF SERVICE

Pursuant to Nev. Rev. Civ. Pro. 5, I hereby certify that on the 30th day of August, 2022, an electronic copy of the **Vinco Ventures, Inc.'s Motion for Clarification of the Court's August 17, 2022 Order Pertaining to Meetings of the Board of Directors** was filed and served on counsel of record via the Court's electronic service system:

/s/ Andrew S. Clark
An Employee of Ballard Spahr LLP

EXHIBIT A

From: Mike Distasio mike@chair.com 

Subject: Please see Monday Board meeting request attached

Date: August 26, 2022 at 5:22 PM

To: Elliot Goldstein goldsteinelchonon@gmail.com, Giovanni Colucci john@hwydata.com, Roderick Vanderbilt rodv1@msn.com, Lisa King Lking@vincoventures.com, Rod Vanderbilt rodvanderbiltvin@gmail.com, Giovanni Colucci john@hwydata.com

MD

Mike Distasio



Vinco - Board
Meetin...22).pdf

From: Elliot Goldstein elliott@whitedoveequities.com 

Subject: Board meeting request for Monday 6pm

Date: August 26, 2022 at 5:38 PM

To: Lisa King Lking@Vincovenures.com, Rod Vanderbilt rodvanderbiltvin@gmail.com, John Colucci jcoluccivincovenures@gmail.com, Mike Distasio mike@chair.com

EG

Please see attached board meeting request.

Have a fantastic weekend!

Elliot Goldstein, Partner

White Dove Equities


[908.216.1254](tel:908.216.1254)

Elliot@Whitedoveequities.com



Vinco - Board
Meetin...22).pdf

EXHIBIT B

From: Lisa King Lking@Vincovenures.com 
Subject: Re: Please see Monday Board meeting request attached
Date: August 27, 2022 at 6:48 AM
To: Mike Distasio mike@chair.com
Cc: Elliot Goldstein goldsteinelchonon@gmail.com, Giovanni Colucci john@hwydata.com, Roderick Vanderbilt rodv1@msn.com, Rod Vanderbilt rodvanderbiltvin@gmail.com
Bcc: Nathanael Rulis n.rulis@kempjones.com, Teddy Parker tparker@pnalaw.net, Madison Zornes-Vela m.zornes-vela@kempjones.com, Ted Farnsworth Tedfarnsworth@gmail.com, Erik Noble enoble@zash.global

LK

Mike & Elliot,

I am not available for the requested Board meeting on Monday, August 29 and disagree that we need a Board meeting in order to accomplish the narrative for the special meeting. We can review a draft via email as soon as it becomes available. This review will involve all three co-CEOs as well.

As far as scheduling a Board meeting, the previous Court order said that it required unanimous Board approval (or Court order) to set a meeting. See paragraph 5 in the attached. As a result of not having unanimous approval to conduct a Board meeting, one shall not occur on Monday, August 29 and no motions or votes can be taken.

Additionally, I refuse to attend Vinco Ventures, Inc., a public company Board meeting on a private Zoom invite, as shown in Elliot's notice, unless required to do so by court order. Vinco Ventures, Inc. private Board meetings should be conducted on a corporate Zoom or Google Meets account.

Kind Regards,
Lisa King
P + (315)-420-8036

On Aug 26, 2022, at 5:21 PM, Mike Distasio <mike@chair.com> wrote:

Mike Distasio
<Vinco - Board Meeting Notice (Meeting Date August 29, 2022).pdf>



2022.08.17
Order...gs.pdf



Vinco - Board
Meetin...22).pdf

EXHIBIT C

From: **John Colucci** <jcoluccivincoventures@gmail.com>

Date: Mon, Aug 29, 2022 at 5:25 PM

Subject: Aug 29th 6pm ET Board Call

To: Rod Vanderbilt <rodvanderbiltvin@gmail.com>, Lisa King <lking@vincoventures.com>, Mike Distasio <mike@chair.com>, Elliot Goldstein <elliott@whitedoveequities.com>

Lisa,

In the motion your side filed today, you state:

“In response to Mr. DiStasio’s email, board member and co-CEO Lisa King responded that she was not available at the time Mr. DiStasio unilaterally chose and also objected to the meeting going forward as it did not comply with the Court’s August 17 Order.”

Without waiving any of our positions on the propriety of today’s board meeting, also the fact that Lisa you are not available, we will agree to postpone it.

Lisa and Rod please let us know ASAP when you’re available for a Board meeting because, as you know, there are emergent issues vital to Vinco’s survival that need to be addressed by the Board.

Also, remember that due to Elliot's religion we can not have board meetings between Friday Evening at sundown wherever Elliot is physically located and until the following Saturday evening at 10 pm Elliots at the earliest.

John Colucci

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Vinco Ventures, Inc., Plaintiff(s) | CASE NO: A-22-856404-B
7 vs. | DEPT. NO. Department 16
8 Theodore Farnsworth,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

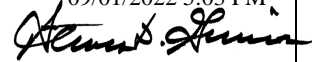
14 Service Date: 8/31/2022

15 Eloisa Nunez	enunez@pnalaw.net
16 Las Vegas Docket	LVDocket@ballardspahr.com
17 Patricia Stoppard	p.stoppard@kempjones.com
18 Nathanael Rulis	n.rulis@kempjones.com
19 Theodore Parker III	tparker@pnalaw.net
20 Joel Tasca	tasca@ballardspahr.com
21 Mahogany Turfley	mturfley@pnalaw.net
22 Pamela Montgomery	p.montgomery@kempjones.com
23 Mark Connot	mconnot@foxrothschild.com
24 Nicole McLeod	n.mcleod@kempjones.com
25 Docket Clerk	DocketClerk_LasVegas@ballardspahr.com

1	Doreen Loffredo	dloffredo@foxrothschild.com
2	Staci Ibarra	sibarra@pnalaw.net
3	David Chavez	chavezd@ballardspahr.com
4	Alison Lott	a.lott@kempjones.com
5	Andrew Clark	clarkas@ballardspahr.com
6	Madison Zornes-Vela	m.zornes-vela@kempjones.com
7	Joseph Dagher	dagherj@ballardspahr.com
8	Katrina Stark	k.stark@kempjones.com
9	Amy Sugden	amy@sugdenlaw.com

TAB 22

TAB 22


CLERK OF THE COURT

Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
n.rulis@kempjones.com
Madison P. Zornes-Vela, Esq. (#13626)
m.zornes-vela@kempjones.com
KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
T: (702) 385-6000
F: (702) 385-6001
Attorneys for Defendants
Theodore Farnsworth & Erik Noble

DISTRICT COURT

CLARK COUNTY, NEVADA

VINCO VENTURES, INC.,

Plaintiff,

vs.

THEODORE FARNSWORTH, LISA
KING, RODERICK VANDERBILT, and
ERIK NOBLE,

Defendants.

CASE NO.: A-22-856404-B
DEPT. NO.: 16

**ORDER GRANTING MOTION FOR
LIMITED EXPEDITED DISCOVERY &
APPOINTMENT OF SPECIAL MASTER
ON ORDER SHORTENING TIME**

Hearing Date: August 24, 2022
Hearing Time: 9:30 a.m.

This matter came on for hearing on August 24, 2022, for consideration of Defendants Theodore Farnsworth (“Farnsworth”), Lisa King (“King”), and Roderick Vanderbilt’s (“Vanderbilt”) Motion for Limited Expedited Discovery & Appointment of Special Master on Order Shortening Time (“Motion”). Defendant Farnsworth was represented by Will Kemp, Esq., Nathanael Rulis, Esq., and Madison Zornes-Vela, Esq. of Kemp Jones, LLP. Defendants King and Vanderbilt were represented by Theodore Parker, III, Esq. of Parker Nelson & Associates. Plaintiff Vinco Ventures, Inc. (“Vinco Ventures”) was represented by Joel E. Tasca, Esq. and Andrew S. Clark, Esq., of Ballard Spahr, LLP, and Rex D. Garner, Esq. of Fox Rothschild LLP.

The Court having reviewed the pleadings, heard the arguments of counsel made at the hearing, and other good cause appearing therefore, the Court hereby FINDS and ORDERS as follows:

Expedited Discovery

1. The Court has the authority to control discovery pursuant to NRCP 16 & 16.1 and the court's inherent authority to control the proceedings before it. "A trial judge must be afforded reasonable discretion in controlling the conduct of pretrial discovery." *Jones v. Bank of Nevada*, 91 Nev. 368, 370 (1975). The Nevada legislature has granted courts wide latitude to fashion appropriate discovery procedures where justice so requires. *See* Nev. R. Civ. P. 26 (By order, ***the court may alter*** the limits in these rules or set limits on the number of depositions and interrogatories, the length of depositions under Rule 30 or the number of requests under Rule 36."); Nev. Civ. P. 29 ("the parties may by written stipulation ***modify*** the procedures governing or limitations placed upon discovery"); Nev. R. Civ. P. 34 ("***A shorter or longer time may be directed by the court*** or, absence of such an order, agreed to in writing by the parties subject to Rule 29).

2. Expedited discovery is authorized by Nevada Rules of Civil Procedure 16.1(f) and 26 if "good cause" is shown. Specifically, NRCP 16.1(f) states: "[i]n a potentially difficult or protracted action that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, the court may, upon good cause shown, waive any or all of the requirements of [the mandatory pre-trial discovery requirements of Rule 16.1]." Nev. R. Civ. P. 16.1(f); *see also Mays v. Eighth Judicial Dist. Ct.*, 105 Nev. 60, 62, 768 P.2d 877, 878 (1989).

3. As a Business Court Judge, the Court has the inherent authority to exercise discretion and control over the proceedings, including to expedite the proceedings when appropriate. Indeed, such authority is one of the primary benefits of Business Court.

4. NRCP 16.1(f) provides "[i]n a potentially difficult or protracted action that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, the court may upon motion and for good cause shown, waive any or all of the requirements of this rule."

5. Given the allegations and claims in the Complaint, the proceedings before the Court to date, and the substantial evidence provided to the Court from both parties at this early stage in the proceedings, as well as the significant corporate governance issues in dispute, the Court hereby deems this matter as falling within the purview of NRCP 16.1(f). The Court further deems the hearing on the Motion sufficient under NRCP 16.1(f).

6. As such, and given the ongoing business concern to Vinco Ventures, the Court further finds expedited discovery is appropriate and hereby waives the requirements of NRCP 16.1(b) & (c). *See* NRCP 16.1(b)(1)(F).

7. The Court further orders the parties to submit their NRCP 16.1(a)(1) disclosures within 7 days of entry of this Order.

8. The expedited discovery permitted by this Order includes written discovery pursuant to NRCP 33, 34 & 36; depositions pursuant to NRCP 30 & 31; and third-party subpoenas under NRCP 45. The scope of the discovery set forth herein is governed by NRCP 26(b).

9. The Defendants can conduct discovery as set forth herein as soon as they file an answer. This does not include Defendant Erik Noble, who has a motion to dismiss pending, and which is set for hearing on September 28, 2022 at 9:30 a.m. Instead, Mr. Noble may conduct discovery as set forth herein after any other Defendant files an answer. The Plaintiff can conduct discovery as set forth herein after the first answer is filed by any of the Defendants.

Special Master

10. Pursuant to NRCP 53, the Court may appoint a special master “to address pretrial or posttrial matters that cannot be effectively and timely addressed by” the Court. NRCP 53(a)(2).

11. The Court further finds a special master is appropriate under the circumstances and orders a special master be appointed pursuant to NRCP 53. Based on the agreement by the parties, and the Court’s own experience, the Court appoints Floyd Hale as Special Master.

12. The Special Master shall have the power and authority to:

- a. Coordinate and make orders concerning the discovery scheduling and discovery issues that arise under NRCP 16.1 and 26 through 37;

- b. Order mediation, settlement conferences, mediation readiness hearings or Special Master hearings, and order attendance at those conferences or other hearings by counsel, parties and any representatives of the insurer of a party or waive attendance at mediation conferences, upon a showing of good cause by the party requesting the waiver of attendance;
- c. Refer to this Court any matter requiring assistance from the Court.

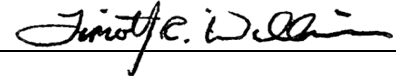
13. The Special Master will have the authority to exercise the forgoing in accordance with NRCP 53(d)(1)(ii), which provides the Special Master the authority to “take all appropriate measures to perform the assigned duties fairly and efficiently...”

14. The Special Master will hear discovery motions under the same meet and confer and notice procedures that apply to the Discovery Commissioner. The form of discovery motions and oppositions may be made in letter form and shall be submitted to the Special Master and properly served on all parties with proper notice. Unless otherwise ordered, any oppositions must be filed within 7 days, and any replies within 5 days thereafter.

15. The parties may submit objections to Special Master Orders or to Special Master Recommendations under the same procedures that apply to the Discovery Commissioner Recommendations, as specified at EDCR 2.34(f) except that the objections must be served 7 days after the service of the Special Master Order, and any response thereto must be filed within 5 days of the objection.

IT IS SO ORDERED.

