THE SUPREME COURT OF THE STATE OF NEVADA

Vinco Ventures, Inc.,

Petitioner,

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. 85315

District Case No. A-22-856404-B

Dept No. 16

Emergency Motion Under NRAP 27(e) to Stay District Court's Orders and Proceedings Pending Vinco's Interlocutory Appeal as of Right or, in the Alternative, Emergency Petition for Writ of Mandamus and/or Prohibition Writ Proceeding

Relief Requested by September 26, 2022

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Vinco Ventures, Inc. ("Vinco" or the "Company") seeks a stay of the district court's August 17 and 19, 2022 Orders and proceedings pending this Court's consideration of Vinco's Interlocutory Appeal as of Right or, in the Alternative, Emergency Petition for Writ of Mandamus and/or Prohibition (the "Appeal"). Vinco seeks this Court's review of an issue of statewide importance under Nevada's corporations statutes, NRS 78.010, et seq.

Nevada has positioned itself as an attractive state for businesses to incorporate, rivaled only by Delaware, because businesses know that Nevada law will treat them and their assets in a predictable and consistent manner. To that end, Nevada law provides: "Subject only to such limitations as may be provided by this chapter, or the articles of incorporation of the corporation, the board of directors has full control over the affairs of the corporation." NRS 78.120(1).

Vinco's bylaws are in accord. The bylaws allow its board of directors (the "Board") to meet without unanimous consent so long as the meeting is called with at least 48 hours' notice. The bylaws, further, allow the Board to appoint (and terminate) the Company's CEO, who shall be subject to the Board's control.

Here, the district court issued two orders that violate NRS 78.120(1). First, the district court's August 17, 2022 order requires unanimous consent among Vinco's directors to hold *any* meeting. Second, the district court's August 19, 2022 order appointed two CEO's (to serve alongside the CEO selected by the Board) –

defendant Lisa King and nonparty Ross Miller, despite that the former was terminated by the majority of the Board at a duly convened July 24 Board meeting and the latter was never vetted or selected by the Board at all.

The August 17 and 19 Orders lack any support from NRS 78 or any other provision of Nevada law. Functionally, the challenged orders enjoin the Board from convening meetings and provide Miller the powers of a receiver or custodian since he has the deciding vote on any issue on which the two other warring CEOs disagree. Nevada law permits the appointment of a receiver or custodian in limited, defined circumstances, but no party moved or petitioned the court for the appointment of a receiver or even attempted to meet the standards under Nevada law for such an appointment. By usurping the Board's right to manage its affairs and appoint its CEOs, the Court's orders have irreparably harmed Vinco and clearly violate Nevada law. Therefore, the Court should grant Vinco's motion.

Memorandum of Points and Authorities

I. BACKGROUND

Vinco is a Nevada corporation publicly traded on NASDAQ. (*See* Ex. 1, Vinco0005 (Compl.).) In October 2021, the Board's composition was as follows: defendant Lisa King was the Company's CEO; defendant Roderick Vanderbilt was the Board's chairman; and nonparties Philip McFillin, Michael DiStasio, and Elliot Goldstein were members. (*Id.* Vinco0008 ¶ 39.) In June 2022, McFillin resigned

from the Board, and as expressly provided in the bylaws, the Board elected nonparty John Colucci to fill the vacant seat. (*Id.* ¶ 40)

The bylaws provide the Board with control over the Company's affairs. Section 5.6 specifies that "[t]he board of directors shall appoint a chief executive officer of the corporation who shall be subject to the control of the board of directors . . ." (Ex. 2 Vinco0026.) Likewise, Section 5.4 provides: "any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors . . ." (*Id.*) Section 3.7, finally, allows special meetings to be called "for any purpose" "by the chairman of the board, the president, any vice president, the secretary[,] or any two (2) directors" with 48 hours' notice. (*Id.* Vinco0024.)

At a duly convened July 24, 2022 meeting of the Board, a majority of the Board terminated defendants from their employment with Vinco (including Lisa King from her position as CEO) and appointed nonparty John Colucci as interim CEO. (Ex. 1 Vinco0011 ¶ 60.) Defendants, however, continued to hold themselves out as Vinco employees and made public statements—including through SEC filings that were not approved by the Board—purportedly on Vinco's behalf. (*Id.* Vinco0012 ¶¶ 63, 65-66.) Thus, Vinco sought and obtained a TRO forbidding defendants from holding themselves out as Vinco employees and requiring them to return Vinco's property, including its SEC filing passcodes. (Ex. 3, Vinco0030-33.)

The Court held three days of oral argument on Vinco's request for a

preliminary injunction. These arguments resulted in the August 17 and 19 Orders. (Exs. 4-5.) In the August 17 Order, the court dissolved the TRO and enjoined the Board from holding a meeting without unanimous consent. (Ex. 4, Vinco0036-37.) In the August 19 Order, the court recognized Colucci, King, and nonparty Ross Miller as Co-CEOs, and authorized them to equally share in the management of the Company's affairs. (Ex 5, Vinco0042-43.)

At the time of the order and to date, no defendant had filed a motion for injunctive relief, established a likelihood of success on the merits, or otherwise sought the appointment of a receiver or custodian. In fact, the Court stated at the August 18 hearing that all it had before it was "argument of counsel." Despite this, the Court's orders enjoin the Board from convening a meeting and gives ultimate decision-making authority to nonparty Ross Miller—who was neither vetted or selected by the Board—on any issues where the Board's duly appointed interim CEO (Colucci) and duly terminated CEO (King) disagree.

II. PETITIONER HAS SATISFIED THEIR OBLIGATIONS UNDER NRAP 8(A)

When a party seeks a stay of trial court proceedings from the Supreme Court, the motion shall state that the district court either denied the stay motion, failed to afford the relief requested, or that moving first in the district court would be impracticable. NRAP 8(a)(2)(A)(i)-(ii). The motion shall include any reasons given by the district court for its refusal to grant the requested relief. *Id.*

Here, Vinco orally moved the district court at an August 31 hearing for a stay pending these appellate proceedings. (Ex. 6, Vinco0140-41 (Aug. 31 Tr. at 95:11-96:10).) The district court denied Vinco's motion without prejudice because it felt it lacked sufficient briefing to fairly consider the motion. (*Id.*) However, it is impracticable to again move the district court for a stay. The Court expressed that it intended to allow defendants a full 14-day period to respond to Vinco's emergency motion for a stay. (*Id.*) But, as explained below, Vinco has suffered and will continue to suffer irreparable injury each day that its Board is precluded from managing its affairs and selecting its officers. Thus, Vinco has met its NRAP 8(A) obligations.

III. LEGAL STANDARD

Nevada courts consider the following factors in deciding whether to stay proceedings pending a writ to the Nevada Supreme Court:

1. whether the object of the writ petition will be defeated if the stay is denied;
2. whether petitioner will suffer irreparable or serious injury if the stay is denied;
3. whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
4. whether petitioner is likely to prevail on the merits in the petition.

NRAP 8(c). None of the factors is weighted heavier than any other, but "if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Here,

all factors strongly weigh in favor of staying the district court's hand.

a. The Object Of The Petition Will Be Defeated Unless the Stay Is Extended

The object of the writ petition is to enforce the Nevada legislature's directive that "[s]ubject only to such limitations as may be provided by this chapter, or the articles of incorporation of the corporation, the board of directors has full control" of a corporation's affairs. NRS 78.120(1). The August 17 and 19 Orders usurp the Board's ability to manage Vinco's affairs. Therefore, the very purpose of NRS 78.120(1) is being undermined every day that the orders are allowed to stand.

b. Petitioners Will Suffer Irreparable Injury Unless the Stay Issues

Receivership orders by their nature curtail property rights in ways that may cause great harm. *Hill v. Cohen*, 40 F.4th 101, 111 (3d Cir. 2022). "That great harm is a result of the receivership order foreclosing independent action and decision in irreparable ways." *Id.* (citing 16 Wright & Miller, *Federal Practice and Procedure* § 3925 (3d ed. 2015)); *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 882 (1983) (explaining that a receivership is "a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it.").

Here, the Court's August 17 and 19 Orders foreclose independent action and decision in irreparable ways. The August 19 Order functionally appoints Miller as the Company's receiver because he "was appointed to manage and control [Vinco] to preserve its value during the course of this lawsuit. That makes him a 'receiver'

. . .” *See Hill*, 40 F.4th at 110-11. Further, the August 19 Order recognizes King as Co-CEO despite that she was terminated from her employment with Vinco at the valid July 24 meeting. *Dengrong Zhou v. Log Deng*, 2022 Del. Ch. LEXIS 112, at *3 (Del. Ch. Ct. May 23, 2022) (citing *Klaassen v. Allegro Dev. Corp.*, 2013 Del. Ch. LEXIS 275, at *7-8 (Del. Ct. Ch. Oct. 21, 2013) (“the risk that an unauthorized party will ultimately have power over corporate assets . . . justifies some reasonable restrictions.”). Finally, by restraining the Board’s ability to convene a meeting, the district court has precluded the Board from fulfilling its fiduciary obligations and controlling the affairs of the Company. For these reasons, Vinco will continue to suffer irreparable harm absent a stay.

c. No Irreparable or Serious Injury Will Occur If the Stay Issues

Defendants were validly terminated from their employment by a majority of the Board of Directors. To the extent the meeting had some procedural defect (which it did not), the same majority can ratify acts taken at the defective meeting. *Hill*, 40 F.4th at 116 n.9 (2022) (citing *Stone v. Am. Lacquer Solvents Co.*, 463 Pa. 417, 345 A.2d 174, 177 (Pa. 1975)). Thus, the only possible harm that can inure to defendants is a delay in litigating their defenses and counterclaims. But, a delay in pursuing discovery and litigation “does not constitute irreparable harm.” *Mikohn Gaming Corp.* 120 Nev. at 253, 89 P.3d at 39.

d. Vinco Is Likely to Prevail on The Merits of Its Petition

Nevada law provides: "Subject only to such limitations as may be provided by this chapter, or the articles of incorporation of the corporation, the board of directors has full control over the affairs of the corporation." NRS 78.120(1).

Here, the district court contravened that fundamental principal of corporate governance. First, its August 17 Order forbids the Board from convening *any* meeting without unanimous director agreement where two of the five Board members are defendants in the action, effectively ensuring the Board cannot meet, much less function. Second, its August 19 Order overrode the decision of the majority of the Board and sua sponte appointed ***three*** CEOs: the Board's chosen interim CEO (Colucci), the terminated CEO (King), and a court-appointed CEO who was neither selected nor vetted by the Board (Miller). Vinco moved the court to modify this order, but the motion was denied on September 9.

Vinco is likely to prevail on its argument that the August 17 and 19 Orders violate Nevada law. Each order usurps the Board's ability to manage the affairs of the Company and elect (or remove) its CEOs without meeting any standard set forth in Chapter 78 of the NRS that could warrant overriding the Board's authority. NRS 78.120(1). As explained more fully in Vinco's appeal, the only plausible limitation that the district court could have relied on for its actions are the receivership or custodian statutes, but even the district court recognized that the standards in those statutes were likely not met. (Ex. 7 at Vinco0158 (Aug. 18 Tr. at 17:16); s*ee also*

NRS78.360(1); NRS 78.650(1); NRS 32.010(5)-(6).) In fact, they were not and the Court had no authority to circumvent the strict standards required for the appointment of a receiver by simply labeling Miller a co-CEO. Miller was tasked with operating in Vinco's best interest and ensuring Vinco's ongoing business operations – as the Third Circuit Court of Appeals recently held in a similar situation, "[t]hat makes him a 'receiver[.]'" *See Hill v. Cohen*, 40 F.4th 101, 111 (3d Cir. 2022)

None of the bases for appointing a receiver or custodian have been satisfied, and the Court's order is therefore in excess of its jurisdiction. *Shelton v. Second Jud. Dist. Ct.*, 64 Nev. 487, 494, 185 P.2d 320, 323 (1947). Defendants did not apply for the appointment of a receiver nor did they submit evidence to support that relief. Defendants did not show that Vinco was insolvent. They did not show that they own 10% of the Company's stock – a prerequisite to request a receivership under NRS 78.650. The court did not find that any defendant was likely entitled to judgment; indeed quite the opposite. The court repeatedly acknowledged that it had heard only argument and could not assess any likelihood of success on the merits. (Ex. 7 Vinco0158 (Aug. 18 Tr. at 17:16).) Although the court expressed some concern about the economic viability of the Company, it acknowledged it had no evidence of the value of the business (Ex. 8 Vinco0238 (Aug. 17 Tr. 59:19-59:25) and its primary concern—a default called by one of the Company's lenders—was resolved before the Court entered its August 19 Order. (Ex. 7 Vinco0145 (Aug. 18 Tr. at 4:6-

4:11).)

Without support from Chapter 78, and without any evidentiary record much less one sufficient to warrant the "harsh and extreme remedy" of taking the power of corporate governance away from the duly elected Board, the August 17 and 19 Orders did just that. *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983) ("The appointment of a receiver pendent lite is a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it."); *Hill v. Cohen*, 40 F.4th 101, 105 (3rd Cir. 2022) (power of a court to take control of a corporation should be "used sparingly, with caution and circumspection, and only in an extreme case[.]"). Those orders cannot stand.

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IV. CONCLUSION

Accordingly, the Court should stay the August 17 and 19 Orders to the extent they forbid the Board from meeting consistent with its bylaws and recognize King and Millers as Co-CEOs, and it should stay the district court proceedings while it considers Vinco's appeal or alternative writ petition.

Dated: September 13, 2022.