Dated this 1st day of September, 2022



JM

298 89D 1E00 2493
Timothy C. Williams
District Court Judge

1 Respectfully submitted by:

2
3 **KEMP JONES, LLP**

4 /s/ Nathanael Rulis

5 Will Kemp, Esq. (#1205)

6 Nathanael R. Rulis, Esq. (#11259)

7 Madison P. Zornes-Vela, Esq. (#13626)

8 3800 Howard Hughes Parkway, 17th Floor

9 Las Vegas, Nevada 89169

10 *Attorneys for Defendants*

11 *Theodore Farnsworth & Erik Noble*

12
13 **PARKER, NELSON & ASSOCIATES, CHTD.**

14 /s/ Theodore Parker, III

15 **THEODORE PARKER, III, ESQ.**

16 Nevada Bar No. 4716

17 2460 Professional Court, Suite 200

18 Las Vegas, Nevada 89128

19 *Attorneys for Defendants*

20 *Lisa King & Roderick Vanderbilt*

21
22 Approved as to form and content by:

23
24 **BALLARD SPAHR LLP**

25 /s/ Andrew Clark

26 Joel E. Tasca

27 Nevada Bar No. 14124

28 Andrew S. Clark

Nevada Bar No. 14854

David E. Chavez

Nevada Bar No. 15192

Joseph E. Dagher

Nevada Bar No. 15204

1980 Festival Plaza Drive

Suite 900

Las Vegas, Nevada 89135

Attorneys for Plaintiff

Ali Lott

From: Nathanael Rulis
Sent: Thursday, September 1, 2022 1:19 PM
To: 'Clark, Andrew S.'; Madison Zornes-Vela; 'tparker@pnalaw.net'; 'amy@sugdenlaw.com'; Ali Lott; 'ENunez@pnalaw.net'
Cc: Tasca, Joel; Krabill, Laura E.; Chavez, David; Dagher, Joseph E.
Subject: RE: [External]RE: Vinco Ventures v. Farnsworth et al. (Case No. A-22-856404-B) - Proposed Order on Motion to Expedite Discovery and Appoint Special Master
Attachments: 2022.09.01 Order Granting Motion to Expedite Discovery and Appoint Special Master.DOCX; 2022.09.01 Order Granting Motion to Expedite Discovery and Appoint Special Master.pdf

Thank you for the response. We have accepted your proposed revision. Attached is a clean copy (in Word and PDF versions). The only changes from the last version are the removal of "[Proposed]" in the caption and I have inserted the attorney information for Ballard Spahr at the end, under "Approved as to form and content by:".

Please acknowledge your approval, and we will submit to the Court.

Thank you,

Nate Rulis

From: Clark, Andrew S. <clarkas@ballardspahr.com>
Sent: Thursday, September 01, 2022 12:13 PM
To: Nathanael Rulis <n.rulis@kempjones.com>; Madison Zornes-Vela <m.zornes-vela@kempjones.com>; 'tparker@pnalaw.net' <tparker@pnalaw.net>; 'amy@sugdenlaw.com' <amy@sugdenlaw.com>; Ali Lott <a.lott@kempjones.com>; 'ENunez@pnalaw.net' <ENunez@pnalaw.net>
Cc: Tasca, Joel <TASCA@ballardspahr.com>; Krabill, Laura E. <KrabillL@ballardspahr.com>; Chavez, David <chavezd@ballardspahr.com>; Dagher, Joseph E. <dagherj@ballardspahr.com>
Subject: [External]RE: Vinco Ventures v. Farnsworth et al. (Case No. A-22-856404-B) - Proposed Order on Motion to Expedite Discovery and Appoint Special Master

Good afternoon,

We approve the proposed order subject to one revision to Paragraph 12(c). It is unclear whether 12(c)'s "statements of legal and factual issues" are related to 12(b)'s mediation or settlement conferences or something else. To the extent 12(c) refers to preparing statements of legal and factual issues in connection with a mediation or settlement conference, we have no objection. But we would ask that the order clarify.

Thank you,

Andrew S. Clark

Ballard Spahr
LLP

One Summerlin, 1980 Festival Plaza Drive, Suite 900
Las Vegas, NV 89135-2958
702.868.7528 DIRECT
702.471.7070 FAX

From: Nathanael Rulis <n.rulis@kempjones.com>
Sent: Thursday, September 1, 2022 10:32 AM
To: Clark, Andrew S. (LV) <clarkas@ballardspahr.com>; Madison Zornes-Vela <m.zornes-vela@kempjones.com>; 'tparker@pnalaw.net' <tparker@pnalaw.net>; 'amy@sugdenlaw.com' <amy@sugdenlaw.com>; Ali Lott <a.lott@kempjones.com>; 'ENunez@pnalaw.net' <ENunez@pnalaw.net>
Cc: Tasca, Joel (LV) <TASCA@ballardspahr.com>; Krabill, Laura E. (Phila) <KrabillL@ballardspahr.com>; Chavez, David (LV) <chavezd@ballardspahr.com>; Dagher, Joseph E. (LV) <dagherj@ballardspahr.com>
Subject: RE: Vinco Ventures v. Farnsworth et al. (Case No. A-22-856404-B) - Proposed Order on Motion to Expedite Discovery and Appoint Special Master

 **EXTERNAL**
Good morning,

I am following up on this proposed order. After having the requested night to consider it, do you have an ETA on approval or comments? We plan on providing it to the Court today and would like the opportunity to at least attempt to work out any revisions – should there be any.

Thank you,

Nate Rulis

Nathanael Rulis, Esq.



3800 Howard Hughes Pkwy., 17th Floor | Las Vegas, NV 89169
(P) 702-385-6000 | (F) 702 385-6001 | n.rulis@kempjones.com
([profile](#)) ([vCard](#))

This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

From: Nathanael Rulis
Sent: Wednesday, August 31, 2022 12:28 PM
To: 'Clark, Andrew S.' <clarkas@ballardspahr.com>; Madison Zornes-Vela <m.zornes-vela@kempjones.com>; tparker@pnalaw.net; amy@sugdenlaw.com; Ali Lott <a.lott@kempjones.com>; ENunez@pnalaw.net
Cc: Tasca, Joel <TASCA@ballardspahr.com>; Krabill, Laura E. <KrabillL@ballardspahr.com>; Chavez, David <chavezd@ballardspahr.com>; Dagher, Joseph E. <dagherj@ballardspahr.com>
Subject: Vinco Ventures v. Farnsworth et al. (Case No. A-22-856404-B) - Proposed Order on Motion to Expedite Discovery and Appoint Special Master

All,

A draft order on Defendants' Motion to Expedite Discovery and Appoint Special Master is attached. We will also plan on bringing hard copies to Court this afternoon for review.

Also, please do not use the 'kjc@kempjones.com' email address for correspondence. That is a general inbox for our front desk. Instead, please include my assistant – Ali Lott (cc'd on this email) – for future correspondence.

Thank you,

Nate Rulis

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Vinco Ventures, Inc., Plaintiff(s) | CASE NO: A-22-856404-B
7 vs. | DEPT. NO. Department 16
8 Theodore Farnsworth,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

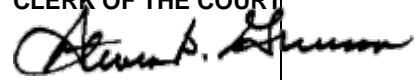
15 Service Date: 9/1/2022

16 Eloisa Nunez	enunez@pnalaw.net
17 Las Vegas Docket	LVDocket@ballardspahr.com
18 Patricia Stoppard	p.stoppard@kempjones.com
19 Nathanael Rulis	n.rulis@kempjones.com
20 Joel Tasca	tasca@ballardspahr.com
21 Theodore Parker III	tparker@pnalaw.net
22 Mahogany Turfley	mturfley@pnalaw.net
23 Pamela Montgomery	p.montgomery@kempjones.com
24 Mark Connot	mconnot@foxrothschild.com
25 Nicole McLeod	n.mcleod@kempjones.com
26 Docket Clerk	DocketClerk_LasVegas@ballardspahr.com

1	Doreen Loffredo	dloffredo@foxrothschild.com
2	Staci Ibarra	sibarra@pnalaw.net
3	David Chavez	chavezd@ballardspahr.com
4	Andrew Clark	clarkas@ballardspahr.com
5	Alison Lott	a.lott@kempjones.com
6	Madison Zornes-Vela	m.zornes-vela@kempjones.com
7	Joseph Dagher	dagherj@ballardspahr.com
8	Katrina Stark	k.stark@kempjones.com
9	Amy Sugden	amy@sugdenlaw.com

TAB 23

TAB 23



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

VINCO VENTURES, INC.,

Plaintiff,

vs.

THEODORE FARNSWORTH, et
al,

Defendants.

CASE#: A-22-856404-B

DEPT. XVI

BEFORE THE HONORABLE TIMOTHY WILLIAMS, DISTRICT COURT JUDGE
WEDNESDAY, AUGUST 31, 2022

**RECORDER'S TRANSCRIPT OF HEARING
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff:

JOEL TASKA, ESQ.
ANDREW CLARK, ESQ.

For the Defendants:

WILLIAM S. KEMP, ESQ.
THEODORE PARKER, III, ESQ
NATHANIEL R. RULIS, ESQ.
MADISON ZORNES-VELA,
ESQ.

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APPEARANCES (continued):

Also Appearing:

AMY L. SUGDEN, ESQ.
(for Ross Miller)
THEODORE FARNSWORTH
ROSS MILLER
DAVE HUNTINGTON
ERIK NOBLE (via BlueJeans)
RODERICK VANDERBILT
(via BlueJeans)
LISA KING (via BlueJeans)

RECORDED BY: MARIA GARIBAY, COURT RECORDER

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Las Vegas, Nevada, Wednesday, August 31, 2022

[Case called at 1:33 p.m.]

THE COURT RECORDER: We're on the record, Your Honor.

THE COURT: All right, thank you, ma'am.

And let's go ahead and set forth our appearances for the record. We'll start first with the Plaintiff and then we'll move to the Defense.

MR. TASKA: Joel Taska and Andrew Clark, Your Honor, from Ballard Spahr for the Plaintiff.

MR. PARKER: Good afternoon, Your Honor, Theodore Parker on behalf of Lisa King and Rod Vanderbilt. I believe that Mr. Rulis is coming in right now. And Kemp is -- so Mr. Kemp is somewhere behind him.

THE COURT: All right. Okay.

MR. RULIS: Good afternoon, Your Honor, Nate Rulis from Kemp Jones on behalf of Defendants Farnsworth and specially appearing Defendant Noble. Will Kemp is also here.

THE COURT: All right.

MR. KEMP: Hello, Your Honor.

MS. SUGDEN: Good afternoon, Your Honor.

THE COURT: Good afternoon, Mr. Kemp.

All right, and ma'am, last but not least of course.

MS. SUGDEN: Thank you. Amy Sugden on behalf of the Court appointed co-CEO Ross Miller. I also have Dave Huntington with

1 me as well.

2 THE COURT: All right. And once again, good afternoon. And
3 I guess we might as well get started. We have a few matters on
4 calendar this afternoon.

5 And I guess first in line would be the status check. All right.
6 And that's regarding the expiration of the August 17, 2022 order
7 payment to vendors, salaries, et cetera. Who wants to start?

8 MR. CLARK: Your Honor, Andrew Clark for Plaintiff Vinco.
9 We're not aware of any issues on the payroll payments. That's where
10 we left it.

11 And the last hearing was we all kind of figured that was up to
12 the three co-CEOs to decide to continue paying. So I believe we've
13 continued to do that, so.

14 THE COURT: All right.

15 MR. KEMP: Your Honor, there seems to be a little bit of a
16 problem with paying some of the vendors, but I don't think it's to the
17 point now that I want to bring it to the Court's attention specifically. I just
18 want to preview it.

19 So we're going to have the co-CEOs try to work it out, but
20 there does seem to be a case where some vendors are preferred and
21 some are not. But in any event, we'll try to work on the co-CEOs and
22 see if we can get that resolved that way.

23 THE COURT: I understand.

24 MR. PARKER: Your Honor, one other thing. We've not seen
25 a full accounting. And that's one of the problems in terms of who's

1 getting paid. We don't know exactly why certain vendors appear to be
2 being paid, others are not.

3 We'd like a -- an account summary. Perhaps for the last two
4 months, which would be helpful I think to everyone to make sure that all
5 vendors are being paid and all employees also being paid.

6 When we came here last time, we presented a chart that
7 provided the I think at a glance the ability of the Court to see the Vinco
8 umbrella and all of the affiliates.

9 And so, we're not sure that all of the employees for all the
10 affiliates are getting paid. So that's something that we'll have to do a
11 deeper dive, but to do so, we need an accounting history for the last two
12 months.

13 THE COURT: All right. Sir?

14 MR. CLARK: Your Honor, we don't have necessarily any
15 objection to providing who the company has paid. There are certainly
16 some disputes over which vendors are being paid and why, but we can
17 get more into it if Your Honor would like. But for an accounting on what
18 has already been paid, that's -- we wouldn't object.

19 MR. PARKER: That sounds great, Your Honor.

20 THE COURT: All right. We might do -- have a little follow up
21 on that.

22 Okay, continuing on, I guess that I deal specifically with that
23 issue.

24 And I guess next up would be where should we go from here?
25 There was a motion for an order to show cause why Plaintiff should not

1 be held in contempt and/or admonished for violating the August 17th,
2 2022 order. Is that really still ripe for adjudication at this point?

3 MR. PARKER: Your Honor, I believe we were able to reach
4 an accord.

5 THE COURT: Right.

6 MR. PARKER: I had conversations with Mr. Taska, probably
7 the most pleasant I think I've had since we started.

8 And this was on Monday I believe Monday morning and then
9 Monday evening. And we were concerned about an unauthorized Board
10 meeting. And that was one of the concerns we had.

11 Mr. Taska has agreed, I believe, that no Board meetings
12 would continue or be scheduled without complete consent. And if there
13 were, he would give me a heads up before those meetings would be
14 scheduled, I believe, is the accord we reached.

15 MR. TASKA: I would squeak that slightly to say that our side
16 agreed to put that particular Board meeting off and not go forward with it,
17 given the dispute.

18 And we said that we would file a motion for clarification on the
19 Court's order regarding the unanimity requirement for Board meetings,
20 which we went ahead and filed last night. And I agree with Your Honor
21 that's not quite ripe yet for communication at this point.

22 THE COURT: Right, in fact, I've already read it, but -- and I
23 realize it's -- has it been set for hearing yet? I think so.

24 MR. CLARK: It hasn't, Your Honor. And just one clarification.
25 We submitted it to the Court on OST.

1 THE COURT: Right.

2 MR. CLARK: It didn't get filed. It's not on the docket.

3 THE COURT: Okay, that's what my next question was, which
4 is -- and I was thinking about it. And I guess -- I mean, each time we
5 come down here, I do worry about spending the company's money. I
6 don't mind telling you that.

7 And I was -- and looking at it, I guess -- and it's my
8 recollection that was more of a motion not necessarily for clarification of
9 relief from the prior order based upon 60(b)(1), something to that effect
10 because really people forget there's no motion for clarification.

11 MR. PARKER: Exactly, Your Honor.

12 THE COURT: Right, there just isn't.

13 MR. PARKER: That's right.

14 THE COURT: There has to be a motion to seek relief
15 pursuant to Rule 60(b)(1) potentially for inadvertence, mistake, and
16 those types of things, right?

17 MR. PARKER: That's right.

18 MR. CLARK: And we did, Your Honor, cite Rule 60(b)(1).

19 THE COURT: Well, I saw it --

20 MR. CLARK: And --

21 THE COURT: -- but it was after the motion -- you read -- I
22 read -- I actually read the two cases that were cited, too, just to
23 see -- just to make sure I wasn't missing something.

24 And one was a chiropractic informed consent medical
25 malpractice case and the other was a criminal case that -- but anyway.

1 MR. CLARK: Right, Your Honor. And we would just not --

2 THE COURT: I just want to tell you, I read this stuff. I do.

3 MR. CLARK: We agree, Your Honor. We would just --

4 THE COURT: Even before it becomes contested, I read it
5 sometimes.

6 MR. PARKER: Well, we don't want you to get bored.

7 MR. CLARK: That's right.

8 MR. PARKER: Your Honor, one other question that Mr. Rulis
9 just pointed --

10 THE COURT: Do you think that's something you could work
11 out before hearing it? Because I'll set it, but it seems to me that's
12 something that could be worked out specifically.

13 And it's my recollection it's regarding setting Board meetings
14 and whether it has to be unanimous, the 48-hour exception to it and so
15 on and so on.

16 And I mean, my thoughts were something to this effect. I
17 mean, I get it as far as 40 hours. I realize, too, that there has to be an
18 agenda, accompanying. That's pursuant to the bylaws, right?

19 MR. CLARK: Correct, Your Honor, and in the order.

20 THE COURT: Yeah, I get that. But -- and I understand how
21 potentially having a unanimous requirement could be an impediment
22 potentially for key issues down the road. I mean, I get it. I understand
23 what's going on.

24 And -- but I was hoping we'll set it and maybe you could work
25 it out.

1 MR. PARKER: Sounds good, Your Honor.

2 THE COURT: Because I don't mind saying this. When it
3 comes to corporate governance, I would rather have the corporation and
4 the entities in charge try to work it out versus me trying to take over a
5 corporation. I'm not here for that.

6 MR. CLARK: Sure, Your Honor, I'd be happy to speak with
7 opposing counsel, see if we can get that settled.

8 THE COURT: Yeah, but we'll get that set.

9 MR. PARKER: Your Honor, one thing I wanted to go back to
10 and I apologize, but Mr. Rulis pointed out to me and I think it's a point
11 well taken, this -- the order he put in place I think has been effective.
12 And we want to know how long he can keep it in place. I think there's --

13 THE COURT: Wasn't that one of the reasons why you're here
14 today, right?

15 MR. PARKER: It is. And you started with status check. And I
16 should have brought this up earlier. But I think your order has been not
17 only effective in the short-term, but I think there's a reason behind
18 continuing it in it's current form.

19 Because we'd like to have the Court's order in place to make
20 sure these employees are continuing to get paid. And the Court's
21 interest in knowing that also I think sends a message to the company
22 and to the employees that they were will continue to get paid while this
23 company is ongoing.

24 THE COURT: Well, I think one of the purposes I -- I mean, I
25 had a short -- what was it 14 days, the original?

1 MR. PARKER: Yes, Your Honor.

2 THE COURT: And then, and today I think I placed on the
3 record earlier that you will have a status check. And part of the status
4 check will focus on whether it should be extended or not.

5 And I was thinking of it from his perspective, because one of
6 the things we have to be is very efficient and not have to run down and
7 file a motion for everything. And that's why we have Business Court,
8 right?

9 And so, I had anticipated one of the topics we might have
10 today would be something to the effect why should we extend it for
11 another 30 days. And we have another 30 day status check.

12 MR. PARKER: Absolutely Your Honor. And I will --

13 THE COURT: Right? And so, my point is I'm not saying it's
14 going to be there forever, but for now.

15 MR. PARKER: And I will tell you --

16 THE COURT: And think that's what I commented on, Mr.
17 Kemp, is something like that, right?

18 MR. PARKER: Well, I was going to read it to you.

19 THE COURT: Right.

20 MR. PARKER: Paragraph 6 of the order says just that. It
21 gives the Court and the parties notice that until further notice and
22 ordered by this Court regarding preservation of status quo moving
23 forward as if you knew we would be re-visiting this issue at least 14 days
24 later, perhaps even beyond that.

25 THE COURT: Well, I think I knew that, number one.

1 And number two, there was a request for a longer period of
2 time at the time. And I think I commented on the record that I would like
3 to re-visit it without having to file motions and all those things because
4 potentially we could have a status check and I could dissolve it if I feel
5 things are appropriately moving on.

6 But go ahead, sir, Mr. Taska.

7 MR. TASKA: Yeah.

8 THE COURT: I don't want you cut you off, sir.

9 MR. TASKA: Yeah, not at all, Your Honor. I think that -- and I
10 don't mean to divert Mr. Parker's issue, but I think that is part of this
11 order. I think you could see from the two motions that we have pending
12 that we've got a lot of problems with the order.

13 And maybe what we should do is put that issue at the end,
14 see how Your Honor rules on the two motions, and then, take up that
15 issue.

16 I mean, one of the problems is --

17 THE COURT: And when you say the two motions, I want to
18 make sure I'm clear. Which two motions do you mean?

19 MR. TASKA: The motion that we just talked about that's not
20 set yet --

21 THE COURT: Right.

22 MR. TASKA: -- on the unanimity requirement for Board
23 meetings and in the motion that we have on for today.

24 THE COURT: I understand. I do, I do.

25 MR. TASKA: Okay, so, you know, one of our problems is this

1 kind of gets to the -- some of the fundamental disagreements between
2 the two sides is we're concerned -- I mean, you know, our client has a
3 fiduciary duty to the shareholders. And it's nothing against the
4 employees, but we got to think about the shareholders and shareholder
5 value.

6 And you know, as Your Honor is aware at this point, the
7 company's in a cash crisis. And I don't know that we want to just agree
8 to another 30 days of this payroll.

9 I think it's something we need to perhaps discuss offline and
10 then bring back to Your Honor. I don't think it's something that -- I mean,
11 we would oppose it if that's the request being made today.

12 THE COURT: All right.

13 MR. PARKER: Your Honor, procedurally, I don't know how he
14 can oppose a status check on the propriety of going forward with the
15 order. I think that's a procedurally incorrect approach to take.

16 Substantively, Your Honor, my client has informed me and has
17 allowed me to express to this Court that she's prepared to waive her fee
18 as a co-CEO in the interest of the company and in the interest of the
19 employees. So I think your order is very important. The maintenance of
20 it is very important.

21 And I think the company and the employees benefit as a
22 whole, including the shareholders because the company depends on the
23 employees to have your order in place.

24 We're concerned about improper spending, I mean, to the
25 tune of the 875,000 that we became aware of last week for legal fees

1 without to our knowledge any Board authority, any Board action, any
2 minutes to reflect that action.

3 And so, I'm concerned that Mr. Taska's client are more
4 concerned -- perhaps is more concerned about his own CEO income
5 because we also became aware of a new contract that he approved for
6 himself of a quarter of a million dollars, I believe, with the potential I think
7 of up to 380,000, while we have employees that may not get paid.

8 So I think the Court's order is something that's not only
9 appropriate, but needed at this time to maintain the status quo of this
10 company and all the employees and shareholders that rely on it.

11 MR. KEMP: Now, Judge, it's only a cash crisis when it's
12 something they don't want to pay. You know, they pay the New York
13 attorney \$875,000. I think that was on August 1st.

14 That's -- and the payrolls are \$75,000. That's well over 14
15 payrolls. You know, I can't really do the math in my head that quickly.

16 MR. PARKER: August 2nd.

17 MR. KEMP: And then, they pay millions of dollars to this AI-
18 Pro outfit upward of 3 to 5 million. And we see nothing that's come out
19 of that.

20 And as Mr. Parker mentioned, Mr. Colucci gives himself an
21 employment contract for potentially 350 million, which is --

22 MR. PARKER: 1,000.

23 MR. KEMP: -- 1,000 excuse me, which is, yeah.

24 MR. PARKER: We all just kind of raise our hands when he
25 said that.

1 MR. KEMP: It might be 350 if you get rid of unanimity
2 requirement. But anyway, you know, it's only a cash crisis when they
3 don't want to spend money on what they want to spend it on.

4 But I think this reiterates the point that we should be seeing
5 these checks. You know, how tough is it to send at least the co-CEOs
6 all the checks that were written at least on a weekly basis or a bi-weekly
7 basis.

8 THE COURT: Well, shouldn't though -- shouldn't the books of
9 the company be made available for inspection anyway, right?

10 MR. KEMP: They should anyway, Your Honor. And I'm
11 informed that we have -- we've seen checks up to I think August 18th or
12 19th and we haven't seen anything in the last two weeks.

13 And I'm not suggesting they're moving the company treasury,
14 but you know, if there's a cash crisis, this money must be going
15 somewhere quick.

16 And I'll remind the Court that the last time there was a cash
17 crisis, when the loan was allegedly called due, we had to bail them out.
18 Okay, I mean, you know back to Hudson Bay thing.

19 So if there is a cash crisis let us know and we'll do whatever
20 we can to help, but I really think continuing a TRO for 30 days, two
21 \$75,000 payrolls, \$150,000, counsel says there's a cash crisis. He can't
22 pay \$150,000, I just don't think that's a well-founded argument.

23 MR. TASKA: So Your Honor, if I can respond to those points.
24 First of all, Mr. Parker suggested that I was doing procedurally improper.
25 I'm not sure I understand that. He can make a request that a certain

1 provision of the order continue on, but I can't oppose it? I'm not really
2 following that at all.

3 Second of all, one thing I learned from the last hearing I was
4 at here, Your Honor, is that Your Honor's not going to get into whether
5 my side's allegations are correct or their side's allegations are correct.

6 THE COURT: I'm glad you noticed that.

7 MR. TASKA: I did notice that, Your Honor.

8 THE COURT: Yeah.

9 MR. TASKA: So I'm not going to go down that rabbit hole --

10 THE COURT: Right.

11 MR. TASKA: -- today. So if they want to start slinging mud
12 and they want to start talking about this payment and, oh, I'm not saying
13 they're looting the company, but the money had to go -- I mean, let's cut
14 it out. I mean, if they want to get into that, we can get into that.

15 We can talk about where the money is that they -- where they
16 want the money to go, the payments that they're trying to make and how
17 it's going to into their private companies.

18 I'm not going to get into that. It's a waste of time. So what I
19 would like to do, Your Honor, is the company -- one thing I think both
20 sides agree on is the company is in a cash crisis.

21 And we're talking about expenditures like any other
22 expenditures, that should be decided on by whatever body at the end of
23 this hearing is governing the company.

24 So I don't it's something that should be decided by the Court
25 respectfully who's not following the day-to-day cash flows of this

1 company.

2 So I just think it's a premature issue for the Court to decide
3 today. And the parties should try to work it out with the respect to
4 whoever's governing it.

5 THE COURT: All right. What we can do is let's go on to the
6 next issue. And then we'll re-visit this because I do have some thoughts.

7 And you are right. I don't get down in the weeds. It's probably
8 the best way to say it. I try to stay above that. And really and truly, try to
9 determine under the facts as we know them moving forward what would
10 be in the best interests of Vinco Ventures, Inc. And that's kind of how I
11 see that.

12 But let's go -- what was the other -- there was another matter I
13 guess we had to deal with and that's dealing with Mr. Miller; isn't that
14 correct?

15 MR. TASKA: That's correct, Your Honor.

16 THE COURT: Yeah, let's go there and then we'll --

17 MR. TASKA: Do you mind if I approach the podium here?

18 THE COURT: Sir, you can do that. No problem. You can flip
19 it around. Put it wherever you are comfortable and all those things.

20 MR. TASKA: Okay, so Your Honor, this is our motion that we
21 filed regarding the co-CEO structure. And look, we understand it's not
22 realistic given the history of the proceedings here Your Honor's going to
23 take Mr. Colucci and put him back into power and remove everybody
24 else from power in terms of the interim CEO situation.