BALLARD SPAHR LLP

By: /s/ Joel E. Tasca
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NRAP 27(e) CERTIFICATE

1. My name is Joel E. Tasca, I am over 21 years of age, I am an attorney and partner at the law firm Ballard Spahr LLP, and I am counsel of record for Petitioner/Appellant Vinco Ventures, Inc. I provide the following information in support of Vinco's **Emergency Motion Under NRAP 27(e) to Stay District Court's Orders and Proceedings Pending Vinco's Interlocutory Appeal as of Right or, in the Alternative, Emergency Petition for Writ of Mandamus and/or Prohibition Writ Proceeding**.

2. The telephone numbers and office addresses of the attorneys for the other parties are:

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Attorney for nonparty, court-appointed Co-CEO Ross Miller

3. Vinco informed the above counsel of its intent to seek emergency relief from this Court at the district court's August 31, 2022 hearing.

4. Vinco is suffering and will continue to suffer irreparable harm unless this Court interferes to stay the district court's August 17 and August 19 Orders. As explained above, Nevada has positioned itself as an attractive state for businesses to incorporate, rivaled only by Delaware. To that end, Nevada law provides: "Subject only to such limitations as may be provided by this chapter, or the articles of incorporation of the corporation, the board of directors has full control over the affairs of the corporation." NRS 78.120(1). Vinco's bylaws allow Vinco's board of directors to manage its business and affairs. (Ex. 2, Vinco0023.) The Board is entitled under its bylaws to elect and—if it so chooses—remove its officers, including its CEOs. (*Id.* Vinco 0026.) However, the challenged orders usurp the Board's authority by appointing a CEO for the Company who has not been vetted or elected by the Board and by forbidding the Board from meeting without unanimous consent of the Board's members.

5. The Court had no basis under Nevada law to issue the August 17 and August 19 Orders. Nevada law permits the court to appoint a receiver or

custodian for a corporation in certain limited circumstances, but none of those were met and no party moved or petitioned for the appointment of a receiver. Receivership orders curtail property rights in a way that may cause great harm. *Hill v. Cohen*, 40 F.4th 101, 111 (2022). "That great harm is a result of the receivership order foreclosing independent action and decision in irreparable ways." *Id.* (citing 16 Wright & Miller, *Federal Practice and Procedures* § 3925 (3d ed. 2015)). Here, by usurping the Board's authority., to manage the affairs of the Company and appointing a third Co-CEO, the district court has functionally appointed a receiver and undermined the Board's ability to make its own corporate governance decisions.

6. The Board's inability to function consistent with its bylaws constitutes irreparable harm. Without intervention by this Court, Vinco will continue to suffer irreparable harm. Notably, Vinco sought to modify the Court's August 19 Order, but the motion was denied on September 9, 2022.

/s/ Joel E. Tasca

VERIFICATION

1. My name is Joel E. Tasca, I am over 21 years of age, I am an attorney and partner at the law firm Ballard Spahr LLP, and I am counsel of record for Petitioner/Appellant Vinco Ventures, Inc.

2. I verify under penalty of perjury that I have read the foregoing Motion and know the contents thereof. I further verify that the facts stated in the Motion are true of my own knowledge, except as to those matters stated on information and belief, and that as to such matters, I believe them to be true.

Dated: September 13, 2022

/s/ Joel E. Tasca

CERTIFICATE OF SERVICE

I hereby certify that this **Emergency Motion Under NRAP 27(e) to Stay District Court's Orders and Proceedings Pending Vinco's Interlocutory Appeal as of Right or, in the Alternative, Emergency Petition for Writ of Mandamus and/or Prohibition Writ Proceeding** was filed electronically with the Nevada Supreme Court on September 13, 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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Exhibit 1

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CASE NO: A-22-856404-B
Department 31

DISTRICT COURT

CLARK COUNTY, NEVADA

VINCO VENTURES, INC., Plaintiff, vs. THEODORE FARNSWORTH, LISA KING, RODERICK VANDERBILT, and ERIK NOBLE, Defendants.	CASE NO.: DEPT. NO.: **COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES** **BUSINESS COURT REQUESTED** (Arbitration Exemption Requested Pursuant to N.A.R. 3(A): Extraordinary/Injunctive Relief; and Declaratory Relief)

Plaintiff Vinco Ventures, Inc. (the "Company"), by and through its attorneys Mark J. Connot, of the law firm Fox Rothschild LLP, complains and alleges against Defendants Theodore "Ted" Farnsworth ("Farnsworth"), Lisa King ("King"), Roderick "Rod" Vanderbilt ("Vanderbilt"), and Erik Noble ("Noble," and together with Farnsworth, King, and Vanderbilt, "Defendants" or the "Farnsworth Group"), as follows:

This case should be exempted form the Court Annexed Arbitration Program pursuant to N.A.R. 3(A) because this case seeks extraordinary/injunctive relief; and declaratory relief.

INTRODUCTION

1. The Company is a digital media, advertising, and content technologies holding company formed in Nevada on July 18, 2017.

2. Defendants' recent illegal and reckless actions have jeopardized the Company and put its continued existence at risk. In just the past couple weeks, Farnsworth, with the help of the

Farnsworth Group, have conspired to seize control of the Company through illicit and invalid purported Board actions, and to attempt to legitimize that falsely-claimed authority through materially false and misleading Current Report on Form 8-Ks filed with the Securities and Exchange Commission ("SEC") on July 14, 2022 and July 22, 2022, as well as materially false and inaccurate press releases and disclosures made by Farnsworth through YouTube videos and social media channels.

3. When the Company sought to make corrective and clarifying SEC filings, the Farnsworth Group blocked these attempts by changing SEC login passcodes and incorrectly representing to the SEC, as well as EDGAR printing service firms, that Mr. Farnsworth had authority to act on behalf of the Company.

4. In approximately three weeks, Defendants have created chaos at the Company, including causing an amendment to defer a $33 million payment to October 1, 2022 on a secured convertible note that was due on July 22, 2022, which the Company had spent significant time and negotiations, not be signed given the blockages on SEC filings that defendants had created.

5. This caused the Company to lose the opportunity to defer the $33 million payment, thereby negatively impacting the Company's financial position.

6. After weeks of meetings, the Board of Directors finally put an end to the disorder on July 24, 2022, and officially voted to terminate Defendants, who were at-will employees and did not have employment contracts, from the Company effective immediately. Defendants have been notified in writing that they no longer hold any position with the Company, may not make any SEC filings or press releases on the Company's behalf, must relinquish all SEC codes, are denied access to the Company's servers and email, and must return all personal devices. Yet, Defendants refuse to accept any of that as they persist in refusing to relinquish control of the Company. In fact, on August 1, 2022, the Farnsworth Group attempted to (i) appoint Farnsworth as Interim CEO; (ii) put both the Interim Chief Executive Officer, John Colucci ("Colucci"), the Chief Financial Officer, Philip Jones ("Jones") on administrative leave; and (iii) hire an Interim CFO to replace Jones. These extreme actions by non-employees will further place at risk the Company's upcoming Form 10-Q filing due August 15, 2022, and its relationship with its auditors Marcum LLP who must

consent to such filing. Despite having no legal authority to take these actions or make these claims, the Farnsworth Group continues to hold the Company's assets and internal systems hostage and continue to spread lies to the world that they control the Company.

7. Defendants' renegade conduct has caused real and lasting harm to the Company, but their refusal to accept their terminations and cede any and all apparent Company authority will cause irreparable harm if left unchecked by this Court. Currently, Defendants have completely blocked the Company's validly appointed Interim CEO and CFO from all Company systems and continue to hold the Company hostage. They have attempted to take over the Company's bank accounts, including approximately $17 million in cash, causing the bank to freeze all accounts. They have purported to place the Interim CEO and the CFO on administrative leave and pressure and harass the comptroller to assign control of bank accounts to people under the control of Farnsworth. Farnsworth and the Farnsworth Group are continuously harassing and bullying the accounting team to try to get them to capitulate and add new authorized users under the Farnsworth Group's control to the bank accounts and payment systems.

8. Defendants have blocked reorganization efforts that include layoffs. This is causing hundreds of thousands of dollars of payroll and benefits to continue to be due and owing every two weeks and their actions have precluded appropriate compliance with state and Federal Worker Adjustment and Retraining Notifications ("WARN") Act and related regulations.

9. Defendants were subject to an Order to Show Cause, issued by a New York State Supreme Court judge on July 29, 2022, in *Vinco Ventures, Inc., v. Theodore Farnsworth et. Al*, No. E2022005847 (N.Y. Sup. Ct.) (the "New York Action") related to why that Court should not, among other things, order the Defendants Mr. Farnsworth and Ms. King to be:

- enjoined from holding themselves out as employed by Vinco,
- enjoined from accessing computer systems, servers and emails
- enjoined from entering premises, and
- compelled to turn over SEC passcodes.

10. The Company will be voluntarily dismissing the New York Action on or about the date hereof in order to bring this action in Nevada since the Defendants' claimed in their court filings in that case that Nevada was the proper forum.

11. The Company has an obligation to file a Form 10-Q on August 15, 2022, and Jones, the Company's CFO, has been shut out of systems and emails and ostensibly put on administrative leave by these non-employees, as previously mentioned, the Company does not have control of the SEC Codes and the SEC has indicated it will not release the codes to anyone until there is a court order or an agreement amongst the parties, and Defendants have refused to agree to release the codes and relinquish the usurped dominion and control that they have taken over the Company in a hostile takeover.

12. The Bylaws of the Company specifically state that no action may be taken without a quorum of three directors, and yet King and Vanderbilt are repeatedly flaunting that requirement to claim dominion and control of the Board and have attempted to fire the Interim CEO and the CFO. In response to the idea that King and Vanderbilt could take any action as a board of two is directly contradicted and expressly prohibited by the Company's bylaws. Section 3.8 of Vinco's bylaws explicitly state "At all meetings of the board of directors, ***a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors***, except as may be otherwise specifically provided by statute, the Articles of Incorporation, or these bylaws." (emphasis added) Therefore, numerous attempted actions taken by King and Vanderbilt as a board of two is expressly prohibited, including renaming previously fired Farnsworth as CEO, since the bylaws currently require three directors to take any valid Board action, and is yet further evidence of their blatant disregard for applicable laws, rules, regulations and orders.

13. Without immediate court intervention, the public shareholders of the Company will be robbed of their Company under a hostile takeover for no consideration and with illegal corporate actions and SEC filings. Actions by the FTC and SEC will come too late to block the dissipation of assets of the Company and a repeat of the MoviePass / Helios bankruptcy, which Farnsworth and Vanderbilt orchestrated before, and it will likely occur again.

14. The Company now brings this action seeking to hold Defendants accountable for the harm they have caused and to enjoin them any further purported action on the Company's behalf.

THE PARTIES

15. The Company is a publicly traded Nevada corporation that is duly authorized to do business in this State, and has a principal place of business located at 500 Linden Oaks, Suite 300, Rochester, Monroe County, New York.

16. Farnsworth, is a natural person with a residence located at 491 State Highway 10, Caroga Lake, Fulton County, New York.

17. King is a natural person with a residence located at 19 Capstone Rise, Rochester, Monroe County, New York.

18. Vanderbilt is a natural person with a residence located at 275 NE 18th St., Apt. PH 7, Miami, Florida 33132.

19. Noble is a natural person with a residence located at 1400 Ribbon Limestone Southeast Terrace, Leesburg, Virginia 20175.

JURISDICTION AND VENUE

20. This Court has personal jurisdiction over all parties involved pursuant to the Company's Articles of Incorporation.

21. The Court has subject matter jurisdiction over this action as the Company has suffered, and continues to suffer, damages in excess of $15,000.00 as a result of Defendants' actions.

22. Venue is appropriate pursuant to the Company's Articles of Incorporation.

23. Article XIII of the Company's Articles of Incorporation provides:

> To the fullest extent permitted by law, and unless the [Company] consents in writing to the selection of an alternative forum, the courts of the State of Nevada shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the [Company], (b) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any director or officer of the [Company] to the [Company] or the [Company's] shareholders, (c) any action or proceeding asserts a claim against the [Company] arising pursuant to any provision of the Nevada Revised Statutes or the [Company's] articles of incorporation or bylaws (as either might be amended from time to time), or (d) any action or proceeding asserting a claim against the corporation governed by the internal affairs doctrine. . . . Any person or entity purchasing or otherwise acquiring any interest (including beneficial ownership) in shares of capital stock of the [Company] shall be deemed to have notice of and consented to the provisions of this Article XIII.

FACTUAL BACKGROUND

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

24. From January 2017 through September 2019, Farnsworth served as Chairman of the Board and Chief Executive Officer of Helios and Matheson Analytics Inc. ("Helios"), a former Nasdaq listed and publicly traded company.

25. In December 2017, Helios, which was operating under Farnsworth's control, acquired a controlling interest in MoviePass, Inc. ("MoviePass"). Farnsworth then became a director for MoviePass until September 2019, when MoviePass ceased operations.

26. Helios and the Company are similar in that both companies owned a major subsidiary upon which virtually all of its operations are based.

27. On January 28, 2020, after suffering over $150 million in losses under Farnsworth's control, Helios filed for Chapter 7 Bankruptcy.

28. On June 7, 2021, the Federal Trade Commission (the "FTC") filed a complaint against MoviePass, Helios, Farnsworth and another officer of MoviePass whereby the FTC alleged that, among other things, MoviePass, Helios, Farnsworth and the other officer deceptively marketed MoviePass services and employed tactics to prevent subscribers from using the MoviePass service as advertised.