25 What we're really asking for here today is that the Court take

1 down this tripartite co-CEO system that's put into place by the Court's
2 order and instead put into place the long-time CFO and COO, who their
3 clients brought into the company originally, to mind the store, so to
4 speak, Your Honor, till we get to the preliminary injunction phase of this
5 case.

6 And we can figure -- or the preliminary injunction hearing and
7 Your Honor can decide who's going to actually run the company. That is
8 what our suggestion is.

9 And I want to just give a little bit of context here. And I
10 apologize that some of this is repetitive, but I do think the context is
11 important.

12 So we've talked about it. This company is in a existential
13 crisis. Your Honor heard a lot about that already. It's down to about \$17
14 million in cash and its regular burn rate that's about two months of
15 operating cash is what I'm told.

16 And so, we need to ask ourselves, who's responsible for
17 running this company in the interim here? Who's going to keep this
18 company alive when it's in this cash crisis until this Court decides which
19 side is the right side in place?

20 Well, one of the possibilities is the Board of Directors, right?
21 The Board of Directors of course under NRS 78.120 is the entity that is
22 supposed be running the company.

23 The statute says that full control over the affairs of the
24 company, that's a quote, should be with the Board of Directors. And
25 Your Honor in your -- in the August 17th and 19th orders that Your

1 Honor entered, they also give the Board certain authority.

2 The problem is -- and this gets back to the unanimity
3 requirement, based on the way which Defendants insist that Your
4 Honor's order be interpreted, the Board of Directors of this company's
5 powerless.

6 And this gets into the motion that we filed and that they filed
7 and I understand we're not going to argue that here today, but let's take
8 the position -- let's just assume Defendants are right. Let's say they win
9 this argument. And they're on a winning streak. They probably will win.

10 So there's unanimity required for all Board meetings whether
11 they can take place at all.

12 So what that means is that any member of the Board of
13 Directors can filibuster, cannot allow a Board meeting to take place just
14 by saying I'm not going to have that Board meeting take place.

15 Look, we don't need to get into the nitty gritty of that motion
16 and how the order reads. Let's just say they win. And I think they would
17 agree that means any director can say, no, no Board meeting is taking
18 place, okay?

19 So now we have any director can hold this company hostage,
20 can hold the Board of Directors hostage. The entity, that's supposed to
21 have full control of the affairs of the company, any director can prevent it
22 from meeting and conducting the company's business.

23 And Your Honor, the reason Defendants are taking this
24 position is because they know on any vote of consequence at the Board
25 level, they lose. It's 3 to 2.

1 It's not -- they call Mr. Colucci. He's the wild man. He's the
2 one who's going crazy. It's not Mr. Colucci. It's Mr. Colucci and the
3 other two independent directors of this company. Those three are going
4 to vote on the issues of consequence against the two directors that are
5 in their camp, okay?

6 That's why they don't want the Board to meet. So let's say
7 that win. They're on their winning streak, they win that. So what do we
8 have left? The Board is neutered. It's effectively rendered powerless
9 because it's never going to meet again.

10 The only thing we have left then is this triumvirate, this
11 tripartite group of CEOs that's been put in place.

12 And when we look at those three CEOs, we have the
13 Defendant King is one of them. And I'm not going to go where they
14 immediately went as soon as they stood up and talked. I'm not going to
15 get into all the allegations against King. I just won't do that because
16 Your Honor's not going to decide that.

17 But what I will say is that I think it's pretty clear from our
18 papers that our side does not trust Ms. King. It's pretty clear from their
19 papers that their side doesn't trust Mr. Colucci. So those are the two
20 CEOs.

21 THE COURT: I agree with that.

22 MR. TASKA: Okay, nobody can dispute that.

23 THE COURT: Right.

24 MR. TASKA: So the one person left, the one person left is the
25 third CEO. And that's going to be the deciding vote, the deciding vote

1 on whether this company, this public company, survives.

2 And Your Honor said that the third CEO should be
3 independent and neutral. And respectfully, Your Honor, the -- I read the
4 transcript. Mr. Miller essentially was sort of pulled out of the crowd here.
5 There was no vetting of Mr. Miller as to his neutrality or his
6 independence. There were no other candidates suggested.

7 And then, you know, I don't want to harp on this, Your Honor,
8 because we went through it the other day, but it is now ripe for this
9 motion.

10 The very first CEO meeting, the co-CEO meetings, Mr. Miller
11 tells the group that one of his two advisers for purposes of informing
12 himself to make -- to be able to make decisions on behalf of the
13 company is Defendant's guy. It's Defendant's guy in the room with him.

14 Mr. Jesse Law is sitting in the room with Mr. Miller. He's the
15 manager of one of the ZASH entities, which is Defendant Farnsworth's
16 companies. It's a private company. That's the guy who's in the room
17 with our neutral and independent CEO.

18 THE COURT: Now here's my question. And I thought about
19 that. And I don't know the whole history behind specifically what went
20 on, but is there any evidence that Mr. Miller had any sort of affiliation,
21 friendship, or relationship with any of the players in this case before his
22 appointment?

23 MR. TASKA: Your Honor, I don't know the answer to that.
24 Mr. Miller's here. He can ask that. I don't know if he knew Mr. Law
25 before or he knew anybody on the other side before, he's got some

1 affiliation with McGuire Woods where it seems like a lot of these players
2 on their side have come from.

3 But that's something he can answer, but all I can tell Your
4 Honor is that the mere fact that he is being the adviser, he's sitting in the
5 room with Mr. Miller makes Mr. Miller unable to maintain his
6 independence. It's not his fault. I don't think it's his fault.

7 THE COURT: But see, I kind of look at it slightly different.
8 And here's my point. I don't mind telling you what I'm thinking about.

9 If hypothetically, I was appointed a neutral CEO for the
10 company, right, and I don't know much about the business and I feel I
11 have an obligation to educate myself on their structure, their operations
12 and so on and so on, so I would want to start talking to both sides.

13 MR. TASKA: I'm glad you raise that, Your Honor. We are in
14 the process of filing. It took us a while and I apologize to the Court and
15 to counsel for not having these right here and right now.

16 THE COURT: But you understand my thought process?

17 MR. TASKA: Yeah, I do. I do. And this is right on the point
18 with your thought process. One of the things that we were getting are
19 declarations.

20 And I believe we're going to get them from the -- all three of
21 the independent directors, as well as the CFO and the COO, who are
22 the two top officers in the company.

23 And one of the things Mr. Miller says in his brief is while he
24 has not and will not be unduly influenced by anyone during his role as
25 interim third co-CEO, he must of course interact with a number of

1 individuals from both sides of the litigation.

2 THE COURT: Right.

3 MR. TASKA: They define our side as who? The three
4 independent directors, right? And they also say that the CFO and COO
5 have thrown in with that side.

6 They're submitting declarations today that say in the week and
7 a half or whatever it's been that Mr. Miller has been there, where this
8 company's trying to survive day-to-day making crucial decisions about
9 where to send cash, outside the context of those co-CEO meetings, Mr.
10 Miller hasn't had a single substantive conversation with any of them.
11 That's what their declarations going to say. They're being filed right
12 now. We'll provide them hard copies hopefully today before the end of
13 this hearing.

14 So Your Honor said shouldn't we hear from both sides? I
15 agree, but it sounds like that's not happening so far.

16 But what we do know is he's certainly hearing from their side.
17 He's sitting in the room with Mr. Law, Defendant's guy. That's what we
18 know is happening here.

19 We also know and Your Honor, you know, is in a situation
20 where we want to be profane and vulgar, but we heard -- we heard on
21 one of the calls, at the end of the COO call, Mr. Colucci was about to
22 hang up.

23 And a voice comes from Mr. Miller's screen. I don't know who
24 it was, but somebody's telling Mr. Miller this mother F'er, we'll still have a
25 quorum after he hangs up.

1 This is what we're dealing with. That's the screen on the
2 Zoom that's supposed to be neutral and independent. And that's what
3 we're dealing with, calling Mr. Colucci a mother F'er.

4 And again, it's not Mr. Colucci. It's Mr. Colucci. It's the other
5 independent director and the other independent director, okay. All three
6 of them are aligned.

7 Then we have Mr. Jones and Mr. Garrow or the CFO and
8 COO. They're also aligned. And they're not aligned because they
9 are -- they've thrown in with Mr. Colucci.

10 Mr. Colucci got involved as an independent director of this
11 company in June. He's known these people -- he knew these people for
12 about six weeks before Defendants were fired.

13 And what happened was -- and as we said earlier, they
14 knew -- they've known them from the start. So if he's going to
15 be -- those guys are going to be loyal to anybody, Garrow or Jones,
16 they're going to be loyal to their side, Defendant's side, okay?

17 So but in instead what happens is Defendant's misconduct in
18 the eyes of Mr. Jones and Mr. Garrow is so bad that they have thrown in
19 with Colucci in that sense.

20 The declarations are going to talk about this, too. They have
21 been promised anything by Mr. Colucci. They don't -- they're not being
22 promised Board seats. They're not being promised benefits of any sort.

23 Maybe, just maybe Mr. Garrow and Mr. Jones have concluded
24 that it's not in the best interest of the company to be sending out cash to
25 private companies owned by Defendants. Maybe that's what's

1 happening. Maybe he's not biased and he's -- those guys are not
2 biased. Maybe they are just taking that position.

3 And look, that's right, because there's no bias involved with
4 them with Mr. Jones and Mr. Garrow, that's why we're saying that those
5 guys ought to be the ones minding the store, running the company,
6 making sure on either side no cash goes out that's not supposed to go
7 out.

8 Then, when we have the preliminary injunction hearing in a
9 few weeks, Your Honor can decide who's running this company and we
10 can get back to business at least through the duration of the litigation
11 until there's a final determination.

12 But you know, in the interim, it's -- as I said, there's no Board.
13 There's no Ms. King. There's no Mr. Colucci. There's Mr. Miller. He's
14 the deciding vote.

15 The company is in his hands. And so far, what we have seen
16 frankly and with all respect to Mr. Miller is some disturbing evidence that
17 Defendants have put a mole in on his side.

18 And they're whispering in his ear. And they are advising him.
19 And you know, beyond the substance of what's happening there, look, I
20 know Mr. Miller is a politician. He hears things from all sides.

21 And he can filter through that and be independent. I know
22 that's what he'll say, but that's not how human nature works.

23 He's got somebody embedded with him from the Defendant's
24 side. He's not talking to the Plaintiff's side at all. He's not talking to the
25 CFO or the COO at all except with -- you know, possibly on the co-COO

1 calls.

2 And you know, for appearances, Your Honor, Your Honor has
3 an order that says the CFO, the deciding vote, the COO, who's
4 supposed to be neutral and independent, we've got him on video in the
5 room with Defendant's guy. That's not independent or neutral, Your
6 Honor. We just can't keep going like that.

7 We can't keep going also with more leadership changes. And
8 I agree with that. I think we all agree with that. That's not going to look
9 good in the eyes of the stockholders, but what we're suggesting is
10 people from the inside, people who are already there quietly step up and
11 run this company until we have resolution on the issues in this litigation.
12 Thank you, Your Honor.

13 THE COURT: Thank you, sir.

14 MR. KEMP: I was joking with Mr. Farnsworth that every time
15 we have a court hearing, the stock goes up. So, you know, maybe we
16 should have court hearing every day.

17 But addressing counsel's points, Your Honor, first of all, this
18 \$17 million scare figure, I don't know where that comes from. I don't
19 think that includes the \$10 million that they're getting back from Hudson
20 Bay, which we talked about a couple weeks ago.

21 If they're down to \$17 million, they're spending money even
22 faster than we have, you know, in our wildest imagination. That's all the
23 more reason to get the books faster.

24 You know, counsel's first point is the Board is powerless. The
25 Board isn't powerless, Your Honor. If there's a serious issue, I think we

1 have it as that with the Hudson Bay situation. We dropped everything,
2 we worked all night, we got it resolved. Okay, Mr. Farnsworth got it
3 resolved for them.

4 You know, what they should be doing is reaching out and if
5 they have items, let's try to do the unanimous consents on it. They
6 haven't done that even one time.

7 Instead, they just want to call a Board meeting and cram down
8 these things like they were doing before. And if they really need a Board
9 meeting, and they propose to us that we want this topic, that topic, this
10 topic, and they are important or emergency topics, they always have the
11 right to come to Court and ask the Court to set a Board meeting. That's
12 expressly provided for in the order. So I take issue with the claim that
13 the Board is powerless.

14 You know, now they come back and they propose the exact
15 same thing Mr. Connot proposed originally, which was let's let Mr. Jones
16 and Mr. Garrow be the two co-CEOs who run this company and Mr.
17 Colucci will step aside.

18 That's what they proposed at the very beginning because they
19 know for whatever reason the loyalties that Jones and Garrow have to
20 Mr. Colucci's position.

21 So we don't think that's a realistic solution. That was rejected
22 at the very get-go.

23 You know, if they want to substitute one of those again for Mr.
24 Colucci, and have Ms. King, Mr. Miller, and either Jones or Garrow be
25 the co-CEOs, we'll listen to that, Your Honor. That might be

1 constructive.

2 Because all of this started when Mr. Colucci showed up about
3 eight weeks ago. You know, you walk into a hen house and you see a
4 fox and a bunch of dead chickens and you think, well, maybe the fox did
5 that.

6 Eight years ago, all -- or eight weeks ago, all of a sudden, we
7 have all these problems materialize. And the one thing that everyone
8 agrees to is eight weeks ago, Mr. Colucci showed up. So I don't want to
9 castigate him unnecessarily, but that is what happened, Your Honor.

10 Now with regards to Mr. Miller, and I'll let him defend his
11 honor, but you know, Mr. Miller was a serendipitous choice, Your Honor.
12 And I think, you know, for counsel to say, oh, Mr. Miller's in the tank for
13 one side or the other, you know, Mr. Colucci, where's the evidence that
14 Mr. Colucci called Mr. Miller and Mr. Miller wouldn't take his call?
15 Where's the evidence Mr. Jones tried to talk to Mr. Miller and Mr. Miller
16 wouldn't take his call? Where's the evidence that Mr. Garrow tried to call
17 Mr. Miller?

18 You know, Mr. Miller's got a lot to get his hands around. And
19 I'm assuming that at some point he's going to make visits to the various
20 company offices.

21 But you know, this is a two-way street here. You know, they
22 can't complain, oh, he's not talking to us when they're not trying to talk to
23 him.

24 And so, with regards to that, Your Honor, I think Mr. Miller
25 should be -- continue to be given a chance to fulfill the duties the Court's

1 imposed upon him. I don't hear anything specific from counsel that, oh,
2 this happened to Mr. Miller voted the wrong way.

3 And with regards to this tape, you know, this allegation that
4 there was some sort of profanity on the tape, I listened to the tape
5 myself and Mr. Rulis and I listened to it.

6 And we assumed maybe counsel had the time wrong. So we
7 listened to various different times. We couldn't hear anything on that
8 tape.

9 So if counsel wants to give me a better time, I'll listen to the
10 tape and I'll try and get to the bottom of it, but for him to claim right now
11 that Mr. Miller was saying profanities on the tape --

12 MR. TASKA: That's not what I said.

13 MR. KEMP: Well, whoever you're accusing of doing the
14 profanities, without any further evidence than that, there's not even a
15 transcript of the tape. There's some reference in the pleading on it.

16 But in any event, Your Honor, I think we've set the procedure
17 in place. Yeah, there's going to be some speed bumps at the beginning.
18 But I'll view that what they've alluded to is anything more than that.

19 THE COURT: Thank you, sir.

20 MR. PARKER: You want to go first, Amy, or would you like
21 me to go first?

22 MS. SUGDEN: No, go ahead, Mr. Parker.

23 MR. PARKER: I think you must have started something, Joel.
24 We're all coming to the podium now, which I actually like. Your Honor,
25 I'd like to first start off where Mr. Taska started off. He indicated that he

1 was concerned about my remarks regarding the proper procedure for
2 attacking or addressing the Court's prior order of August 19th.

3 And I wanted to point this out because I'm sure that Mr. Taska
4 and his office realizes that under EDCR 5.514, you can re-visit an order.
5 That's the proper way of doing so.

6 And the reason why I know his office is aware of that, if you
7 were to take a look at his motion, the modification, he actually in his
8 declaration says that he's bringing it in accordance with EDCR
9 5.1 -- 5.514. Let's see if I can find it for the Court.

10 And when I saw that, I said, well, certainly Mr. Taska knows
11 that the proper way of having this Court re-visit its motion is to do just
12 that file a -- I mean, it's order, is to file a motion.

13 And so, when I made the comment earlier that this time is not
14 the time set to modify your order, it was simply the time to provide the
15 Court with a status of the company.

16 So if you were to look at Mr. Taska's motion, Your Honor,
17 Vinco Ventures Inc.'s Motion on Order Shortening Time, the modified
18 order appointing Ross Miller and Lisa King as co-CEOs, they tried to file
19 August 29th, 2022, Monday, page 4 is the declaration of Mr. Taska.

20 Paragraph 3 is where Mr. Taska says that then he makes this
21 motion or his declaration under EDCR 5.514 on Vinco's behalf and in
22 good faith and that they're supporting the modification of the Court's
23 order of August 19th.

24 Today's hearing was not an attempt to modify the order with
25 regards to payment of employees. The Court wanted an update

1 because the Court was concerned about its employee -- the employees
2 of Vinco Ventures, the company that Vinco Ventures is and its of course
3 stockholders.

4 And so, when he gets up and tries to argue for modification of
5 something that's not on the motion, nothing has been briefed, mainly the
6 payment of bills and employees, I take exception to his procedural
7 infraction.

8 And so, that's why I brought that forward, especially given his
9 own motion that seems to support my position on this and what's the
10 appropriate procedural mechanism to modify the Court's order.

11 And I also find it strange that Mr. Taska, after trying this
12 approach last week, is again trying to argue the merits of the Court's
13 order of August 19th after we participated in three lengthy days providing
14 the Court with what we consider to be supporting facts and the case law.

15 Now if I were to shift gear, Your Honor, if I could, to the current
16 motion, we provide in our opposition a tremendous amount of
17 documents.

18 And I apologize up front. Some of the documents were a lot
19 longer and would take quite a bit to read, but we pointed to the pages of
20 particular concern to the Court to be able to evaluate the disclosures
21 made by Ms. King.

22 And if you were to look at Plaintiff's motion, Plaintiff's motions
23 from page 6 to page 12 is simply a collage or criticisms against Ms.
24 King.

25 And Plaintiff claims that Ms. King did not disclose her interests

1 or involvement with Magnify You. And so what I did Your Honor, is
2 identify all of these documents, documents filed in accordance with SEC
3 requirements where Magnify You and Ms. King's relationship to Magnify
4 You has been properly disclosed.

5 And Your Honor, if you would like me to go through Exhibits A
6 through M, I can, but I'm sure the Court read them and referred to the
7 particular pages that we identified in our brief.

8 But just to hit some of the highlights, Your Honor, Exhibit B is
9 the form 8-K. And it identifies on page 2 of this document related party
10 transactions, Your Honor. Do you have that in front of you, Exhibit B,
11 page 2 which is Bates stamped OPPS, page 8?

12 THE COURT: Yeah, you can continue on, Mr. Parker.

13 MR. PARKER: All right. And you see under related party
14 transactions where Magnify You is identified and Ms. King is identified?

15 In fact, it says it says since the beginning of the company's
16 last fiscal year, the company has not engaged in any transaction in
17 which Ms. King had a direct or indirect material interest within the
18 meaning of item 404 within parenthesis (a) of regulation SK except for
19 certain loans from the company to Magnify You. Are you able to see
20 that, Your Honor?

21 THE COURT: Yeah, but you're on what page again?

22 MR. PARKER: This is the second page of Exhibit B, but
23 it's -- if you look at up --

24 THE COURT: Bates stamp.

25 MR. PARKER: -- Bates stamp is 8. OPPS --

1 THE COURT: Okay, I'm right there.

2 MR. PARKER: All right. If you go to Exhibit C, this is the form
3 10-Q for Vinco Ventures, Inc. And if you were to look at page 25, but it's
4 actually Bates stamp 39, again, sorry, 38, again, Magnify You is
5 specifically identified in the second full paragraph. And it discusses and
6 discloses Ms. King as a founder of Magnify You and serves as its Chief
7 Executive Officer.

8 So for Mr. -- for the Plaintiff to suggest that Ms. King has done
9 anything untoward, has failed to disclose, that's ridiculous. It's not
10 supported by a single document.

11 I would refer now the Court to Exhibit D. And in particular,
12 Bates stamp OPPS 157. This page identifies the loan investment, held
13 for investment by a related party Magnify You in the amount of \$4
14 million.

15 And it speaks to the October 12th, 2021 loan of 1.25 to
16 Magnify You, the interest rate, and the maturity date, I'm sorry. Again,
17 full disclosure, Your Honor.

18 Going to Exhibit E, Your Honor, emails between Phillip Jones,
19 the person, the CFO of the company and --

20 THE COURT: What's the Bates stamp, Mr. Parker, on that?

21 MR. PARKER: This is OPPS 218, 219, 220, all the way
22 through to 226. And I would direct the Court's attention to page 2, Bates
23 220.

24 This is an email from Phillip Jones, May 31st, 2022 regarding
25 Magnify You's payroll. Again, there's no lack of disclosure, no lack of

1 knowledge to Magnify You's relationship to Vinco, payment of its
2 employees, and Ms. King's involvement.

3 The promissory note, Your Honor, between the company was
4 actually prepared by Lucosky Brookman. The law firm Dale Boken
5 [phonetic] was here at one time attempting to be admitted pro hac vice,
6 prepared -- and her firm prepared this document. That's Exhibit F.

7 Exhibit D is the security agreement again prepared by that
8 same firm, the firm retained by Vinco at one time. Your Honor, if you go
9 to Exhibit H, this is the minutes of the meetings of June 12th, 2022.

10 And if you go to the second to last paragraph, the last full
11 paragraph.

12 THE COURT: What was the date?

13 MR. PARKER: Bates -- 245, Your Honor. I apologize.

14 THE COURT: I got it. I'm right here.

15 MR. PARKER: Phil Jones explained that ZDB spends
16 approximately \$4 million per month and that the company has
17 approximately 95 million of unrestricted cash and 33 million as due to be
18 paid to Hudson Bay in July. \$20 million is earmarked as PZAJ, P-Z-A-J.
19 And 2 million earmarked for Magnify You.

20 Again, the financial relationship between Magnify You and
21 Vinco has been fully vetted, fully disclosed and was -- and everyone
22 involved was aware of it.

23 Now Exhibit I, Your Honor, is an email chain between Ms.
24 King, Mr. Jones, and Adele Hogan.

25 THE COURT: What's the date? What's that?

1 MR. PARKER: These are Bates stamped 247 through 249.
2 And Adele Hogan in this email is indicating that she's drafting the
3 promissory note that we just saw a few moments ago as well as the
4 security agreement.

5 If you look at 248, the email from Adele Hogan to Lisa King
6 and to Phillip Jones of May 30, 2022 at 12:39 p.m., it says to Lisa, this is
7 from Ms. Hogan, these documents can be forwarded to your counsel.
8 This is a draft of the note and security agreement.

9 Again, for Plaintiff to come to this Court, suggest to this Court
10 that there wasn't full disclosure between Ms. King and the Vinco
11 Ventures officers, Board members, and counsel regarding Magnify You
12 defines all of these documents, Your Honor, and the filings made with
13 the SEC.

14 Your Honor, if you were to look at Exhibit J, and these are
15 Bates stamped 250 through 252, further emails between Ms. King and
16 Adele Hogan and John Monna. Adele Hogan and John Monna are both
17 with the Lucosky Brookman firm.

18 And the first page discusses items that have to be taken care
19 of. One is the secured promissory note, the Magnify You security
20 agreement, the corporate HQ 8-K. Bulletpoints right here on page 1 of
21 this document, Your Honor.

22 The next exhibit, Exhibit K, Your Honor, is an email again
23 Lucosky Brookman is identified on the email. John Monna, M-O-N-N-A,
24 is attaching as a part of this cover email, the security agreement that
25 was prepared by that firm just to confirm to the Court that that's the firm,

1 the firm hired by Vinco to prepare these documents on behalf of the
2 company.

3 And I attached the actual security agreement, which was
4 attached to the original email. And that's Bates stamped 253 through
5 267.

6 Exhibit L, Your Honor, is Bates stamped 288 and 289, an
7 email between Ken Slack [phonetic] of ZASH Global, Phillip Jones of
8 Vinco Ventures, and Lisa King of Vinco Ventures. And it talks about the
9 costs related to Magnify You.

10 The second page, Your Honor, I apologize 289, is 269 I
11 apologize is not very legible. So small-- the figures are small. This is
12 how it was provided to me.

13 But it's certainly an indication that the costs related to Magnify
14 You is known to all. And Your Honor, the last exhibit, which is also the
15 exhibit that Mr. Kemp gave me, I've already attached as Exhibit M.

16 And I would have you look at the last two paragraphs of
17 Exhibit M, which is Bates stamped 270, 271. And of particular concern it
18 says here the last toward the bottom of the page, the audit committee
19 considered the pre-revenue nature of Magnify You and how it is
20 essentially a start-up that could fail.

21 The audit committee also discussed a strategic value of
22 obtaining ownership in and lending to Magnify You and how in their
23 judgment it fits into and appears with the company's current business
24 and future plans, including potential generating and driving content to
25 both AdRizer and Lomotif.

1 Lawyers from Lucosky Brookman, LLP advised the audit
2 committee on the conflicts inherent in the proposed transaction and the
3 related party nature given this is current and prior rules with the
4 company Magnify You and ZASH.

5 And this is May 19, 2022. Plaintiff's attempt to bring this
6 forward to the Court now three months later, knowing all this has been
7 vetted by counsel and by the officers of Vinco Ventures in an attempt to
8 support a very weak argument that Lisa King should be removed as a
9 CEO.

10 What I'd like for the Court also to consider is the motion, the
11 actual motion, and some of the comments made in the motion. Mr.
12 Taska gets up and says to this Court we want all the CEOs removed.
13 Your Honor, we re-visit your order in that respect. And let's just have
14 Mr. Jones and Mr. Garrow come in.

15 Mr. Jones actually sent the termination letters to Rod
16 Vanderbilt and Lisa King. I can't imagine him being neutral. He has
17 shown his bias. He's shown his allegiance to Mr. Colucci. That's
18 number one.

19 Number two, Mr. Taska's motion actually says that he's not
20 looking for all the CEOs to be released, just everybody except Mr.
21 Colucci.

22 He changed his position I think on the fly, but the original part
23 of his motion says just make Mr. Colucci the CEO as if he hadn't done
24 enough harm to this company. And if you won't do that, then put Mr.
25 Jones and Mr. Garrows in place.

1 Your Honor, Mr. Colucci has proven himself to be problematic.
2 He's not an independent director. He's not a competent CEO in our
3 opinion.