29. On October 1, 2021, the FTC, Farnsworth and the other defendants finalized a settlement of the FTC's allegations. Pursuant to Farnsworth's settlement with the FTC, Farnsworth is barred for twenty (20) years from, among other things, misrepresenting his business and security practices and collecting or sharing consumers' personal information without first implementing stringent safeguards and controls.[1]

B. Farnsworth's and Vanderbuilt's Longstanding Relationship.

30. Upon information and belief, Vanderbilt and Farnsworth have over a twenty-year personal and business relationship.

[1] Due to the conduct described below, the Company has notified the FTC, SEC and Nasdaq regarding potential violations of the FTC settlement order and other applicable laws, rules and regulations.

31. Upon information and belief, Farnsworth and Vanderbilt share common property, one appears as trustee on the other's trust documents, and the two have been directly involved in various business ventures over the years, including MoviePass.

32. From October 2017 to September 2019, Vanderbilt served as Brand Manager of MoviePass while Farnsworth was in control of MoviePass.[2]

33. Vanderbilt and Farnsworth also co-founded ZASH Global Media and Entertainment Corporation ("ZASH") together, and Vanderbilt served as ZASH's Business Development Manager and President from January 2021 until October 2021.

34. From June 2021 to December 2021, Vanderbilt also served as one of ZASH's appointees on the board of managers of ZVV Media Partners, LLC ("ZVV"), a joint venture between the Company and ZASH.

35. Vanderbilt also currently serves as the President of Farwest Haiti Mission, a non-profit organization that he co-founded with Farnsworth in 2007.

36. These are just a few of the most recent business ventures in which Farnsworth and Vanderbilt are involved and show they have a long history together.

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

37. The Company was founded in 2017 as a digital media, advertising, and content technologies holding company that promotes the "B.I.G. Model," an approach that involves buying, innovating, and growing.

38. Most of the Company's consolidated subsidiaries and affiliates are in businesses that involve social media and entertainment, and require the accumulation, retention, and use of personally identifiable information. This is entirely similar to the data that Farnsworth is specifically required to safeguard pursuant to his 2021 settlement with the FTC relating to MoviePass going out of business when he was Chairman and Helios's bankruptcy. On information and belief, Farnsworth's recent actions, aided and abetted by the Farnsworth Group, is in direct

[2] Vanderbilt's former position with MoviePass is the same position he held with the Company until he was terminated on July 24, 2022.

violation of the Farnsworth's settlement with the FTC.

39. In October 2021, when the Company's most recent corporate governance structure was set, King became the Company's Chief Executive Officer and President, and a member of the Board of Directors. Philip McFillin ("McFillin"), Michael DiStasio ("DiStasio"), and Elliot Goldstein ("Goldstein"), also joined the Board of Directors at that time, and Vanderbilt became Chairman of the Board.

40. McFillin delivered his resignation from the Board on June 10, 2022, and Colucci was officially appointed to fill the vacant Board seat at a duly-noticed and authorized Board meeting that same day.

41. Going into the events that give rise to this action, the Company's Board therefore consisted of five directors, Vanderbilt as Chairman, and King, DiStasio, Goldstein, and Colucci as directors.

42. Various members of the Farnsworth Group in July have made allegations about which directors are independent for Nasdaq purposes, but those allegations have no bearing on whether a board member may vote at general board meetings, including where the terminations of Farnsworth, after a mere 48 hours as an officer, and the termination of King occurred.

43. Various members of the Farnsworth Group in July have made three copycat allegations related to a contractor, Ai Pros contracts, and, although the Company would always take any allegations under serious consideration, to date they have appeared to be mere mudslinging to attempt to obfuscate the Farnsworth Group's own serious hostile takeover and false SEC filings, which support their attempt to take over the Company.

D. <u>The Events Giving Rise to this Action.</u>

44. On July 8, 2022, Chairman Vanderbilt and King attempted to convene a meeting of the Board of Directors on less than one hour's notice, thereby violating the 48-hour notice requirement under the Company's bylaws. Because board member DiStasio did not attend this attempted meeting or otherwise waive the 48-hour notice requirements, the Board could not take legal action and the meeting was, as a legal matter, not a Board meeting.

45. All the same, at this discussion, which was not a duly authorized Board meeting,

King admitted that she was not fit to be the Company's CEO and that she had been taking direction from Farnsworth all along, so she proposed the Board consider a motion to appoint Farnsworth as the Company's Co-Chief Executive Officer. When other directors raised questions about whether there were conflicts and other legal issues associated with making Farnsworth an officer of the Company, Farnsworth and King assured the Board that that legal guidance was not needed to engage in the present discussion and that they were assured there were no legal conflicts that needed to be addressed. King then made the motion to appoint Farnsworth as Co-Chief Executive Officer at which point board member Goldstein noted that he did not feel comfortable voting and abstained. King, Vanderbilt, and Colucci, voted in favor. DiStasio was absent, thereby nullifying any action because there was less than 48 hours of notice.

46. Because the fifth Board member, DiStasio, did not attend or waive the legally-mandated notice requirements for a Board meeting under the Company's bylaws, any so-called actions taken during this discussion had no legal effect. In sum, Farnsworth was not legally appointed as the Company's Co-Chief Executive Officer on July 8, 2022. At this time, he still had no official capacity with the Company, other than acting as the President of, a joint venture owned between the Company and Farnsworth's private company, ZASH.

47. Notwithstanding the invalidity of the "Board" meeting, which was known to Farnsworth on advice of Company counsel and which he admitted to a third-party banker, on July 11, 2022, Vanderbilt requested that the Company's legal counsel circulate minutes for the July 8 meeting and distribute them to the Board. Counsel advised that minutes could not be produced because the July 8 discussion did not constitute a validly held Board meeting and no Board actions were taken. Counsel further advised that if the Board desired to take action, it should convene a properly-noticed meeting and take other appropriate and legally mandated steps in connection with proposed management changes, such as asking the potential new officer to complete a Director and Officer Questionnaire and consent to a background check. Defendants, acting only out of self-interest, directly disregarded this advice and on July 14, 2022, King secretly, and against the advice of counsel and the Board, filed a Current Report on Form 8-K with the SEC that incorrectly stated Farnsworth had been appointed as Co-CEO on July 8, 2022 (the "First Incorrect 8-K").

48. Prior to the filing of the First Incorrect 8-K, and since she became the Company's Chief Executive Officer in October, 2021, King has not made a single SEC filing without both the knowledge of Jones, the Company's CFO, and consulting with the Company's legal counsel.

49. Yet, prior to the opening of the stock market on July 14, 2022, King authorized the First Incorrect 8-K despite knowing that it contained materially incorrect and misleading information. Moreover, she did so without the knowledge of the independent members of the Company's Board of Directors (the "Independent Directors").

50. As a result, on July 14, 2022, the Independent Directors delivered a written notice to King at 10:37 a.m. (EST) that her employment with the Company was terminated effective immediately.

51. That afternoon, at the direction of the Independent Directors, a Current Report on Form 8-K was prepared to correct and clarify the First Incorrect 8-K.

52. That evening, the Independent Directors held a duly-convened joint meeting of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee, where the Board Committees passed a resolution (1) approving King's termination as the Company's Chief Executive Officer, (2) approving the retention of Colucci as the Company's interim Chief Executive Officer (or Co-Chief Executive Officer with Farnsworth), and (3) recommending full Board approval of the two resolutions.

53. Between July 14, 2022 and July 17, 2022, members of the Company's Board, management, advisors, and legal counsel held numerous meetings in an effort come to a resolution on the leadership issues, and to find a path to timely correct the incorrect disclosures contained in the First Incorrect 8-K.

54. Then, at noon on July 17, 2022, the Board convened a duly-noticed meeting to discuss the joint recommendations made by the Board Committees on July 14, and then passed resolutions (1) immediately terminating King as the Company's Chief Executive Officer, and appointing Colucci as the Company's interim Chief Executive Officer. The next day, Colucci delivered a formal, written termination notice to King.

55. The Board held another duly noticed and properly held meeting on July 21, 2022. At

this meeting the Board, (1) rescinded King's termination and moved her from the role of Chief Executive Officer of the Company to the role of President of ZVV and (2) appointed Colucci as Interim Co-Chief Executive Officer and Farnsworth as Co-Chief Executive Officer.

56. Also at this meeting, the Board specifically directed Farnsworth that a corrective Form 8-K was to be filed by 5:30 p.m. that day, with any comments due by 4:00 p.m. to make that deadline, and that he was to have absolutely no involvement in any Company finance matters.

57. In the face of this directive, Defendants affirmatively blocked the filing of the corrected Form 8-K by sending emails that they would not sign off, and telling the printer not to file.

58. On July 22, 2022, Defendants, without consulting Colucci, the Board, or Company counsel, secretly filed another Current Report on Form 8-K that materially misrepresented the above chain of events, failed to correct material misstatements and omission contained in the First Incorrect 8-K and falsely alleged that Colucci failed to disclose certain information that may or may not have impacted his independent director status when he was nominated to the Board (the "Second Incorrect 8-K").

59. Simultaneously while Defendants were wreaking havoc at the Company and conspiring how to ultimately take control of Company assets and systems, Colucci and Jones, the Company's CFO, were attempting to negotiate the deferral of a $33 million payment under its senior secured convertible note that was due on July 22, 2022 (the "Deferral Amendment"). The Company and the Investor ultimately reached an agreement with respect to the Deferral Amendment; however, the Company could not sign the agreement because a condition of the agreement was the Company filing a Current Report on Form 8-K announcing the Deferral Amendment. Since the Company's ability to file a Current Report on Form 8-K was taken hostage and blocked by Defendants, the Company ultimately made the $33 million payment on July 22, 2022, resulting in immediate financial harm to the Company.

60. Given Farnsworth's inability to follow direct Board instructions and the Farnsworth Group's willingness to continually make materially false and misleading public statements, on July 24, 2022, the Board of Directors met at a duly-authorized and noticed meeting, and voted to

unequivocally terminate each member of the Farnsworth Group from their respective positions with the Company effective immediately, and to appoint Colucci as the Interim Chief Executive Officer. Vanderbilt was also validly removed as the Chairman of the Board at this meeting.

61. Through the filing of this Compliant, every single member of the Farnsworth Group continues to ignore the Board's actions, as evidenced by an unauthorized and freewheeling letter Farnsworth wrote to all employees that evening.

62. Defendants were sent written notice of their terminations the next morning stating that they no longer hold any position with the Company, may not make any SEC filings or press releases on the Company's behalf, must relinquish all SEC codes, are denied access to the Company's servers and email, and must return all personal devices.

63. On July 25, 2022, Defendants once again blocked the SEC codes and, for the third time, inhibited the Company's ability to make a required SEC filing on Form 8-K. They also disabled the administrative privileges of the email system of an employee when she, at the direction of an officer of the company, disabled the administrative privileges of Noble, the former Chief Security Officer and one of the Defendants.

64. Defendants continued to block the SEC codes on July 26, 2022.

65. Every member of the Farnsworth Group is continuing to hold themselves out as employed by the Company. The Farnsworth Group continues to block the Company's ability to make corrective SEC filings, has taken complete control of the Company's internal systems, and hold themselves both internally and publicly as having authority to act on behalf of the Company, despite the Board's conclusive determination to terminate these individuals.

66. Additionally, Farnsworth continues to act as the ringleader of the Farnsworth Group and continues to authorize incorrect public disclosures and statements, mirroring the same efforts Farnsworth undertook when he drove MoviePass into the ground. The unauthorized acts of the Farnsworth Group and their continued blatant disregard for the law is causing irreparable harm to the Company.

67. At-will employees, Farnsworth, King, Noble and Vanderbilt, were terminated from their officer positions by a valid Board meeting and a 3 to 2 vote on July 24, 2022. The Company

respectfully requests the Court to effectuate those terminations and follow the lead of the New York court on a more expedited basis in a forum Defendants requested.

E. The Farnsworth's Group's Action Have Prompted a 40% Decline in the Company's Stock Price.

68. In light of Defendants' action described above, the Company's stock price has fallen approximately 40% in less than three weeks.

69. On July 14, 2022 (the day King filed the first incorrect Form 8-K), the Company's stock price, which is publicly traded on Nasdaq, closed at $1.02 per share.

70. The Company's stock price has been steadily declining ever since.

71. As of August 3, 2022, the Company's stock price closed at $0.69 per share on August 3, 2022—an approximately 40% decline (or $0.33 per share) in the value of the Company's common stock over the twenty days of chaos that Defendants have intentionally caused.

72. Defendants' actions during this twenty-day period are directly related to the dramatic decline in the Company's stock price. Defendants' actions in this short time include, among other things, blocking corrective SEC filings, continuously releasing false and materially misleading information into the market, and causing so much internal chaos at the Company that it can no longer operate effectively.

73. What is more, pursuant to Nasdaq continued listing standards, if the Company's common stock trades below $1.00 per share, the Company will be subject to potential delisting from Nasdaq.

FIRST CAUSE OF ACTION
Breach of Fiduciary Duty

74. The Company repleads, realleges, and incorporates by reference each and every allegation above as if fully set forth herein.

75. At any point in time at which Farnsworth held the position of Co-Chief Executive Officer of the Company, he had a fiduciary relationship with the Company and owed the Company a fiduciary duty.

76. At any point in time at which King validly held the position as Chief Executive Officer,

Co-Chief Executive Officer, President, or member of the Board of Directors, she had a fiduciary relationship with the Company by virtue of that position and owed the Company a fiduciary duty.

77. At any point in time at which Vanderbilt held the position of Chairman of the Board or as a member of the Board of Directors, he had a fiduciary relationship with the Company by virtue of that position and owed the Company a fiduciary duty.

78. At any point in time at which Noble held the position of Chief Security Officer, he had a fiduciary relationship with the Company by virtue of that position and owed the Company a fiduciary duty.

79. Defendants breached their fiduciary duties to the Company by, among other things, blocking the Company from making corrective SEC filings, authorizing the public disclosure of materially false and misleading statements and allowing market trading to occur in the Company's stock without correcting those disclosure deficiencies, and diverting corporate resources for their own personal gain.

80. Defendants have caused the Company to incur substantial costs related to their actions, (a) including blatantly claiming two person Board actions are valid, (b) launching a hostile takeover of the Company for no consideration to the shareholders of the Company and not in compliance with SEC rules and regulations and (c) aiding and abetting run arounds of the 2021 FTC Order after the MoviePass / Helios bankruptcy fiasco.

81. Defendants' breaches of fiduciary duty directly and proximately harmed the Company and its shareholders in the form of the diminution of its market value, blocking the Company's ability to file accurate and required SEC filings on time, causing the Company to lose Form S-3 eligibility for a year due to late SEC filings, and the failure to act on an amendment that would have delayed a $33 million dollar note payment to an investor until the fall, thereby depleting the Company's current cash and damaging its financial position.

82. Given Defendants' continued misconduct, and in light of the Company's cash position and current operating expenses, the Company's ability to operate and be compliant with the SEC may now be imperiled.

SECOND CAUSE OF ACTION
Aiding and Abetting Breach of Fiduciary Duty

83. The Company repleads, realleges, and incorporates by reference each and every allegation above as if fully set forth herein.

84. Farnsworth, King, Vanderbilt and Noble knowingly and substantially assisted and/or encouraged various individuals, including the Company's other employees, to breach their individual duties to the Company as described herein including, but not limited to, through filing of the First Incorrect 8-K and Second Incorrect 8-K with the SEC and wrongfully exercising dominion over the Company's SEC passwords, assets and internal systems.

85. Defendants were aware of their role in promoting those individuals to breach their fiduciary duties to the Company.

86. As a direct and proximate result of Defendants' aiding and abetting various individuals, including Company employees to breach their individual duties, the Company has suffered, and continues to suffer, damages in excess of $15,000.

87. Defendants' unlawful conduct was willful and malicious, thus entitling the Company to an award of punitive or exemplary damages.

88. The Company has suffered and will continue to suffer irreparable harm from Defendants' unlawful conduct so as to entitle it to temporary, preliminary, and permanent injunctive relief against Defendants. Absent such equitable relief, the Court will not be able to make the Company whole.

89. It was necessary for the Company to retain the services of an attorney to prosecute this action, and the Company should be awarded reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION
Civil Conspiracy

90. The Company repleads, realleges, and incorporates by reference each and every allegation above as if fully set forth herein.

91. Defendants, by acting in concert, intended to engage in unlawful and harmful acts towards the Company and have in fact engaged in such unlawful and harmful acts as described in

this Complaint.

92. As co-conspirators, Defendants are jointly and severally liable for the unlawful acts taken by their co-conspirators in furtherance of the conspiracy.

93. As a direct and proximate result of Defendants' civil conspiracy, the Company has suffered, and continues to suffer, damages in excess of $15,000.

94. Defendants' unlawful conduct was willful and malicious, thus entitling the Company to an award of punitive or exemplary damages.

95. The Company has suffered and will continue to suffer irreparable harm from Defendants' unlawful conduct so as to entitle it to temporary, preliminary, and permanent injunctive relief against Defendants. Absent such equitable relief, the Court will not be able to make the Company whole.

96. It was necessary for the Company to retain the services of an attorney to prosecute this action, and the Company should be awarded reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION
Declaratory Relief

97. The Company repleads, realleges, and incorporates by reference each and every allegation above as if fully set forth herein.

98. The Company's bylaws set forth the procedures through which its Board of Directors can meet and make decisions impacting the Company.

99. The Company seeks relief pursuant to NRS 30.010. *et seq.*, in the form of a declaration that:

a. as of July 24, 2022, Defendants were duly terminated by the Board and were thus not employed by or otherwise affiliated with the Company; and

b. any and all actions taken by Defendants with respect to the Company after July 24, 2022 were *ultra vires*.

100. Plaintiff seeks declaratory and injunctive relief as an alternative to the other forms of relief prayed for herein due to the difficulty in determining damages arising from the various actions of Defendants and in the event that no other legal remedy is available to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, the Company prays the Court enter judgment in its favor as follows:

1. For temporary, preliminary, and permanent injunctive relief prohibiting and restraining Defendants, or those acting under Defendants' control, direction, or authority, from holding themselves out as employees or agents of the Company, from accessing the Company's premises or serves, and requiring Defendants to relinquish control over any of the Company's SEC passwords and to return their personal devices;

2. For damages against Defendants, and each of them, in excess of $15,000 allowed or recoverable by law for each and every claim made herein;

3. For punitive and exemplary damages;

4. For a declaration that Defendants were duly terminated by the Company on July 24, 2022 and that any and all actions taken by Defendants after that date were *ultra vires*;

5. For pre-judgment interest allowed or recoverable by law;

6. For attorneys' fees and costs incurred; and

7. For such other and further relief as the Court may deem just and proper.

DATED this 3rd day of August, 2022.

FOX ROTHSCHILD LLP

/s/ Mark J. Connot
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Attorneys for Plaintiff Vinco Ventures, Inc.

VERIFICATION

I, John Colucci, Chief Executive Officer of VINCO VENTURES, INC. (the "Company"), hereby state as follows:

1. I am a representative of Vinco Ventures, Inc., Plaintiff in the above-entitled action;

2. I have read the foregoing Verified Complaint for Injunctive Relief and Damages and know the contents thereof; that the same are true to the best of my knowledge and belief, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 3rd day of August, 2022.

/s/ John Colucci
JOHN COLUCCI
Chief Executive Officer
Vinco Ventures, Inc.

Exhibit 2

SECOND AMENDED AND RESTATED
BYLAWS
OF
EDISON NATION, INC.
a Nevada corporation

ARTICLE I
CORPORATE OFFICES

1.1 REGISTERED OFFICE. The registered agent and office of Edison Nation, Inc. in the State of Nevada shall be as designated in the corporation's amended and restated articles of incorporation (as might be further amended or restated from time to time, the "Articles of Incorporation").

1.2 OTHER OFFICES. The board of directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II
MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS. Meetings of stockholders shall be held at any place, either within or without the State of Nevada, as may be designated by the board of directors or in the manner provided in these bylaws. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the corporation in the State of Nevada.

2.2 ANNUAL MEETING. The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors. At the meeting, directors shall be elected and any other business properly brought before the annual meeting may be transacted. Except as otherwise restricted by the Articles of Incorporation or applicable law, the board of directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the board of directors.

2.3 SPECIAL MEETING. A special meeting of the stockholders may be called at any time by the board of directors, or by the chairman of the board, or by the chief executive officer, or by the president.

If a special meeting is called by any person or persons other than the board of directors, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the board, the president or the secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.5 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than ten (10) nor more than sixty (60) calendar days after the receipt of the request. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

2.4 NOTICE OF STOCKHOLDERS' MEETINGS. All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.6 of these bylaws not less than ten (10) nor more than sixty (60) calendar days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 ADVANCE NOTICE OF STOCKHOLDER NOMINEES AND STOCKHOLDER BUSINESS. Nominations for the election of directors, and business proposed to be brought before any stockholder meeting may be made by the board of directors or proxy committee appointed by the board of directors or by any stockholder entitled to vote in the election of directors generally if such nomination or business proposed is otherwise business properly brought before such meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder and for nominations to be properly brought before a special meeting by a stockholder, the stockholder of record must have given timely notice thereof in writing to the secretary of the corporation, and, in the case of business other than nominations, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90^{th}) calendar day nor earlier than the close of business on the one hundred twentieth (120^{th}) calendar day prior to the first anniversary of the preceding year's annual meeting; provided that in the event that the date of the annual meeting is more than thirty (30) calendar days before or more than seventy (70) calendar days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120^{th}) calendar day prior to such

annual meeting and not later than the close of business on the later of the ninetieth (90^{th}) calendar day prior to such annual meeting or the tenth (10^{th}) calendar day following the day on which public announcement (as defined below) of the date of such meeting is first made by the corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The notice must be provided by a stockholder of record and must set forth:

(a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including such person's written consent to being named in the corporation's proxy statement as a nominee and to serving as a director if elected,

(b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made,

(c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the business is proposed: (i) the name and address of such stockholder, as they appear on the corporation's books, and the name and address of such beneficial owner, (ii) the class and number of shares of stock of the corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the corporation in writing within five (5) business days after the record date for such meeting of the class and number of shares of stock of the corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting, and (iii) a representation that the stockholder intends to appear in person or by proxy at the meeting to propose such nomination or business,

(d) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such person, a "control person"): (i) the class and number of shares of stock of the corporation which are beneficially owned (as defined below) by such stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the stockholder will notify the corporation in writing within five (5) business days after the record date for such meeting of the class and number of shares of stock of the corporation beneficially owned by such stockholder or beneficial owner and by any control person as of the record date for the meeting, (ii) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder or beneficial owner or control person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder, beneficial owner or control person) and a representation that the stockholder will notify the corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting, (iii) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder or beneficial owner and by any control person or any other person acting in concert with any of the foregoing, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class of the corporation's stock, or maintain, increase or decrease the voting power of the stockholder or beneficial owner with respect to shares of stock of the corporation, and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting, (iv) a representation whether the stockholder or the beneficial owner, if any, and any control person will engage in a solicitation with respect to the nomination or business and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding stock required to approve or adopt the business to be proposed (in person or by proxy) by the stockholder, and

(e) a certification that the stockholder giving the notice and the beneficial owner(s), if any, on whose behalf the nomination is made or the business is proposed, has or have complied with all applicable federal, state and other legal requirements in connection with such stockholder's and/or each such beneficial owner's acquisition of shares of capital stock or other securities of the corporation and/or such stockholder's and/or each such beneficial owner's acts or omissions as a stockholder of the corporation, including, without limitation, in connection with such nomination or proposal.

The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as a director of the corporation, including information relevant to a determination whether such proposed nominee can be considered an independent director.

For purposes of this Section 2.5, a "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the United States Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of Section 2.5(d)(i), shares shall be treated as "beneficially owned" by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (a) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (b) the right to vote such shares, alone or in concert with others, and/or (c) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

This Section 2.5 shall not apply to notice of a proposal to be made by a stockholder if the stockholder has notified the corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such meeting.

The chairman of the meeting shall refuse to acknowledge the nomination of any person or the proposal of any business not made in compliance with the foregoing procedure. Notwithstanding the foregoing provisions hereof, a stockholder shall also comply with all applicable requirements of the Exchange Act, and the rules and regulations thereunder with respect to the matters set forth herein.

2.6 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE. Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his, her or its address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.7 QUORUM. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Articles of Incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting, or (b) the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.8 ADJOURNED MEETING; NOTICE. When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) calendar days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.9 CONDUCT OF BUSINESS. Except as otherwise provided in the Articles of Incorporation no action shall be taken by the stockholders except at an annual or special meeting of stockholders called and noticed in the manner required by these bylaws. The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business.

2.10 VOTING. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.13 of these bylaws, subject to the provisions of the Nevada Revised Statutes (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as may be otherwise provided in the Articles of Incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder at the close of business on the record date, or the relevant date established by the board of directors, as applicable, which shall be cast only by that individual or such individual's duly authorized proxy. Stockholders shall not be allowed to cumulate their votes in the election of directors or any other matter submitted to a vote of stockholders.

With respect to shares held by a representative of the estate of a deceased stockholder, or a guardian, conservator, custodian or trustee, even though the shares do not stand in the name of such holder, votes may be cast by such holder upon proof of such representative capacity. In the case of shares under the control of a receiver , the receiver may vote such shares even though the shares do not stand of record in the name of the receiver but only if and to the extent that the order of a court of competent jurisdiction which appoints the receiver contains the authority to vote such shares. If shares stand of record in the name of a minor, votes may be cast by the duly appointed guardian of the estate of such minor only if such guardian has provided the corporation with written proof of such appointment.

With respect to shares standing of record in the name of another corporation, partnership, limited liability company or other legal entity on the record date, votes may be cast: (a) in the case of a corporation, by such individual as the bylaws of such other corporation prescribe, by such individual as may be appointed by resolution of the board of directors of such other corporation or by such individual (including, without limitation, the officer making the authorization) authorized in writing to do so by the chairman of the corporation's board of directors, if any, the chief executive officer, if any, the president or any vice president of such corporation, and (b) in the case of a partnership, limited liability company or other legal entity, by an individual representing such stockholder upon presentation to the corporation of satisfactory evidence of his or her authority to do so.

With respect to shares standing of record in the name of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, spouses as community property, tenants by the entirety, voting trustees or otherwise and shares held by two or more persons (including proxy holders) having the same fiduciary relationship in respect to the same shares, votes may be cast in the following manner: (a) if only one person votes, the vote of such person binds all, (b) if more than one person casts votes, the act of the majority so voting binds all, and (c) if more than one person casts votes, but the vote is evenly split on a particular matter, the votes shall be deemed cast proportionately, as split.

2.11 WAIVER OF NOTICE. Whenever notice is required to be given under any provision of the Nevada Revised Statutes, the Articles of Incorporation or these bylaws, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Articles of Incorporation or these bylaws.