4 The Court has given Mr. -- in my also humble opinion, the
5 Court has given Mr. Colucci a chance to actually make a better -- make
6 better decisions for this company in working with Mr. Miller and Ms.
7 King.

8 Again, they brought the company along with Mr. Farnsworth to
9 where it was before he came. And in eight short weeks, he's been able
10 to make a mess of that company and its related companies.

11 I don't believe there's any support to remove Ms. King. I'll let
12 Mr. Miller stand for himself, but we did mention in our brief that Mr. Miller
13 is in an attorney licensed in the state of Nevada in good standing. He is
14 a current county commissioner for Clark County. He's a former
15 Secretary of State.

16 I don't believe that any personal relationship, professional
17 relationship would come or interfere in his professional judgment. He
18 certainly will not risk his license and his credibility in this community for
19 the faith that this Court has put in him by appointing him as a co-CEO
20 because of any relationships. Unless the Court has any questions, I will
21 turn the mic over to Ms. Sugden.

22 THE COURT: Not at this time, sir.

23 MR. PARKER: Thank you.

24 MS. SUGDEN: Good afternoon, Your Honor. Amy Sugden
25 on behalf of Ross Miller. Your Honor, our opposition is short for a

1 reason.

2 That's because despite all the noise, a photograph and an
3 audio file I couldn't either hear, was unable to access, it is not shown
4 with any substantial evidence that there has been any bias that would
5 create the basis then to modify this Court's prior order.

6 We point out that no less than four days from the first CEO
7 meeting on the 19th of August, somehow Mr. Colucci has determined
8 this is an unworkable tri-party relationship. That is not the case.

9 We presented through Mr. Miller's affidavit, and he's obviously
10 here in Court as well, regarding the fact that he had voted with Mr.
11 Colucci regarding the contentious issues they feel very strongly about
12 the prior law firm.

13 He said let's keep him on his counsel. He voted with Mr.
14 Colucci. There is not, despite the Plaintiff's repeated comments of his 2
15 to 1 dichotomy, that has actually proven to be true.

16 So therefore, there's no basis. This Court said it's not going to
17 pick sides. What we need to do is keep the status quo. This Court picks
18 Mr. Miller. It wasn't random, but he is as we've shown in the pleadings
19 we all know that he is a former Nevada Secretary of State. He's the
20 current Clark County Commissioner and a licensed bar member in good
21 standing.

22 So, of course, he did as what Your Honor said when he first
23 got appointed that Saturday became aware and prepared as quickly as
24 he could for that meeting on Monday.

25 I certainly am here to have Mr. Miller if he has anything else to

1 weigh in on, but there's no showing that they can prove that there's any
2 bias.

3 It's just not in the record now. So we would respectfully
4 request that you deny their motion in its entirety.

5 THE COURT: And as far as there's no evidence of any
6 pre-existing relationship with any of the parties involved in this case; is
7 that correct?

8 MS. SUGDEN: That is correct, Your Honor. Mr. Miller's
9 affidavit, he sets that forth in the declaration. Up until two weeks ago, he
10 had no knowledge or intimate dealings with this company or any of its
11 players. I believe that's paragraph 4.

12 THE COURT: Yeah. Okay, ma'am.

13 MS. SUGDEN: Thank you.

14 THE COURT: Thank you.

15 [Counsel confer]

16 MR. PARKER: Just looking for my pen, Your Honor. There it
17 is.

18 THE COURT: Yeah.

19 MR. TASKA: Just very briefly, Your Honor, to go back over
20 some of the issues we talked about. I -- the procedural issue, I
21 wouldn't -- I'm not even sure what we're talking about. We had an order
22 that Your Honor entered on the 17th that said it's to expire on the 31st,
23 14 days later.

24 The issue addressed -- one of the issues addressed in that
25 order was the payroll issue. I thought, maybe I'm wrong about this, I

1 thought today's status conference was to discuss that, hey, this order
2 has expired, what do we do now. All I was doing --

3 THE COURT: Well, I think it's, the way I understand it's
4 slightly --

5 MR. TASKA: Yeah.

6 THE COURT: -- different than that in this regard. And I think
7 Mr. Parker offered this up. We're dealing right now with whether or not
8 Mr. Miller should continue on as one of the three CEOs, right?

9 MR. TASKA: Understood, Your Honor.

10 THE COURT: Because he made a recommendation. Let him
11 decide to what to do okay, right? And I'm listening. And I think that's
12 one of the issues that we --

13 MR. TASKA: I believe that was my recommendation actually,
14 but --

15 THE COURT: Okay.

16 MR. TASKA: -- if that's how we do it --

17 THE COURT: But anyway.

18 MR. TASKA: -- that's fine.

19 THE COURT: I heard that from someone.

20 MR. TASKA: Yeah.

21 THE COURT: I'll keep it at that, but go ahead, sir.

22 MR. TASKA: Regarding --

23 THE COURT: But focusing on Mr. Miller, and understand this.
24 I mean, when we talk about issues regarding his ability to continue to
25 serve in this instance, I mean, number one, we do know this.

1 And this is from his declaration, it says prior to the last two
2 weeks of August, I had no prior dealings with or relationship with any of
3 the companies' representatives or its affiliates.

4 And he certainly in parenthetical is including the ZVV Media
5 Partners, LLC and ZASH Global Media and Entertainment Corporation.

6 And my point is this. We talked about bias, bias and/or
7 enmity, but one thing for sure, I guess we can say this at the very outset,
8 he had no conflicts of interest, right? Because he didn't know anyone
9 involved in this case. He -- and no prior relationships and those types of
10 things.

11 And then, we say -- said bias. I mean, just because you vote
12 one way doesn't stand for the proposition that you have bias.

13 Counsel brought up on other areas he supported Mr. Colucci
14 when it came to exercising his discretion and voted along with him as it
15 pertained to keeping the law firm in place.

16 MR. TASKA: He did, Your Honor. I have no doubt about that.
17 No question about that. My problem is that Mr. Miller has said in the
18 declaration that he's neutral and independent.

19 We're talking about the fate of a public company turning on his
20 vote. That's what this comes down to.

21 THE COURT: Right.

22 MR. TASKA: Okay. I had no opportunity to depose Mr. Miller
23 to make any inquiry into Mr. Miller, to see whether, look, there's people
24 beyond just the people he mentioned there. There's an underlying issue
25 here involving the McGuire Woods law firm. There are other people at

1 issue.

2 I would like to have at it and examine Mr. Miller on all of the
3 things that, you know, we want to ask him about to ensure that he's
4 neutral and independent as Your Honor contemplated. I don't have that
5 opportunity. Fox Rothschild never had that opportunity.

6 THE COURT: But my question is this though. In a general
7 sense, and I think we would know whether he had some sort of
8 relationship with his company in some form or fashion.

9 MR. TASKA: Why would you say that, Your Honor? I'm not
10 sure how I would know. I didn't get a chance to cross-examine him.

11 THE COURT: Well --

12 MR. TASKA: All I did -- all he did was read a sentence from
13 his declaration.

14 THE COURT: Yeah, but my point is this. I mean, we -- I
15 understand taking your depositions. I mean, I've taken a few over the
16 years, but my point is this. At this point, had -- there's been no evidence
17 from anywhere that there was a prior relationship with the players in this
18 case.

19 MR. TASKA: But how do you define the players? That's --

20 THE COURT: I talk about the Board members, the CEOs, the
21 executive officers, and the decision makers as far as the company's
22 concerned.

23 MR. TASKA: But the problem is there are people who are not
24 in this room who our side believes may be sort of pulling the strings
25 here. And we didn't have any opportunity to ask --

1 THE COURT: Okay. But when you say Plaintiff -- so what
2 you're saying is this. So that's a different issue. You're saying, look,
3 you're saying Mr. Miller's not giving your side or your client a fair shake
4 as far as decision making's concerned?

5 MR. TASKA: Okay, well, all I'm saying is --

6 THE COURT: Right? I mean, because pulling strings is I
7 don't think -- I'm going to be candid with you. I don't necessarily think
8 that Mr. Miller's going to let somebody pull his strings.

9 MR. TASKA: Your Honor, I don't think his strings are being
10 pulled and he intentionally knows that that's happening. All I'm saying is
11 that the deck stacked here because they planted a mole in there.

12 There are a lot of people who are on the side of Defendants.
13 They are waging a PR battle out there to -- in support of their side.
14 There's a lot going on here.

15 And Mr. Miller gets picked out of the crowd. There's no
16 vetting. There's no deposition. There's one line of a declaration. And
17 boom, he's installed as the deciding vote on the fate of a public
18 company. And here are the four declarations, Your Honor. Two
19 from -- may I approach?

20 THE COURT: Yes.

21 MR. TASKA: Counsel --

22 THE COURT: Have you had a chance to receive it? Do we
23 know what this is? Before I see it, I should -- I before --

24 MR. PARKER: Yeah, we've not seen it, Your Honor.

25 MR. TASKA: Providing the copies now, Your Honor. Sorry for

1 doing everything at once.

2 MR. PARKER: I'm not going to address any procedural
3 irregularities at this point. I already have notes.

4 MR. TASKA: You beat me up enough on procedural
5 irregularities.

6 Your Honor, in essence what these are are a declaration from
7 Mr. Distasio, one of the other independent directors, from Mr. Goldstein,
8 one of the other independent directors, from Mr. Garrow and Mr. Jones,
9 who are the COO and CFO of the company.

10 And in each of those, it says that I haven't had any substantive
11 conversations. Some of them, I think, Your Honor, I just got these two,
12 but at least one of them talks about having reached out to Mr. Miller.

13 And yet, there have been no discussions outside of these
14 co-CEO meetings with any of the people who have the knowledge in this
15 company. Yet, there are discussions with their guy, Mr. Law. Mr. Law
16 sitting in his room on the Zoom call.

17 So that's the point, Your Honor. And look, I can tell how -- I
18 think I see the way Your Honor's going to rule on this. And, you know if
19 that's --

20 THE COURT: But the only reason -- I mean, when we think
21 about, you know, allegations of bias, I'm looking for actually more. I
22 guess one thing for sure there's -- unless there's something we don't
23 know about, there's no pre-existing relationships here.

24 MR. TASKA: I've had no opportunity -- I'll say this again. I've
25 had no opportunity to explore that question.

1 THE COURT: I understand that, but --

2 MR. TASKA: And --

3 THE COURT: Mr. Miller --

4 MR. TASKA: -- Your Honor, if this is a *prima facie* case, I
5 would think that I have made a *prima facie* case by showing that their
6 guy is sitting in a room with Mr. Miller.

7 That is enough to be able to say, hmm, all right, let's check
8 this out. Let's look a little closer at this issue. Let's explore the
9 independence, the neutrality, to make sure that this person really is, you
10 know.

11 THE COURT: Okay, but that's not what I'm saying. That's --

12 MR. TASKA: Okay.

13 THE COURT: That's slightly different than coming to the
14 conclusion that he has bias or he's pre-disposed or he's in accord with
15 the Defense team.

16 MR. TASKA: And Your Honor, that's an important distinction.
17 We've not come to that conclusion yet. We think that is the case, but we
18 have evidence of that. We are -- our position is that there's evidence
19 calling into question whether Mr. Miller is neutral and independent.

20 And before he makes decisions on behalf of his company.
21 And sure, he made a decision about keeping a law firm and sided with
22 Mr. Colucci.

23 Let's see what happens. Why do you think they're so happy to
24 have them in there? Let's see what happens when issues of
25 consequence actually have to be decided.

1 And the Board isn't new here. Mr. Kemp, what he's talking
2 about is nonsense. They're never going to have a Board meeting.

3 If they're going to have a Board meeting, when will it be, Mr.
4 Kemp, tell us? When will that be?

5 THE COURT: Wait, wait, we're not --

6 MR. TASKA: No, we -- no, but Your Honor, we did ask. Mr.
7 Colucci asked Ms. King after Ms. King -- after their side complained
8 about the Board meeting, Mr. Colucci asked Ms. King, said, okay, when
9 will you be available for a Board meeting because there are important
10 issues that have to be decided?

11 And Ms. King never responded. That was two days ago. So
12 there's not going to be a Board meeting. It's not going to happen unless
13 of course, Your Honor, rules our way on the other motion that's not quite
14 ripe yet.

15 THE COURT: Right, right. But is there anything else I need
16 to know because I mean, don't -- when it comes to bias, even as it
17 relates to some of the decision making, is there any evidence of bias in
18 that regard?

19 MR. TASKA: Well, most of the decisions, except for that
20 attorney -- retaining the attorney decision either did not decide. This is
21 my understanding, either didn't decide it at all or he sided with Ms. King.
22 That's what happened in the decisions. I have a list of them somewhere
23 which I can dig up if Your Honor would like to see them. But with
24 respect --

25 THE COURT: Yeah, I mean, but at the end of the day, I do

1 understand the business judgment rule. And I'm quite sure Mr. Miller
2 does, too.

3 Whether -- I don't think it's a question of -- you know what it
4 kind of reminds me of. And I don't mind saying this. I remember as a
5 trial judge about 16, 17 years ago in a hotly contested trial and a lawyer
6 approached the bench and he said, look, Judge, you've ruled in favor of
7 the adverse party 10 times in a row. I remember that, right?

8 And I looked at him. I said, sure, the only problem here that I
9 see is this. You need to throw more strikes. And see, that's kind of my
10 point, you know. It's just because you vote one way or another. And
11 that's really important to point out as a trial judge, right?