2.12 WRITTEN CONSENT OF STOCKHOLDERS IN LIEU OF MEETING. Unless otherwise provided in the Articles of Incorporation or these bylaws, any action required or permitted to be taken at any annual or special meeting of stockholders of the corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered by hand or by registered United States mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to the attention of the secretary of the corporation at the principal executive offices of the corporation. Every written consent shall bear the date of signature of each stockholder who signs the consent. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 2.12 to the corporation, written consents signed by a sufficient number of holders required to take action are delivered to the corporation by delivered by hand or by registered United States mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to the attention of the secretary of the corporation at the principal executive offices of the corporation. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by applicable law, be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the corporation as provided in this Section 2.12.

2.13 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) calendar days before the date of such meeting, nor more than sixty (60) calendar days prior to any other action.

If the board of directors does not so fix a record date, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

2.14 PROXIES. At any meeting of stockholders, any holder of shares entitled to vote may designate, in a manner permitted by the laws of the State of Nevada, another person or persons to act as a proxy or proxies. If a stockholder designates two or more persons to act as proxies, then a majority of those persons present at a meeting has and may exercise all of the powers conferred by the stockholder or, if only one is present, then that one has and may exercise all of the powers conferred by the stockholder, unless the stockholder's designation of proxy provides otherwise. Every proxy shall continue in full force and effect until its expiration or revocation in a manner permitted by the laws of the State of Nevada.

2.15 LIST OF STOCKHOLDERS ENTITLED TO VOTE. The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) calendar days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) calendar days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

ARTICLE III
DIRECTORS

3.1 POWERS. Subject to the provisions of the Nevada Revised Statutes and any limitations in the Articles of Incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

3.2 NUMBER OF DIRECTORS. The board of directors shall consist of at least three (3) and not more than seven (7) directors, provided that the minimum and maximum number of directors may be increased or decreased from time to time by an amendment to these bylaws or by resolutions adopted by the board of directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS. Except as provided in the Articles of Incorporation or Section 3.4 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the Articles of Incorporation or these bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his successor is elected and qualified or until his or her earlier death, resignation or removal.

Elections of directors need not be by written ballot.

3.4 RESIGNATION AND VACANCIES. Any director may resign at any time upon written notice to the attention of the secretary of the corporation. When one or more directors shall resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the articles of incorporation or these bylaws:

(a) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(b) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Articles of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Articles of Incorporation or these bylaws, or may apply for a decree summarily ordering an election as provided in the Nevada Revised Statutes.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then a court of competent jurisdiction may, upon application of any stockholder or stockholders holding at least thirty-three percent (33%) of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, which election shall be governed by the provisions of the Nevada Revised Statutes as far as applicable.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE. The board of directors of the corporation may hold meetings, both regular and special, either within or outside the State of Nevada.

Unless otherwise restricted by the Articles of Incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of such board of directors, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this section shall constitute presence in person at the meeting.

3.6 REGULAR MEETINGS. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

3.7 SPECIAL MEETINGS; NOTICE. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two (2) directors.

Notice of the time and place of special meetings shall be delivered personally, by email, by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) calendar days before the time of the holding of the meeting. If the notice is delivered personally, by email or by telegram, it shall be delivered at least forty-eight (48) hours before the time of the holding of the meeting. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation.

3.8 QUORUM. At all meetings of the board of directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute, the Articles of Incorporation, or these bylaws. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 WAIVER OF NOTICE. Whenever notice is required to be given under any provision of the Nevada Revised Statutes, the Articles of Incorporation, or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when such person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the Articles of Incorporation or these bylaws.

3.10 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Unless otherwise restricted by the Articles of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the board or committee.
3.11 FEES AND COMPENSATION OF DIRECTORS. Unless otherwise restricted by the Articles of Incorporation or these bylaws, the board of directors (or a committee of the board of directors) shall have the authority to fix the compensation of directors.

3.12 APPROVAL OF LOANS TO OFFICERS. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.
3.13 REMOVAL OF DIRECTORS. Any director may be removed from such position as provided in, and in accordance with, the Articles of Incorporation and the Nevada Revised Statutes. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

ARTICLE IV
COMMITTEES

4.1 COMMITTEES OF DIRECTORS. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, with each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority (a) approving or adopting or recommending to the stockholders, any action or matter expressly required by the Nevada Revised Statutes to be submitted to stockholders for approval, or (b) adopting, amending, or repealing any bylaws of the corporation; and, unless the board resolution establishing the committee, the bylaws or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to the Nevada Revised Statutes.
4.2 COMMITTEE MINUTES. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.
4.3 MEETINGS AND ACTION OF COMMITTEES. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Section 3.5 through Section 3.10 of Article III of these bylaws, with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the board of directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the board of directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V
OFFICERS

5.1 OFFICERS. The officers of the corporation shall be a chief executive officer, chief financial officer, president, treasurer and secretary. The corporation may also have, at the discretion of the board of directors, a chairman of the board, one or more vice presidents, one or more assistant vice presidents, one or more assistant secretaries, one or

more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these bylaws, shall be appointed by the board of directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS. The board of directors may appoint, or empower the president to appoint, such other officers and agents as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS; FILLING VACANCIES. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board or, except in the case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

Any vacancy occurring in any office of the corporation shall be filled by the board of directors.

5.5 CHAIRMAN OF THE BOARD. The chairman of the board, if such an officer be appointed, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to the chairman of the board by the board of directors or as may be prescribed by these bylaws. If there is no president appointed, then the chairman of the board shall also be the president of the corporation and shall have the powers and duties prescribed in Section 5.8 of these bylaws.

5.6 CHIEF EXECUTIVE OFFICER. The board of directors shall appoint a chief executive officer of the corporation who shall be subject to the control of the board of directors and have general supervision, direction and control of the business and the officers of the corporation. The chief executive officer shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the board of directors. The chief executive officer shall be the Principal Executive Officer of the corporation.

5.7 CHIEF FINANCIAL OFFICER. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. The chief financial officer shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all his transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

The chief financial officer shall be the Principal Financial Officer, Principal Accounting Officer of the corporation, and subject to the order of the board of directors, the secretary and treasurer of the corporation.

5.8 PRESIDENT. The president shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws. In addition and subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if no one has been appointed chief executive officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have the powers and duties described in Section 5.6.

5.9 SECRETARY. The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.
The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. The secretary shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.
5.10 TREASURER. The treasurer, subject to the order of the board of directors, shall have the care and custody of, and be responsible for, all of the money, funds, securities, receipts and valuable papers, documents and instruments of the corporation, and all books and records relating thereto. The treasurer shall keep, or cause to be kept, full and accurate books of accounts of the corporation's transactions, which shall be the property of the corporation, and shall render financial reports and statements of condition of the corporation when so requested by the board of directors, the chairman of the board of directors, if any, the chief executive officer, if any, or the president. The treasurer shall perform all other duties commonly incident to his or her office and such other duties as may, from time to time, be assigned to him or her by the board of directors, the chief executive officer, if any, the president, these bylaws or as provided by law. If a chief financial officer of the corporation has not been appointed, the treasurer may be deemed the chief financial officer of the corporation.
5.11 VICE PRESIDENTS. In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president or the chairman of the board.
5.12 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The chairman of the board, the chief executive officer, the chief financial officer, the president, any vice president, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.
5.13 AUTHORITY AND DUTIES OF OFFICERS. In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors.

ARTICLE VI
INDEMNITY

As further set forth in the Articles of Incorporation, to the fullest extent permitted by applicable law, a director of the corporation shall not be personally liable to the corporation or to its stockholders for monetary damages for any breach of fiduciary duty as a director.

ARTICLE VII
RECORDS AND REPORTS

7.1 MAINTENANCE AND INSPECTION OF RECORDS. The corporation shall, either at its principal executive officer or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.
7.2 ANNUAL LIST OF OFFICERS, DIRECTORS AND REGISTERED AGENT. The corporation shall annually, on or before the last day of the month in which the anniversary date of incorporation occurs each year, file with the Nevada Secretary of State a list of its president, secretary and treasurer and all of its directors, along with the post office box or street address, either residence or business, and a designation of its resident agent in the state of Nevada. Such list shall be certified by an officer of the corporation.

ARTICLE VIII
GENERAL MATTERS

8.1 CHECKS. From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that

are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS. The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 STOCK CERTIFICATES; PARTLY PAID SHARES. The shares of the corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the chief financial officer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile or other electronic signature. In case any officer, transfer agent or registrar who has signed or whose facsimile signature or other electronic signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 SPECIAL DESIGNATION ON CERTIFICATES. If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in the Nevada Revised Statutes, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.5 LOST AND REPLACEMENT CERTIFICATES. All certificates surrendered to the corporation, except those representing shares of treasury stock, shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been canceled, except that in case of a lost, stolen, destroyed or mutilated certificate, a new one may be issued therefor. However, any stockholder applying for the issuance of a stock certificate in lieu of one alleged to have been lost, stolen, destroyed or mutilated shall, prior to the issuance of a replacement, provide the corporation with his, her or its affidavit of the facts surrounding the loss, theft, destruction or mutilation and, if required by the board of directors, an indemnity bond in an amount not less than twice the current market value of the stock, and upon such terms as the treasurer or the board of directors shall require which shall indemnify the corporation against any loss, damage, cost or inconvenience arising as a consequence of the issuance of a replacement certificate.

When the Articles of Incorporation are amended in any way affecting the statements contained in the certificates for outstanding shares of capital stock of the corporation or it becomes desirable for any reason, in the discretion of the board of directors, including, without limitation, the merger of the corporation with another corporation or the conversion or reorganization of the corporation, to cancel any outstanding certificate for shares and issue a new certificate therefor conforming to the rights of the holder, the board of directors may order any holders of outstanding certificates for shares to surrender and exchange the same for new certificates within a reasonable time to be fixed by the board of directors. The order may provide that a holder of any certificate(s) ordered to be surrendered shall not be entitled to vote, receive distributions or exercise any other rights of stockholders of record

until the holder has complied with the order, but the order operates to suspend such rights only after notice and until compliance.

8.6 CONSTRUCTION; DEFINITIONS. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Nevada Revised Statutes shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

8.7 DIVIDENDS. The board of directors, subject to any restrictions contained in: (a) the Nevada Revised Statutes, or (b) the Articles of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The board of directors may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

8.8 FISCAL YEAR. The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors. Absent such a resolution of the board of directors to the contrary, December 31 shall be the end of the fiscal year of the corporation.

8.9 SEAL. The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the board of directors, and may use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

8.10 TRANSFER OF STOCK. The board of directors shall have the power and authority to make such rules and regulations not inconsistent herewith as it may deem expedient concerning the issue, transfer, and registration of certificates for shares of the corporation's stock. No transfer of stock shall be valid as against the corporation except on surrender and cancellation of any certificate(s) therefor accompanied by proper evidence of succession, assignation or authority to transfer by the registered owner made either in person or under assignment. Whenever any transfer shall be expressly made for collateral security and not absolutely, the collateral nature of the transfer shall be reflected in the entry of transfer in the records of the corporation.

8.11 STOCK TRANSFER AGREEMENTS. The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the Nevada Revised Statutes. The board of directors may appoint one or more transfer agents, transfer clerks and registrars of transfer and may require all certificates for shares of stock to bear the signature of such transfer agents, transfer clerks and/or registrars of transfer.

8.12 REGISTERED STOCKHOLDERS. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Nevada.

ARTICLE IX
AMENDMENTS

In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized to adopt, amend or repeal these bylaws or adopt new bylaws without any action on the part of the stockholders; provided that any bylaw adopted or amended by the board of directors, and any powers thereby conferred, may be amended, altered or repealed by the stockholders.

ARTICLE X
CHANGES IN NEVADA LAW

References in these bylaws to the laws of the State of Nevada or the Nevada Revised Statutes or to any provision thereof shall be to such law as it existed on the date these bylaws were adopted or as such law thereafter may be changed; provided that (a) in the case of any change which expands the liability of directors or officers or limits the indemnification rights which the corporation may provide pursuant to Article VI, the rights to limited liability, to indemnification and to the advancement of expenses provided in the Articles of Incorporation and/or these bylaws shall continue as theretofore to the extent permitted by law, and (b) if such change permits the corporation, without the requirement of any further action by stockholders or directors, to limit further the liability of directors or limit the liability of officers or to provide broader indemnification rights or rights to the advancement of expenses than the corporation was permitted to provide prior to such change, then liability thereupon shall be so limited and the rights to indemnification and the advancement of expenses shall be so broadened to the extent permitted by law.

Exhibit 3

EXPR
MARK J. CONNOT (10010)
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Attorneys for Plaintiff Vinco Ventures, Inc.

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 **EX PARTE ORDER GRANTING PLAINTIFF VINCO VENTURES, INC.'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff Vinco Ventures, Inc. (the "Company"), having submitted its Emergency Motion for Temporary Restraining Order and Preliminary Injunction (the "Emergency Motion"), the Court having reviewed the papers and pleadings on file, including the verified Complaint for Injunctive Relief and Damages filed by the Company, the Emergency Motion, the Declaration of John Colucci, and the Declaration of Mark Connot filed in support of the Emergency Motion, the Court hereby finds and concludes as follows as follows:

1. Pursuant to Nevada Rule of Civil Procedure ("NRCP") 65(b), the Company has established good cause for immediate *ex parte* relief, as there is an appreciable risk of irreparable harm to the Company's business based on the conduct of Defendants Theodore "Ted" Farnsworth, Lisa King, Roderick "Rod" Vanderbilt, and Erik Noble (collectively, "Defendants").

2. There is an immediate risk of irreparable harm to the Company including, but not limited to, (a) destroying the Company's business and preventing a downsizing to preserve cash after

a $33 million payment on July 22, 2022 was made and Defendants' constant harassment and bullying of accounting staff to get access and authorization to bank accounts, payroll and payment systems holding millions of dollars, (b) damaging the Company's reputation and status with the Securities and Exchange Commission ("SEC") which will not issue SEC codes to any party without a court order or an agreement of the parties, (c) the further filing of inaccurate Form 8-Ks with the SEC, (d) putting the Company at risk of delisting from Nasdaq's Capital Market due to the large stock price drop of over 33% and well below $1 since the Defendants' inaccurate SEC Form 8-K filing on July 14, 2022 and the fraudulent "change in management," and (e) placing at risk the Company's upcoming Form 10-Q filing due August 15, 2022 with the attendant work required by Marcum LLP its auditors, likely to cause an immediate collapse of the Company much like Farnsworth and Vanderbilt presided over in connection with the closing and bankruptcy of MoviePass / Helios, for which there is no adequate remedy at law;

3. Defendants' actions unreasonably interfere with the Company's business and if left unchecked will destroy the Company's credit or profits;

4. The balance of the hardships weighs in favor of the Company;

5. As a publicly traded Nevada corporation with a substantial number of shareholders and over 150 million shares outstanding, the public has a distinct interest in ensuring the stability of the Company and the accuracy of its filings with regulators, such as the SEC. Defendants have filed two false Form 8-Ks with the SEC regarding the Company and, in doing so, have mislead the SEC, the Company's shareholders, and the public at large regarding the Company's governance, NASDAQ has suspended trading of the Company's stock as of August 4, 2022 due to the conflicting and misinformation in the market; and thus public policy further supports entry of a temporary restraining order (a "TRO");

6. The Company has demonstrated a reasonable probability of success on the merits and that the Defendants' conduct, if allowed to continue, will result in great or irreparable harm for which compensatory damages is an inadequate remedy.

7. Under the circumstances, a TRO is necessary (1) to prohibit and restrain Defendants,

or those acting under their control, direction, or authority from holding themselves out as employees or agents of the Company, (2) to restrain Defendants from accessing the Company's premises or servers, and (3) to require Defendants to relinquish control over the Company's SEC filing passcodes and cooperate to return SEC passcodes to the Company's dominion and control under John Colucci and return all Company personal devices, passwords, servers, documents (whether in paper or electronic format), payment and payroll systems, and emails and email servers related to any business of the Company and its affiliates.

8. Only a nominal bond is necessary to secure a TRO to preserve the status quo until the hearing on the Company's request for a preliminary injunction.

Based on the foregoing findings and conclusions, **IT IS HEREBY ORDERED:**

1. The Emergency Motion is hereby GRANTED;

a. For the duration of this TRO, Defendants are enjoined from holding themselves out internally or externally as employed by the Company or acting on its behalf in any capacity;

b. For the duration of this TRO, Defendants are enjoined from accessing Company's premises or servers;

c. Immediately upon receipt of service of this TRO, Defendants and each of them, are required to relinquish control, or to direct those persons working with or under them to relinquish control, over the Company's SEC filing passcodes and cooperate to return SEC codes to the Company's dominion and control under John Colucci and return all Company personal devices, passwords, servers, documents (whether in paper or electronic format), payment and payroll systems, and emails and email servers related to any business of the Company and its affiliates;

d. Pursuant to NRCP 65(c), the Company shall post a bond in the amount of $ 500.00 .

e. This TRO will remain in full force and effect until the conclusion of the hearing as set forth in Paragraph 2 below, unless the Court otherwise orders the extension

of the TRO.

2. Pursuant to NRCP 65(b)(3), the hearing on the Company's Emergency Motion shall be on August 16, 2022 at 9:05 a.m./p.m. Any opposition to the Emergency Motion shall be filed on or before August 15, 2022, ~~and the Company shall file any reply on or before _____, 2022.~~

JM Ent

3. A copy of this Order, along with the Emergency Motion and all exhibits thereto, shall be served on Defendants on or before August 8, 2022.

Dated this 5th day of August, 2022

JM

7BA 99C CD9B 124A
Timothy C. Williams
District Court Judge

Respectfully submitted by:

FOX ROTHSCHILD LLP

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Online: https://bluejeans.com/305354001/2258

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 8/5/2022

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Attorneys for Defendants

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: (1) DIRECTING VINCO VENTURES, INC. TO PAY ALL PAYROLL AMOUNTS DUE AND OWING ON AUGUST 19, 2022; (2) PRECLUDING VINCO VENTURES FROM TERMINATING EMPLOYEES; (3) SETTING LIMITATIONS ON EXPENDITURES; AND (4) SETTING LIMITATIONS AND CONDITIONS REGARDING VINCO VENTURES BOARD MEETINGS**

On August 16 and 17, 2022, Plaintiff Vinco Ventures, Inc.'s ("Vinco Ventures") Motion for Temporary Restraining Order and Preliminary Injunction ("Motion") came on for hearing,

with Plaintiff represented by Mark J. Connot of Fox Rothschild LLP, Defendant Theodore Farnsworth represented by Kemp Jones, LLP, and Defendants Lisa King and Roderick Vanderbilt represented by Theodore Parker, III of Parker Nelson & Associates.

Based on the representations by the parties on the record, IT IS HEREBY ORDERED:

1. Plaintiff shall make all payroll payments scheduled for August 19, 2022 for all payroll amounts for which Plaintiff is responsible, specifically including but not limited to payroll for employees in the amount of approximately $700,000 of the following:

   a. Vinco Shared Services ("VSF") (with approximately 48 persons characterized as Vinco employees (and includes Honey Badger Media LLC employees) and 14 persons characterized as Magnifi U employees) in the amount of approximately $425,000 (historically every two weeks) and the 27 persons characterized as AdRizer employees in the amount of approximately $85,000 (historically every two weeks, but they are provided funds monthly, and Mind Tank LLC is a subsidiary of AdRizer and shares that payment);

2. Plaintiff shall not make expenditures in excess of $250,000.00 per transaction, absent unanimous Board approval or order of the Court.

3. Plaintiff stipulates and agrees it will not terminate any employees of the following entities on or before Monday, August 22, 2022:

   a. Plaintiff Vinco Ventures, Inc.

   b. Mind Tank LLC

   c. AdRizer, LLC

   d. Honey Badger Media LLC

   e. Magnifi U, Inc.

4. Plaintiff shall pay ZVV $710,000.00 for payroll on or before August 18, 2022 and it will be treated as an advance on the loan.

5. Plaintiff 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.

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The parties stipulate and agree religious holidays will be accommodated. This shall not apply to Board meetings regarding the Hudson Bay Note and/or any Notice of Default of the Hudson Bay Note.

6. This order will be in effect for 14 days and, over Plaintiff's objection, the Temporary Restraining Order previously entered by this Court will be dissolved within 24 hours and provided no action is taken by any of the Parties until further notice and order by this Court regarding preservation of the status quo moving forward.

IT IS SO ORDERED.

Dated this 17th day of August, 2022

JM

FFA 1DD 35DB 3D47
Timothy C. Williams
District Court Judge

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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Exhibit 5

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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 **FURTHER ORDER OF THE COURT REGARDING TEMPORARY RESTRAINING ORDER AND PRESERVATION OF STATUS QUO FOR VINCO VENTURES, INC.**

On August 16. 17 and 18, 2022, the Court held hearings on Plaintiff Vinco Ventures, Inc.'s ("Vinco Ventures") Motion for Temporary Restraining Order and Preliminary Injunction ("Motion") and Defendants' Motion for *Ex Parte* Temporary Restraining Order and Preliminary Injunction on Order Shortening Time, with Plaintiff represented by Mark J. Connot, Esq. and Rex D. Garner, Esq. of Fox Rothschild LLP, Defendants Theodore Farnsworth and Erik Noble represented by Will Kemp, Esq. and Nathanael R. Rulis, Esq. of Kemp Jones, LLP, and Defendants Lisa King and Roderick Vanderbilt represented by Theodore Parker, III, Esq. of Parker Nelson & Associates.

The Court having reviewed the pleadings, heard the arguments of counsel made at the hearing, and with both parties agreeing that the status quo for Vinco Ventures should be preserved but disagreeing as to the manner in which that occurs, the Court hereby ORDERS as follows:

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FACTUAL RECITALS

On or about August 17, 2022, Plaintiff disclosed that an emergency had just arisen as a result of a lender to Vinco Ventures—Hudson Bay—declaring the loan to be in default status. Plaintiff stated that if this emergency was not resolved, Vinco Ventures would be in serious financial jeopardy. Plaintiff and Defendants worked together and, on August 18, 2022 were able to resolve the Hudson Bay default.

Following the successful resolution of the Hudson Bay potential default, on August 18, 2022, Plaintiff indicated that John Colucci could not be present at Court because of "a grave family emergency for which he needs to direct his attention immediately."

The Parties disagree regarding the propriety of certain Board Meetings wherein persons were either selected or removed as Chief Executive Officer ("CEO"). Plaintiff contends that John Colucci has been selected as CEO and Defendants contend that Lisa King, Ted Farnsworth or both are the duly-elected CEOs.

LEGAL AUTHORITY

Injunctive relief to preserve the status quo is normally available when the Court finds that the parties' conduct, if allowed to continue, will result in irreparable harm. *See, e.g.*, *No. 1 Rent-a-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780–81, 587 P.2d 1329, 1330 (1978); *see also Dangberg Holdings Nev., L.L.C. v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999); *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996). Under Nevada law, destruction of a company's financial stability is considered irreparable harm for purposes of ordering injunctive relief. *See State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Servs., Inc.*, 128 Nev. Adv. Op. 34, 294 P.3d 1223, 1228 (2012).

Courts have inherent power to provide themselves with appropriate instruments required for the performance of their judicial duties. *Ex Parte Peterson*, 253 U.S. 300, 312, 40 S.Ct. 543, 64 L.Ed. 919 (1920). This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties (e.g., a receiver), as they may arise in the progress of a cause. *Id.*; *see also Chen v. Stewart*, 2004 UT 82, ¶¶ 50-51, 100 P.3d 1177, 1190, *abrogated on other grounds by State v. Nielsen*, 2014 UT 10, ¶¶ 50-51, 326 P.3d 645

(equitable power to appoint receiver); *VTB Bank v. Navitron Projects Corp.*, No. CIV.A. 8514-VCN, 2014 WL 1691250, at *5 (Del. Ch. Apr. 28, 2014) ("This Court has the inherent equitable power to appoint a receiver [or custodian] for a Delaware limited liability company even where this remedy is not expressly available by statute or under the operative company agreement."); *Afremov v. Amplatz*, No. A04-952, 2005 WL 89475, at *2 (Minn. Ct. App. Jan. 18, 2005) (Court appointing interim CEO).

ORDER

Having authority under the above-referenced authorities, NRS 78.010 et seq.; NRS 32.010 et seq.; NRS 33.010 et seq.; NRCP 65 and general equitable principles, THE COURT HEREBY ORDERS AS FOLLOWS:

1. The Court recognizes both John Colucci and Lisa King as co-CEOs of Vinco Ventures pending further order of the Court;

2. Given the potential for disagreement between co-CEOs John Colucci and Lisa King and the emergencies that have already occurred (e.g,, the Hudson Bay potential default), the Court believes it is in the best interest of Vinco Ventures to have an interim, neutral, and independent third co-CEO. The Court hereby appoints an interim, neutral, and independent party—former Secretary of State of Nevada, Ross Miller, Esq.—to serve as a third co-CEO of Vinco Ventures pending further order of the Court;

3. The three co-CEOs for Vinco Ventures are to equally share responsibilities and decision-making authority;

4. The Court admonishes all co-CEOs to make a good faith effort to work together in the best interests of Vinco Ventures;

5. The Board and Plaintiff's executives shall take all reasonable steps necessary to ensure Vinco Venture's ongoing business operations.

6. This Order shall remain in place for thirty (30) days or until this Court issues an order on Plaintiff's Motion for Preliminary Injunction and Defendants' Motion for Preliminary Injunction.

/ / /

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7. Defendants are to post a bond in the amount of Five Thousand Dollars ($5,000.00).

IT IS SO ORDERED.

Dated this 19th day of August, 2022

JM

90A DCE 2761 6AAC
Timothy C. Williams
District Court Judge

Respectfully submitted by:

KEMP JONES, LLP

/s/ Nathanael Rulis
Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 8/19/2022

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Staci Ibarra	sibarra@pnalaw.net

Madison Zornes-Vela m.zornes-vela@kempjones.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 8/22/2022

William Kemp
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Exhibit 6

Electronically Filed
9/6/2022 1:19 PM
Steven D. Grierson
CLERK OF THE COURT

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.

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

me as well.

THE COURT: All right. And once again, good afternoon. And I guess we might as well get started. We have a few matters on calendar this afternoon.

And I guess first in line would be the status check. All right. And that's regarding the expiration of the August 17, 2022 order payment to vendors, salaries, et cetera. Who wants to start?

MR. CLARK: Your Honor, Andrew Clark for Plaintiff Vinco. We're not aware of any issues on the payroll payments. That's where we left it.

And the last hearing was we all kind of figured that was up to the three co-CEOs to decide to continue paying. So I believe we've continued to do that, so.

THE COURT: All right.