12 It's not a question of whether -- because this is one thing I've
13 never done. I don't mind saying this. I mean, I try to approach every
14 case the same way, but I don't sit back as a trial judge and say, well, I've
15 ruled four or five times in favor of this side. I have to kind of balance it
16 out, right?

17 So I go four or five ways the other way, right? And that kind of
18 balances it out. No, it doesn't. I look at each pitch as it comes across
19 the plate and I make the call.

20 And that's why I use the example throw more strikes and
21 maybe you'll get some calls here, right, which is how it should be.
22 Because I mean, I agree with Justice Roberts. And that's typically the
23 role of the trial court.

24 The call -- I mean, the Courts in general call balls and strikes.
25 And just as important, too, I don't mind saying this, historically, if there's

1 no pitch. I don't make a call, right?

2 And that's another reason why that lawyers try to work things
3 out because there's no pitch. And if there's no pitch, and they've come
4 to some sort of accord, then there's no appeal, right, and the case goes
5 away.

6 But -- so am I supposed to look at the number of times they
7 voted one way or another and that shows bias?

8 MR. TASKA: I didn't say that, Your Honor. Actually, Your
9 Honor asked that question.

10 THE COURT: Yeah.

11 MR. TASKA: I don't think you should actually. What I think
12 you should focus on is the fact that on Day 1, Mr. Miller was sitting in a
13 room with Defendant's guy and has never reached out to what they
14 define as the other side, the three independent directors and the people,
15 the top officers of the company, the CFO and the COO. Hasn't
16 happened, but he's talking to them.

17 And that's it, Your Honor. It's plain and simple. Is this -- am I
18 saying that Your Honor should conclude that Mr. Miller is absolutely not
19 neutral and not independent? No.

20 But what I'm saying is we put on a *prima facie* case here with
21 no opportunity to examine Mr. Miller, to take any discovery from him, to
22 vett him in any way at all.

23 We've seen in private --

24 THE COURT: It's interesting. That's what this case is all
25 about, vetting.

1 MR. PARKER: Vetting, surely.

2 THE COURT: Right? And I'm not going to disagree with you
3 in that regard, but I understand what you're saying. I do. I do. I kind of
4 get that. I understand.

5 So what is your recommendation or what are you saying it
6 look -- Judge, we need to do because the -- it was my understanding
7 that we have a -- I mean, we could call it a question here. And I always
8 have to come back to that. We're requesting modification and
9 appointing the modified order appointing Ross Miller and Ms. King as
10 co-CEOs.

11 MR. TASKA: Yeah, I mean, Your Honor, our recommendation
12 is --

13 THE COURT: I should say motion, but go ahead, sir.

14 MR. TASKA: Yeah, the recommendation is that the CFO and
15 the COO be installed to run this company. They have no -- their
16 declarations that I just handed Your Honor confirm this. They have no
17 allegiance to Mr. Colucci. They just met Mr. Colucci. They don't care
18 about Mr. Colucci.

19 They've known Defendants for much longer than they've
20 known Mr. Colucci. And yet, they -- they're of a like mind on how to run
21 this company and how to save it from disaster.

22 Those are the people who we believe should be in there
23 running the company temporarily until Your Honor decides who it should
24 be, not a person who was picked out of a crowd, never vetted, and is
25 sitting in the room with one of two warring factions. I think we can agree

1 on that. I mean, this is war. And we've got the neutral sitting in a room.

2 THE COURT: Yeah.

3 MR. TASKA: And not calling the other ones.

4 THE COURT: Yeah, well here's my next question. As far as
5 the decision making of Mr. Miller, and I don't know exactly what all
6 decisions that were made at the only meeting, but were any of those
7 decisions detrimental to the ongoing operations of the company?

8 MR. TASKA: We believe they were, Your Honor. Any time he
9 sided with Ms. King on approving a payment, a payment or any kind of
10 company action that benefitted their private company, because that's the
11 big thing. They want you -- I don't want to get into this, Your Honor,
12 because I don't want to get into a, oh, you know, he said, she said
13 evidence --

14 THE COURT: I understand, I understand.

15 MR. TASKA: -- but our position is that they have a singular
16 objective, which is to drain this company of money, merge it into ZASH,
17 maybe that's what they want to do. And then, drain it and bankrupt the
18 company. That's what's going to happen here.

19 And so, that's the path it's on. They are very happy to have
20 Mr. Miller in there because you know, Mr. Miller, his presence in there
21 whether he, you know, he's cognizant of it or not, is allowing them to
22 push their agenda.

23 Mr. Colucci, he sounds like a wild man. They keep saying that
24 he's a crazy man. He's a mother F'er, but Mr. Colucci is only in there
25 complaining about things and pleading for his side because he's trying to

1 save this company from getting looted by these other folks.

2 THE COURT: All right, and I think -- isn't that the argument
3 from both sides, the same argument?

4 MR. TASKA: Everybody's looting, Your Honor.

5 THE COURT: I know. All right. Okay, anything else, sir?

6 MR. TASKA: No, sir.

7 THE COURT: Okay.

8 MR. TASKA: Your Honor, can I address one of the new things
9 that Mr. Taska raised?

10 THE COURT: Well, just one second. Now one of the -- he
11 brought up one important point. And I know there was an issue as it
12 pertains to at the very outset of this journey regarding the litigation and
13 also this whole issue of [indiscernible], dealt with the vetting of Mr.
14 Colucci, I think, and whether it was independent or not.

15 And I understand the allegations here. But my point is this. If
16 for example the Plaintiff wants to have an opportunity to vett Mr. Miller,
17 I'm not going to preclude him from doing that, right, because we need to
18 have more facts.

19 But at least at this point, I'm looking at it from this perspective
20 when it comes to issues regarding bias. And that's why I brought up the
21 issue regarding any potential conflicts.

22 And I'm focusing on number 1, it doesn't appear there's to be
23 any evidence to support any allegations that Mr. Miller had a pre-existing
24 relationship both from a friendship or financial interest, or any of those
25 things with any of the parties to this litigation, number one. I think that's

1 important point to make.

2 Second, whether or not he reached out or didn't at this point
3 because understand we're talking how long has it been, two weeks?

4 MR. PARKER: Yes, Your Honor since the --

5 THE COURT: Yeah, I mean, I can't say that's fatal to him
6 being neutral in this case. And so, what I'm going to do, number one as
7 far as the motion's concerned, and I'm going to keep everything in place
8 for now.

9 Just as important, too, if there's a request that for vetting of
10 Mr. Miller, that's fine. I mean, and you can see if he has some sort of
11 relationship, both financially and/or from a friendship perspective of any
12 of the parties to this litigation, because we do want neutrality.

13 Just as important, too, as far as it pertains to how someone
14 votes at the end of the day, I would think it really comes down to the
15 business judgment, right, as far as decision-making's concerned for a
16 member in that -- for a CEO in that position, right?

17 And as far as for now, I guess there's issues regarding Ms.
18 King. I'm going to keep her on, too. Because it does appear that and
19 this is my concern and I've expressed this before. I mean, this is a
20 publicly-traded company and there's certain requirements that have to
21 be met in that respect.

22 And just as important, I guess, and I can't say that I'm
23 intimately familiar with the requirements as it pertains to the Security
24 Exchange Commission, but maybe there's a requirement to have Mr.
25 Miller vetted anyway. Is that true or not in his current role or is that just

1 for CEO?

2 MR. KEMP: I don't think so, Your Honor, but I'm sure --

3 THE COURT: Is that just for Board members?

4 MR. KEMP: The Board members, yes.

5 THE COURT: Okay, I understand. That's why I said I'm not
6 intimately family with all the workings, but anyway.

7 MR. PARKER: Your Honor, can I now address the new
8 documents that we received after we made -- submitted our opposition
9 both --

10 THE COURT: Yeah, go ahead, Mr. Parker.

11 MR. PARKER: Thank you. Your Honor, we did not mention
12 earlier, although attached as exhibits to Plaintiff's motion, Plaintiff's
13 Exhibit I believe it was Exhibit B.

14 THE COURT: Was that Plaintiff's exhibit?

15 MR. PARKER: Yes, Your Honor, I believe it was Plaintiff's --

16 THE COURT: D?

17 MR. PARKER: B. All right, it's actually Plaintiff's Exhibit 5,
18 Your Honor, I apologize. It's the photograph of Jesse Law submitted.
19 And he seems to be sitting next to John Colucci.

20 THE COURT: Okay.

21 MR. PARKER: So if just sitting next to someone means that
22 they're biased, I would suggest that Mr. Colucci and Mr. Law had some
23 relationship that would make Mr. Colucci biased.

24 It makes no sense to me that they claim that Mr. Ross Miller is
25 biased because he was sitting next to Mr. Law, but I guess it doesn't go

1 both ways.

2 Mr. Colucci, can sit next to Mr. Law and he doesn't become
3 biased. So I just want the Court to be aware of that. It doesn't support
4 their position.

5 The other reason I wanted to discuss this -- these new
6 documents, these three of these affidavits or declarations, Your Honor,
7 from Phil Jones, the CFO; Steve Garrow, the CEO -- COO; and Mike
8 Distasio, the Board member, they differ in some respects. And I had to,
9 you know, look at this on the fly, Your Honor.

10 But looking at Mr. Jones' declaration on page 2, it says here
11 despite my offer to Mr. Miller to provide information regarding the
12 company, I've had no substantive discussion with Mr. Miller outside of
13 meetings attended by all the CEOs.

14 So I don't really understand how that helps Mr. Taska's
15 position. He's been available at the meetings, all of these meetings that
16 are occurring with Mr. Ross Miller involved, Mr. Jones is there.

17 To the extent he wants to say whatever he wants to say,
18 provide whatever valuable information he wants to provide, he's had that
19 opportunity in the meetings.

20 To suggest now that he had no opportunity and no influence
21 on Mr. Miller stands in the face of his own declaration.

22 Mr. Garrow says the same thing. Paragraph 4, I have had no
23 substantive discussions with Mr. Miller outside of meetings attended by
24 all of the CEOs.

25 That's exactly what this Court wants. This Court wants all the

1 CEOs to have the same information to have the benefit of the CFO and
2 the COO in front of them providing them all the same information.

3 One of our concerns, one of the reasons why we brought our
4 motion for TRO is because our Board members were not getting the
5 same information or any information.

6 Ms. King was shut out. Mr. Vanderbilt shut out. Mr.
7 Farnsworth shut out. And so, now the Court puts the three CEOs in a
8 push position where they can get the benefit of all of the information at
9 front -- up front in front of all of them. And Mr. Taska complains of that.

10 So I suggest to you, Your Honor, the declarations just given to
11 you today in Court after we filed our oppositions and prior to us being
12 and after we've had a chance to actually present our first round of oral
13 arguments support our position, our oppositions as opposed to Plaintiff's
14 motion.

15 The other thing I want to point out, Your Honor, is Ms. King
16 also indicated that Mr. Jones has attended every meeting with Mr. Ross
17 since he started.

18 And I know Mr. Ross Miller has not had a chance to come up
19 and maybe Ms. Sugden didn't even know that, but Mr. Jones was there
20 in every meeting, not just some, not half, but all.

21 And so, for Mr. Taska to get up, wave these declarations in
22 the Court's face, and suggest that it supports their motion is simply
23 untrue.

24 I supports our Court's our Opposition that Mr. Garrows and
25 Mr. Jones have participated in the meetings and have the opportunity to

1 explain to Mr. Miller their positions as COO and CFO.

2 The other thing I wanted to point out, Your Honor, and I won't
3 attribute this to Mr. Taska because he wasn't here at the time, but Mr.
4 Connot did not suggest someone other than Mr. Miller in their proposed
5 order to the Court.

6 If the Court recalls, Mr. Kemp suggested an additional CEO. I
7 suggested simply Mr. Farnsworth and Ms. King. And Mr. Connot
8 suggested just Mr. Colucci.

9 So if they didn't like Mr. Miller, they could have put all of that in
10 their proposed order. Or they could have suggested someone else, but
11 they chose not to.

12 Additionally, McGuire Woods --

13 THE COURT: I don't mind saying this. If there's going to be
14 anyone else, they're going to have no pre-existing relationship with any
15 of the parties.

16 MR. PARKER: That's right. And McGuire Woods --

17 THE COURT: I mean, that's how I would go. And the primary
18 reason I went along with it I think was Mr. Kemp's suggestion at the time
19 was essentially this. It was my understanding that Mr. Miller had no
20 pre-existing relationship on any level with the parties.

21 MR. PARKER: Right.

22 THE COURT: And so, it's one of -- and so, it's why I get
23 someone that's truly independent, I think that would be the first predicate
24 to that. No pre-existing relationship.

25 MR. PARKER: And that's --

1 THE COURT: And that's why we do voir dire here to find out if
2 you know somebody or you have some sort of pre-existing relationship.

3 And I like what the Court said and maybe this is somewhat
4 tongue and cheek, but I found it ironic that we started this -- the -- our
5 arguments talking about a full vetting of Mr. Colucci.

6 THE COURT: Right.

7 MR. PARKER: And now we've come full circle and they want
8 some vetting to be done. They're still not supportive of us vetting Mr.
9 Colucci, but now they want to vett Mr. Miller.

10 And so, Your Honor, if you're -- if your -- and this I think --

11 THE COURT: I mean, I don't mind saying this. If -- I have I
12 think it's important to have transparency under these types of situations,
13 right.

14 And or of course, if they want to vett Mr. Miller, they can. You
15 know, and just is important. I don't know, I mean, I don't know how you
16 feel this personally, but I don't know if I want to be dealing with this for a
17 longer period of time and whether it's worth vetting or not.