MR. KEMP: Your Honor, there seems to be a little bit of a problem with paying some of the vendors, but I don't think it's to the point now that I want to bring it to the Court's attention specifically. I just want to preview it.

So we're going to have the co-CEOs try to work it out, but there does seem to be a case where some vendors are preferred and some are not. But in any event, we'll try to work on the co-CEOs and see if we can get that resolved that way.

THE COURT: I understand.

MR. PARKER: Your Honor, one other thing. We've not seen a full accounting. And that's one of the problems in terms of who's

getting paid. We don't know exactly why certain vendors appear to be being paid, others are not.

We'd like a -- an account summary. Perhaps for the last two months, which would be helpful I think to everyone to make sure that all vendors are being paid and all employees also being paid.

When we came here last time, we presented a chart that provided the I think at a glance the ability of the Court to see the Vinco umbrella and all of the affiliates.

And so, we're not sure that all of the employees for all the affiliates are getting paid. So that's something that we'll have to do a deeper dive, but to do so, we need an accounting history for the last two months.

THE COURT: All right. Sir?

MR. CLARK: Your Honor, we don't have necessarily any objection to providing who the company has paid. There are certainly some disputes over which vendors are being paid and why, but we can get more into it if Your Honor would like. But for an accounting on what has already been paid, that's -- we wouldn't object.

MR. PARKER: That sounds great, Your Honor.

THE COURT: All right. We might do -- have a little follow up on that.

Okay, continuing on, I guess that I deal specifically with that issue.

And I guess next up would be where should we go from here? There was a motion for an order to show cause why Plaintiff should not

be held in contempt and/or admonished for violating the August 17th, 2022 order. Is that really still ripe for adjudication at this point?

MR. PARKER: Your Honor, I believe we were able to reach an accord.

THE COURT: Right.

MR. PARKER: I had conversations with Mr. Taska, probably the most pleasant I think I've had since we started.

And this was on Monday I believe Monday morning and then Monday evening. And we were concerned about an unauthorized Board meeting. And that was one of the concerns we had.

Mr. Taska has agreed, I believe, that no Board meetings would continue or be scheduled without complete consent. And if there were, he would give me a heads up before those meetings would be scheduled, I believe, is the accord we reached.

MR. TASKA: I would squeak that slightly to say that our side agreed to put that particular Board meeting off and not go forward with it, given the dispute.

And we said that we would file a motion for clarification on the Court's order regarding the unanimity requirement for Board meetings, which we went ahead and filed last night. And I agree with Your Honor that's not quite ripe yet for communication at this point.

THE COURT: Right, in fact, I've already read it, but -- and I realize it's -- has it been set for hearing yet? I think so.

MR. CLARK: It hasn't, Your Honor. And just one clarification. We submitted it to the Court on OST.

THE COURT: Right.

MR. CLARK: It didn't get filed. It's not on the docket.

THE COURT: Okay, that's what my next question was, which is -- and I was thinking about it. And I guess -- I mean, each time we come down here, I do worry about spending the company's money. I don't mind telling you that.

And I was -- and looking at it, I guess -- and it's my recollection that was more of a motion not necessarily for clarification of relief from the prior order based upon 60(b)(1), something to that effect because really people forget there's no motion for clarification.

MR. PARKER: Exactly, Your Honor.

THE COURT: Right, there just isn't.

MR. PARKER: That's right.

THE COURT: There has to be a motion to seek relief pursuant to Rule 60(b)(1) potentially for inadvertence, mistake, and those types of things, right?

MR. PARKER: That's right.

MR. CLARK: And we did, Your Honor, cite Rule 60(b)(1).

THE COURT: Well, I saw it --

MR. CLARK: And --

THE COURT: -- but it was after the motion -- you read -- I read -- I actually read the two cases that were cited, too, just to see -- just to make sure I wasn't missing something.

And one was a chiropractic informed consent medical malpractice case and the other was a criminal case that -- but anyway.

MR. CLARK: Right, Your Honor. And we would just not --

THE COURT: I just want to tell you, I read this stuff. I do.

MR. CLARK: We agree, Your Honor. We would just --

THE COURT: Even before it becomes contested, I read it sometimes.

MR. PARKER: Well, we don't want you to get bored.

MR. CLARK: That's right.

MR. PARKER: Your Honor, one other question that Mr. Rulis just pointed --

THE COURT: Do you think that's something you could work out before hearing it? Because I'll set it, but it seems to me that's something that could be worked out specifically.

And it's my recollection it's regarding setting Board meetings and whether it has to be unanimous, the 48-hour exception to it and so on and so on.

And I mean, my thoughts were something to this effect. I mean, I get it as far as 40 hours. I realize, too, that there has to be an agenda, accompanying. That's pursuant to the bylaws, right?

MR. CLARK: Correct, Your Honor, and in the order.

THE COURT: Yeah, I get that. But -- and I understand how potentially having a unanimous requirement could be an impediment potentially for key issues down the road. I mean, I get it. I understand what's going on.

And -- but I was hoping we'll set it and maybe you could work it out.

MR. PARKER: Sounds good, Your Honor.

THE COURT: Because I don't mind saying this. When it comes to corporate governance, I would rather have the corporation and the entities in charge try to work it out versus me trying to take over a corporation. I'm not here for that.

MR. CLARK: Sure, Your Honor, I'd be happy to speak with opposing counsel, see if we can get that settled.

THE COURT: Yeah, but we'll get that set.

MR. PARKER: Your Honor, one thing I wanted to go back to and I apologize, but Mr. Rulis pointed out to me and I think it's a point well taken, this -- the order he put in place I think has been effective. And we want to know how long he can keep it in place. I think there's --

THE COURT: Wasn't that one of the reasons why you're here today, right?

MR. PARKER: It is. And you started with status check. And I should have brought this up earlier. But I think your order has been not only effective in the short-term, but I think there's a reason behind continuing it in it's current form.

Because we'd like to have the Court's order in place to make sure these employees are continuing to get paid. And the Court's interest in knowing that also I think sends a message to the company and to the employees that they were will continue to get paid while this company is ongoing.

THE COURT: Well, I think one of the purposes I -- I mean, I had a short -- what was it 14 days, the original?

MR. PARKER: Yes, Your Honor.

THE COURT: And then, and today I think I placed on the record earlier that you will have a status check. And part of the status check will focus on whether it should be extended or not.

And I was thinking of it from his perspective, because one of the things we have to be is very efficient and not have to run down and file a motion for everything. And that's why we have Business Court, right?

And so, I had anticipated one of the topics we might have today would be something to the effect why should we extend it for another 30 days. And we have another 30 day status check.

MR. PARKER: Absolutely Your Honor. And I will --

THE COURT: Right? And so, my point is I'm not saying it's going to be there forever, but for now.

MR. PARKER: And I will tell you --

THE COURT: And think that's what I commented on, Mr. Kemp, is something like that, right?

MR. PARKER: Well, I was going to read it to you.

THE COURT: Right.

MR. PARKER: Paragraph 6 of the order says just that. It gives the Court and the parties notice that until further notice and ordered by this Court regarding preservation of status quo moving forward as if you knew we would be re-visiting this issue at least 14 days later, perhaps even beyond that.

THE COURT: Well, I think I knew that, number one.

And number two, there was a request for a longer period of time at the time. And I think I commented on the record that I would like to re-visit it without having to file motions and all those things because potentially we could have a status check and I could dissolve it if I feel things are appropriately moving on.

But go ahead, sir, Mr. Taska.

MR. TASKA: Yeah.

THE COURT: I don't want you cut you off, sir.

MR. TASKA: Yeah, not at all, Your Honor. I think that -- and I don't mean to divert Mr. Parker's issue, but I think that is part of this order. I think you could see from the two motions that we have pending that we've got a lot of problems with the order.

And maybe what we should do is put that issue at the end, see how Your Honor rules on the two motions, and then, take up that issue.

I mean, one of the problems is --

THE COURT: And when you say the two motions, I want to make sure I'm clear. Which two motions do you mean?

MR. TASKA: The motion that we just talked about that's not set yet --

THE COURT: Right.

MR. TASKA: -- on the unanimity requirement for Board meetings and in the motion that we have on for today.

THE COURT: I understand. I do, I do.

MR. TASKA: Okay, so, you know, one of our problems is this

kind of gets to the -- some of the fundamental disagreements between the two sides is we're concerned -- I mean, you know, our client has a fiduciary duty to the shareholders. And it's nothing against the employees, but we got to think about the shareholders and shareholder value.

And you know, as Your Honor is aware at this point, the company's in a cash crisis. And I don't know that we want to just agree to another 30 days of this payroll.

I think it's something we need to perhaps discuss offline and then bring back to Your Honor. I don't think it's something that -- I mean, we would oppose it if that's the request being made today.

THE COURT: All right.

MR. PARKER: Your Honor, procedurally, I don't know how he can oppose a status check on the propriety of going forward with the order. I think that's a procedurally incorrect approach to take.

Substantively, Your Honor, my client has informed me and has allowed me to express to this Court that she's prepared to waive her fee as a co-CEO in the interest of the company and in the interest of the employees. So I think your order is very important. The maintenance of it is very important.

And I think the company and the employees benefit as a whole, including the shareholders because the company depends on the employees to have your order in place.

We're concerned about improper spending, I mean, to the tune of the 875,000 that we became aware of last week for legal fees

without to our knowledge any Board authority, any Board action, any minutes to reflect that action.

And so, I'm concerned that Mr. Taska's client are more concerned -- perhaps is more concerned about his own CEO income because we also became aware of a new contract that he approved for himself of a quarter of a million dollars, I believe, with the potential I think of up to 380,000, while we have employees that may not get paid.

So I think the Court's order is something that's not only appropriate, but needed at this time to maintain the status quo of this company and all the employees and shareholders that rely on it.

MR. KEMP: Now, Judge, it's only a cash crisis when it's something they don't want to pay. You know, they pay the New York attorney $875,000. I think that was on August 1st.

That's -- and the payrolls are $75,000. That's well over 14 payrolls. You know, I can't really do the math in my head that quickly.

MR. PARKER: August 2nd.

MR. KEMP: And then, they pay millions of dollars to this AI-Pro outfit upward of 3 to 5 million. And we see nothing that's come out of that.

And as Mr. Parker mentioned, Mr. Colucci gives himself an employment contract for potentially 350 million, which is --

MR. PARKER: 1,000.

MR. KEMP: -- 1,000 excuse me, which is, yeah.

MR. PARKER: We all just kind of raise our hands when he said that.

MR. KEMP: It might be 350 if you get rid of unanimity requirement. But anyway, you know, it's only a cash crisis when they don't want to spend money on what they want to spend it on.

But I think this reiterates the point that we should be seeing these checks. You know, how tough is it to send at least the co-CEOs all the checks that were written at least on a weekly basis or a bi-weekly basis.

THE COURT: Well, shouldn't though -- shouldn't the books of the company be made available for inspection anyway, right?

MR. KEMP: They should anyway, Your Honor. And I'm informed that we have -- we've seen checks up to I think August 18th or 19th and we haven't seen anything in the last two weeks.

And I'm not suggesting they're moving the company treasury, but you know, if there's a cash crisis, this money must be going somewhere quick.

And I'll remind the Court that the last time there was a cash crisis, when the loan was allegedly called due, we had to bail them out. Okay, I mean, you know back to Hudson Bay thing.

So if there is a cash crisis let us know and we'll do whatever we can to help, but I really think continuing a TRO for 30 days, two $75,000 payrolls, $150,000, counsel says there's a cash crisis. He can't pay $150,000, I just don't think that's a well-founded argument.

MR. TASKA: So Your Honor, if I can respond to those points. First of all, Mr. Parker suggested that I was doing procedurally improper. I'm not sure I understand that. He can make a request that a certain

provision of the order continue on, but I can't oppose it? I'm not really following that at all.

Second of all, one thing I learned from the last hearing I was at here, Your Honor, is that Your Honor's not going to get into whether my side's allegations are correct or their side's allegations are correct.

THE COURT: I'm glad you noticed that.

MR. TASKA: I did notice that, Your Honor.

THE COURT: Yeah.

MR. TASKA: So I'm not going to go down that rabbit hole --

THE COURT: Right.

MR. TASKA: -- today. So if they want to start slinging mud and they want to start talking about this payment and, oh, I'm not saying they're looting the company, but the money had to go -- I mean, let's cut it out. I mean, if they want to get into that, we can get into that.

We can talk about where the money is that they -- where they want the money to go, the payments that they're trying to make and how it's going to into their private companies.

I'm not going to get into that. It's a waste of time. So what I would like to do, Your Honor, is the company -- one thing I think both sides agree on is the company is in a cash crisis.

And we're talking about expenditures like any other expenditures, that should be decided on by whatever body at the end of this hearing is governing the company.

So I don't it's something that should be decided by the Court respectfully who's not following the day-to-day cash flows of this

company.

So I just think it's a premature issue for the Court to decide today. And the parties should try to work it out with the respect to whoever's governing it.

THE COURT: All right. What we can do is let's go on to the next issue. And then we'll re-visit this because I do have some thoughts.

And you are right. I don't get down in the weeds. It's probably the best way to say it. I try to stay above that. And really and truly, try to determine under the facts as we know them moving forward what would be in the best interests of Vinco Ventures, Inc. And that's kind of how I see that.

But let's go -- what was the other -- there was another matter I guess we had to deal with and that's dealing with Mr. Miller; isn't that correct?

MR. TASKA: That's correct, Your Honor.

THE COURT: Yeah, let's go there and then we'll --

MR. TASKA: Do you mind if I approach the podium here?