18 MR. PARKER: Well, I'll tell you --

19 THE COURT: On some level, remember, at some point, and I
20 didn't of course, this was this was -- I was just trying to think and this
21 started a whole I guess journey. I was trying to think of a fair way to
22 handle this because I was concerned about it.

23 And then, I thought about -- I mentioned the R word, receiver.
24 And I realized that had a significant negative connotation as far as the
25 ongoing concerns of this business.

1 But in essence, by bringing in an independent Board
2 member --

3 MR. PARKER: CEO.

4 THE COURT: -- CEO, I'm sorry. CEO, I was kind of doing
5 that in a way. You know, where you keep the corporate structure in
6 place.

7 You don't have the negative connotation of a receivership.
8 That's not a good word when it comes to businesses. I get that. You
9 know, I've appointed a receiver many times.

10 Typically, you're talking about dissolution --

11 MR. PARKER: That's right.

12 THE COURT: -- all those types of things and so on.

13 But that's why I think when that suggestion was made, I
14 thought it was in a general sense a good idea. I just did. You know, I
15 don't mind telling you that, because I always tell you what I'm thinking
16 about. And you're right, there was no significant objection to Mr. Miller
17 at the time.

18 MR. PARKER: There wasn't. And there was no proposed
19 order to the Court suggesting someone else from Plaintiff's counsel.

20 THE COURT: I understand, yeah.

21 MR. PARKER: And the only thing I would say, Your Honor, in
22 terms of vetting, Mr. -- I think Mr. Taska uses Mr. Law as some type of
23 scapegoat, some type of strawman argument.

24 There's no evidence, no argument, no documentation that has
25 been put before this Court that shows that Mr. Miller made a decision

1 based upon something Mr. Law told or gave him. Nothing.

2 This is probably the least supported motion I've seen in a long
3 time. And I think at some level, Mr. Taska has already conceded that he
4 doesn't have the information.

5 He says there may come a time when he has it, but he said to
6 this Court I don't want to go back and forth at this point. He just wants
7 the opportunity to vett Mr. Miller in some form or fashion.

8 And I guess he's implied that he's conceding that we have a
9 right to vett not only Mr. Colucci as a CEO, but as a Board member,
10 which is required by the SEC requirements.

11 So on a higher level, Mr. Colucci has to be vetted. And I
12 believe that segues into the motion we have, the only remaining motion
13 today, Your Honor.

14 THE COURT: All right.

15 And sir, is there something else you want to add to that --

16 MR. TASKA: You're --

17 THE COURT: -- because I'm going to give you time -- I'm
18 going to give a full and fair opportunity to make any record you want to
19 make.

20 MR. TASKA: Yeah, Your Honor. I just really commend Mr.
21 Parker for arguing more after a Court has ruled in its favor than I've ever
22 seen anyone before, but I -- because we're making a record here.

23 THE COURT: Yeah, he had something to say and he wanted
24 to make sure he said it. That's probably the best way to say that.

25 MR. TASKA: I'll just briefly respond just to get it on the record.

1 Look, Mr. -- the point about Mr. Law is simply that he is Defendant's guy.
2 They know that. They're not denying it. Mr. Law is Defendant's guy.
3 He's the one who Mr. Miller says advising him, plain and simple.

4 The point about Mr. Law and Mr. Colucci being in bed together
5 is just silly. Yeah, they were all in a retreat together, all of them together
6 but that -- I mean, that's comparing apples and oranges.

7 The difference is Mr. Law then didn't wind up in the room with
8 Mr. Colucci at the first co-CEO meeting. That's the difference. That's
9 what happened with Mr. Miller.

10 I -- nobody ever said that Mr. Miller was not in the presence of
11 Mr. Jones or Mr. Garrow during the CEO meetings. Your Honor, I've
12 seen those, the videos of those co-CEO meetings. They're pretty
13 chaotic.

14 If the only way Mr. Miller is learning about how to run the
15 company is in those meetings, oh, God help him. He needs to be having
16 conversations with both sides as he said in his papers. And so far, that's
17 not happening.

18 In terms of Mr. Colucci being vetted, Mr. Colucci was vetted.
19 And so, that's a side show, Your Honor. It's just a side issue. It has
20 nothing to do with the issue at hand.

21 The whole NASDAQ thing, which Your Honor will learn
22 eventually when the appropriate time comes is all a red herring. The
23 NASDAQ rules have nothing to do with the efficacy of his vote on the
24 Board.

25 And look, the last thing I would say is that Mr. Colucci is just

1 trying to keep this company afloat. He will resign as CEO. He
2 authorized me to say he will resign as CEO after all this is over. He
3 wants nothing out of this. It's not a hostile takeover.

4 I'm on the record right now saying that. Mr. Colucci will be out
5 after this, but that's it, Your Honor. Thank you.

6 THE COURT: Okay, and I don't mind, and this is more
7 thoughts than anything. I mean, hypothetically, I mean, I don't know
8 how long Mr. Miller's willing to serve in the current position, but if he
9 stepped down, I would probably appoint someone independent again,
10 right?

11 I just don't mind telling -- I'm going to tell everybody that
12 because right now, we're at the stage of the proceedings where there
13 has been a lot of allegations, but the facts haven't been fully developed.
14 Do you understand what I'm saying?

15 And so, and here's my point. And we argued about what the
16 status quo was. Well, I look at it from this perspective. The status quo
17 as far as I'm concerned is trying to make sure the business can continue
18 to operate first of all.

19 And secondly, operate in some form or fashion where there's
20 a, quote, independent voice assisting in the decision making that won't
21 benefit either side, but would benefit by operation of the business
22 judgment rule what's in the best interest for the organization.

23 And that's how I see it. But anyway, Mr. Parker, you had
24 a -- there's another motion, sir?

25 MR. KEMP: Yeah, Judge, could we have a five-minute break

1 before the next motion? It's 3:00, 3:08. We've been going.

2 THE COURT: Yeah.

3 MR. KEMP: And before we do that, I have a proposed order I
4 get counsel on special master situation.

5 THE COURT: Yeah, we can --

6 MR. KEMP: If I can --

7 THE COURT: I guess I have a lot entered this afternoon.

8 MR. KEMP: Yeah. Your Honor, if I can approach and give
9 the Court the proposed special master order, too?

10 THE COURT: Oh, okay.

11 MR. KEMP: You can look at it during the break. Five minute's
12 fine, Your Honor.

13 THE COURT: Yeah, we're taking five.

14 [Recess taken at 3:05 p.m.]

15 [Proceedings resumed at 3:28 p.m.]

16 THE MARSHAL: Be seated and come to order.

17 THE COURT: Okay, I guess we'll continue on. And I just
18 want to make sure we have some clarification as far as the record's
19 concerned. Can we have your notes, because we're trying to keep track
20 of everything that's going on.

21 MR. KEMP: We have one left, which is the motion to appoint
22 special counsel to conduct investigation.

23 THE COURT: All right.

24 MR. PARKER: That's correct.

25 MR. KEMP: And, Judge, I talked to opposing counsel about

1 the special master order. And he wanted an opportunity to look at it
2 overnight. And I said I have no problem with that.

3 THE COURT: Okay.

4 MR. KEMP: You know, maybe if you can make this -- there is
5 a potential time concern, though, because Mr. Hale [phonetic] wants to
6 be appointed in a written order before he does anything, which I
7 understand.

8 THE COURT: Which makes perfect sense.

9 MR. KEMP: Right. But we do have a deposition set for
10 Tuesday, a Mr. Yang. And Mr. Yang is the name that you've heard a
11 couple times in connection with AI-Pros.

12 And we've been in communication with Mr. Yang. He's -- Mr.
13 Rulis sent an email. Mr. Yang sent it back and he suggested that we do
14 the deposition video out of whatever that right word is.

15 And then, he said he was going to talk to his lawyer. And as
16 soon as he said that he was going to talk to his lawyer, we sent an email
17 back, saying give us the name of your lawyer and we'll try to work
18 something out.

19 So, you know, the deposition is set for Tuesday as we speak,
20 but I'm anticipating they're going to ask for a brief continuance. And that
21 gets to my problem, which is I've already served a subpoena on Mr.
22 Yang. He lives in California and he's a resident of the Philippines, I
23 think, or spends a lot of times in Philippines.

24 So I don't mind continuing it, but I'd rather have it done
25 through a special master order, which is why I think we need to get in

1 front of a special master sooner as opposed to later, which is why I want
2 to get the order signed, so we can have the hearing to do this.

3 And it may be moot. Mr. Yang may agree to a week or two
4 weeks down the road or whatever, which I'm fine with, but it's better for
5 me to protect myself, because like I said, I have served a subpoena on
6 him. I do have a special master order to continue the deposition.

7 THE COURT: All right, sir?

8 MR. TASKA: Your Honor, I think we just need one night with
9 this to circulate to our team. And then, we should be able to get back to
10 Mr. Kemp tomorrow.

11 THE COURT: Okay.

12 MR. KEMP: Yeah, I don't think there's anything esoteric in the
13 proposed order, Your Honor.

14 THE COURT: All right.

15 MR. KEMP: It's pretty run of the mill special master order.

16 THE COURT: So where does that put us though? Because
17 are we circulating it to make a determination as to whether Mr. Hale can
18 sit or whether it's appropriate to have a special master or?

19 MR. KEMP: I thought we'd already decided Mr. Hale --

20 THE COURT: Yeah.

21 MR. KEMP: -- to be the special master, which is --

22 THE COURT: Yeah.

23 MR. KEMP: -- we brought the order along. I think Mr. Rulis
24 sent --

25 Did you send this to --

1 MR. RULIS: Earlier today.

2 MR. KEMP: Yeah, earlier today. We sent --

3 THE COURT: Right.

4 MR. KEMP: -- it to the Court.

5 THE COURT: So all you need to do, sir, is review the order, is
6 that it?

7 MR. PARKER: Joel?

8 MR. TASKA: I'm sorry, Your Honor. We need to review it. I
9 just want to give some other eyes on our team a chance to look at it and
10 then we'll probably agree to it.

11 THE COURT: I have no problem with that.

12 MR. KEMP: Yeah, I have no problem with that.

13 THE COURT: Okay. Now next, we had one matter. And I
14 think this is currently set. It was Plaintiff's Motion for Clarification on an
15 Order Shortening Time. That hasn't been set yet, right?

16 MR. PARKER: No.

17 MR. CLARK: Correct, Your Honor. We submitted that last
18 night in response to their Motion for Contempt.

19 THE COURT: Okay.

20 MR. CLARK: But yeah, that is response.

21 THE COURT: All right, I just want to make sure. Okay. And I
22 mean, I have everyone here. When would be a good time to hear that?

23 MR. KEMP: Your Honor, Wednesday's don't seem to be bad
24 for our side.

25 MR. TASKA: Um --

1 MR. KEMP: Monday -- next Monday's a holiday.
2 THE COURT: Yes.
3 MR. KEMP: Tuesday we maybe do it Mr. Yang's depo so --
4 MR. TASKA: Right, yeah, I --
5 THE COURT: The following Wednesday after that?
6 MR. PARKER: No opposition on the 7th, Your Honor.
7 THE COURT: Okay. The 7th is better?
8 MR. TASKA: I mean, I think we would like to get it going
9 sooner rather than later. I mean, I could even do Friday if --
10 THE COURT: Yeah, I don't think we can hear it on Friday.
11 And you said that -- what day is the 7th?
12 THE CLERK: It's a Wednesday.
13 MR. TASKA: That's a Wednesday.
14 THE COURT: Next Wednesday. That's pretty quick, right?
15 MR. TASKA: Yeah, I think we can live with it next
16 Wednesday. Thank you, Your Honor.
17 THE COURT: Yeah, and it's okay to -- if you want to appear
18 telephonically or whatever. It doesn't matter actually. Everybody do
19 what it needs. But -- and so what we'll do and we'll go ahead and set
20 that for the 7th at 1:30. How's that?
21 MR. PARKER: Sounds great, Your Honor.
22 THE COURT: Okay, I mean, I'll sign that order after we're
23 done within probably 15 minutes or so. Exhibit in the OIC?
24 THE CLERK: No.
25 THE COURT: Okay, it's in the OIC, so that's taken care of.

1 Okay.

2 MR. PARKER: So last motion, Your Honor.

3 THE COURT: Yes.

4 MR. KEMP: Your Honor, this is our motion with regards to Mr.
5 Colucci. And let me start out with explaining once again how Mr. Colucci
6 came to be involved with this company.

7 One of the other independent directors, there were three
8 independent directors at the time, indicated that he could no longer
9 serve as an independent director because he had discovered that he
10 made \$120,000 I think from a subsidiary company.

11 So he indicated that he couldn't be an independent director.
12 So they started casting a ballot for an independent director. And
13 Mr. -- and they were trying to fill it within 60 days for some reason.

14 Mr. Colucci's name came up. At the end of the time period, he
15 was rather quickly vetted. I would say preliminary vetting, filled out a
16 questionnaire. And then, he was appointed.

17 After he was appointed, Mr. Vanderbilt, who was Chairman of
18 the Board, got some information with regards to some financial
19 information financial involvement that Mr. Colucci may have had with the
20 company.

21 Specifically, a \$240,000 -- approximately 240. I can't
22 remember if it was 220- or it's 2-something invoice from i-Heart Radio.
23 His wife worked for i-Heart Radio.

24 So that's twice as much as the previous guy who signed over.
25 And then also, a situation where the company was making direct