THE COURT: Sir, you can do that. No problem. You can flip it around. Put it wherever you are comfortable and all those things.

MR. TASKA: Okay, so Your Honor, this is our motion that we filed regarding the co-CEO structure. And look, we understand it's not realistic given the history of the proceedings here Your Honor's going to take Mr. Colucci and put him back into power and remove everybody else from power in terms of the interim CEO situation.

What we're really asking for here today is that the Court take

down this tripartite co-CEO system that's put into place by the Court's order and instead put into place the long-time CFO and COO, who their clients brought into the company originally, to mind the store, so to speak, Your Honor, till we get to the preliminary injunction phase of this case.

And we can figure -- or the preliminary injunction hearing and Your Honor can decide who's going to actually run the company. That is what our suggestion is.

And I want to just give a little bit of context here. And I apologize that some of this is repetitive, but I do think the context is important.

So we've talked about it. This company is in a existential crisis. Your Honor heard a lot about that already. It's down to about $17 million in cash and its regular burn rate that's about two months of operating cash is what I'm told.

And so, we need to ask ourselves, who's responsible for running this company in the interim here? Who's going to keep this company alive when it's in this cash crisis until this Court decides which side is the right side in place?

Well, one of the possibilities is the Board of Directors, right? The Board of Directors of course under NRS 78.120 is the entity that is supposed be running the company.

The statute says that full control over the affairs of the company, that's a quote, should be with the Board of Directors. And Your Honor in your -- in the August 17th and 19th orders that Your

Honor entered, they also give the Board certain authority.

The problem is -- and this gets back to the unanimity requirement, based on the way which Defendants insist that Your Honor's order be interpreted, the Board of Directors of this company's powerless.

And this gets into the motion that we filed and that they filed and I understand we're not going to argue that here today, but let's take the position -- let's just assume Defendants are right. Let's say they win this argument. And they're on a winning streak. They probably will win.

So there's unanimity required for all Board meetings whether they can take place at all.

So what that means is that any member of the Board of Directors can filibuster, cannot allow a Board meeting to take place just by saying I'm not going to have that Board meeting take place.

Look, we don't need to get into the nitty gritty of that motion and how the order reads. Let's just say they win. And I think they would agree that means any director can say, no, no Board meeting is taking place, okay?

So now we have any director can hold this company hostage, can hold the Board of Directors hostage. The entity, that's supposed to have full control of the affairs of the company, any director can prevent it from meeting and conducting the company's business.

And Your Honor, the reason Defendants are taking this position is because they know on any vote of consequence at the Board level, they lose. It's 3 to 2.

It's not -- they call Mr. Colucci. He's the wild man. He's the one who's going crazy. It's not Mr. Colucci. It's Mr. Colucci and the other two independent directors of this company. Those three are going to vote on the issues of consequence against the two directors that are in their camp, okay?

That's why they don't want the Board to meet. So let's say that win. They're on their winning streak, they win that. So what do we have left? The Board is neutered. It's effectively rendered powerless because it's never going to meet again.

The only thing we have left then is this triumvirate, this tripartite group of CEOs that's been put in place.

And when we look at those three CEOs, we have the Defendant King is one of them. And I'm not going to go where they immediately went as soon as they stood up and talked. I'm not going to get into all the allegations against King. I just won't do that because Your Honor's not going to decide that.

But what I will say is that I think it's pretty clear from our papers that our side does not trust Ms. King. It's pretty clear from their papers that their side doesn't trust Mr. Colucci. So those are the two CEOs.

THE COURT: I agree with that.

MR. TASKA: Okay, nobody can dispute that.

THE COURT: Right.

MR. TASKA: So the one person left, the one person left is the third CEO. And that's going to be the deciding vote, the deciding vote

on whether this company, this public company, survives.

And Your Honor said that the third CEO should be independent and neutral. And respectfully, Your Honor, the -- I read the transcript. Mr. Miller essentially was sort of pulled out of the crowd here. There was no vetting of Mr. Miller as to his neutrality or his independence. There were no other candidates suggested.

And then, you know, I don't want to harp on this, Your Honor, because we went through it the other day, but it is now ripe for this motion.

The very first CEO meeting, the co-CEO meetings, Mr. Miller tells the group that one of his two advisers for purposes of informing himself to make -- to be able to make decisions on behalf of the company is Defendant's guy. It's Defendant's guy in the room with him.

Mr. Jesse Law is sitting in the room with Mr. Miller. He's the manager of one of the ZASH entities, which is Defendant Farnsworth's companies. It's a private company. That's the guy who's in the room with our neutral and independent CEO.

THE COURT: Now here's my question. And I thought about that. And I don't know the whole history behind specifically what went on, but is there any evidence that Mr. Miller had any sort of affiliation, friendship, or relationship with any of the players in this case before his appointment?

MR. TASKA: Your Honor, I don't know the answer to that. Mr. Miller's here. He can ask that. I don't know if he knew Mr. Law before or he knew anybody on the other side before, he's got some

affiliation with McGuire Woods where it seems like a lot of these players on their side have come from.

But that's something he can answer, but all I can tell Your Honor is that the mere fact that he is being the adviser, he's sitting in the room with Mr. Miller makes Mr. Miller unable to maintain his independence. It's not his fault. I don't think it's his fault.

THE COURT: But see, I kind of look at it slightly different. And here's my point. I don't mind telling you what I'm thinking about.

If hypothetically, I was appointed a neutral CEO for the company, right, and I don't know much about the business and I feel I have an obligation to educate myself on their structure, their operations and so on and so on, so I would want to start talking to both sides.

MR. TASKA: I'm glad you raise that, Your Honor. We are in the process of filing. It took us a while and I apologize to the Court and to counsel for not having these right here and right now.

THE COURT: But you understand my thought process?

MR. TASKA: Yeah, I do. I do. And this is right on the point with your thought process. One of the things that we were getting are declarations.

And I believe we're going to get them from the -- all three of the independent directors, as well as the CFO and the COO, who are the two top officers in the company.

And one of the things Mr. Miller says in his brief is while he has not and will not be unduly influenced by anyone during his role as interim third co-CEO, he must of course interact with a number of

individuals from both sides of the litigation.

THE COURT: Right.

MR. TASKA: They define our side as who? The three independent directors, right? And they also say that the CFO and COO have thrown in with that side.

They're submitting declarations today that say in the week and a half or whatever it's been that Mr. Miller has been there, where this company's trying to survive day-to-day making crucial decisions about where to send cash, outside the context of those co-CEO meetings, Mr. Miller hasn't had a single substantive conversation with any of them. That's what their declarations going to say. They're being filed right now. We'll provide them hard copies hopefully today before the end of this hearing.

So Your Honor said shouldn't we hear from both sides? I agree, but it sounds like that's not happening so far.

But what we do know is he's certainly hearing from their side. He's sitting in the room with Mr. Law, Defendant's guy. That's what we know is happening here.

We also know and Your Honor, you know, is in a situation where we want to be profane and vulgar, but we heard -- we heard on one of the calls, at the end of the COO call, Mr. Colucci was about to hang up.

And a voice comes from Mr. Miller's screen. I don't know who it was, but somebody's telling Mr. Miller this mother F'er, we'll still have a quorum after he hangs up.

This is what we're dealing with. That's the screen on the Zoom that's supposed to be neutral and independent. And that's what we're dealing with, calling Mr. Colucci a mother F'er.

And again, it's not Mr. Colucci. It's Mr. Colucci. It's the other independent director and the other independent director, okay. All three of them are aligned.

Then we have Mr. Jones and Mr. Garrow or the CFO and COO. They're also aligned. And they're not aligned because they are -- they've thrown in with Mr. Colucci.

Mr. Colucci got involved as an independent director of this company in June. He's known these people -- he knew these people for about six weeks before Defendants were fired.

And what happened was -- and as we said earlier, they knew -- they've known them from the start. So if he's going to be -- those guys are going to be loyal to anybody, Garrow or Jones, they're going to be loyal to their side, Defendant's side, okay?

So but in instead what happens is Defendant's misconduct in the eyes of Mr. Jones and Mr. Garrow is so bad that they have thrown in with Colucci in that sense.

The declarations are going to talk about this, too. They have been promised anything by Mr. Colucci. They don't -- they're not being promised Board seats. They're not being promised benefits of any sort.

Maybe, just maybe Mr. Garrow and Mr. Jones have concluded that it's not in the best interest of the company to be sending out cash to private companies owned by Defendants. Maybe that's what's

happening. Maybe he's not biased and he's -- those guys are not biased. Maybe they are just taking that position.

And look, that's right, because there's no bias involved with them with Mr. Jones and Mr. Garrow, that's why we're saying that those guys ought to be the ones minding the store, running the company, making sure on either side no cash goes out that's not supposed to go out.

Then, when we have the preliminary injunction hearing in a few weeks, Your Honor can decide who's running this company and we can get back to business at least through the duration of the litigation until there's a final determination.

But you know, in the interim, it's -- as I said, there's no Board. There's no Ms. King. There's no Mr. Colucci. There's Mr. Miller. He's the deciding vote.

The company is in his hands. And so far, what we have seen frankly and with all respect to Mr. Miller is some disturbing evidence that Defendants have put a mole in on his side.

And they're whispering in his ear. And they are advising him. And you know, beyond the substance of what's happening there, look, I know Mr. Miller is a politician. He hears things from all sides.

And he can filter through that and be independent. I know that's what he'll say, but that's not how human nature works.

He's got somebody embedded with him from the Defendant's side. He's not talking to the Plaintiff's side at all. He's not talking to the CFO or the COO at all except with -- you know, possibly on the co-COO

calls.

And you know, for appearances, Your Honor, Your Honor has an order that says the CFO, the deciding vote, the COO, who's supposed to be neutral and independent, we've got him on video in the room with Defendant's guy. That's not independent or neutral, Your Honor. We just can't keep going like that.

We can't keep going also with more leadership changes. And I agree with that. I think we all agree with that. That's not going to look good in the eyes of the stockholders, but what we're suggesting is people from the inside, people who are already there quietly step up and run this company until we have resolution on the issues in this litigation. Thank you, Your Honor.

THE COURT: Thank you, sir.

MR. KEMP: I was joking with Mr. Farnsworth that every time we have a court hearing, the stock goes up. So, you know, maybe we should have court hearing every day.

But addressing counsel's points, Your Honor, first of all, this $17 million scare figure, I don't know where that comes from. I don't think that includes the $10 million that they're getting back from Hudson Bay, which we talked about a couple weeks ago.

If they're down to $17 million, they're spending money even faster than we have, you know, in our wildest imagination. That's all the more reason to get the books faster.

You know, counsel's first point is the Board is powerless. The Board isn't powerless, Your Honor. If there's a serious issue, I think we

have it as that with the Hudson Bay situation. We dropped everything, we worked all night, we got it resolved. Okay, Mr. Farnsworth got it resolved for them.

You know, what they should be doing is reaching out and if they have items, let's try to do the unanimous consents on it. They haven't done that even one time.

Instead, they just want to call a Board meeting and cram down these things like they were doing before. And if they really need a Board meeting, and they propose to us that we want this topic, that topic, this topic, and they are important or emergency topics, they always have the right to come to Court and ask the Court to set a Board meeting. That's expressly provided for in the order. So I take issue with the claim that the Board is powerless.

You know, now they come back and they propose the exact same thing Mr. Connot proposed originally, which was let's let Mr. Jones and Mr. Garrow be the two co-CEOs who run this company and Mr. Colucci will step aside.

That's what they proposed at the very beginning because they know for whatever reason the loyalties that Jones and Garrow have to Mr. Colucci's position.

So we don't think that's a realistic solution. That was rejected at the very get-go.

You know, if they want to substitute one of those again for Mr. Colucci, and have Ms. King, Mr. Miller, and either Jones or Garrow be the co-CEOs, we'll listen to that, Your Honor. That might be

constructive.

Because all of this started when Mr. Colucci showed up about eight weeks ago. You know, you walk into a hen house and you see a fox and a bunch of dead chickens and you think, well, maybe the fox did that.

Eight years ago, all -- or eight weeks ago, all of a sudden, we have all these problems materialize. And the one thing that everyone agrees to is eight weeks ago, Mr. Colucci showed up. So I don't want to castigate him unnecessarily, but that is what happened, Your Honor.

Now with regards to Mr. Miller, and I'll let him defend his honor, but you know, Mr. Miller was a serendipitous choice, Your Honor. And I think, you know, for counsel to say, oh, Mr. Miller's in the tank for one side or the other, you know, Mr. Colucci, where's the evidence that Mr. Colucci called Mr. Miller and Mr. Miller wouldn't take his call? Where's the evidence Mr. Jones tried to talk to Mr. Miller and Mr. Miller wouldn't take his call? Where's the evidence that Mr. Garrow tried to call Mr. Miller?

You know, Mr. Miller's got a lot to get his hands around. And I'm assuming that at some point he's going to make visits to the various company offices.

But you know, this is a two-way street here. You know, they can't complain, oh, he's not talking to us when they're not trying to talk to him.

And so, with regards to that, Your Honor, I think Mr. Miller should be -- continue to be given a chance to fulfill the duties the Court's

imposed upon him. I don't hear anything specific from counsel that, oh, this happened to Mr. Miller voted the wrong way.

And with regards to this tape, you know, this allegation that there was some sort of profanity on the tape, I listened to the tape myself and Mr. Rulis and I listened to it.

And we assumed maybe counsel had the time wrong. So we listened to various different times. We couldn't hear anything on that tape.

So if counsel wants to give me a better time, I'll listen to the tape and I'll try and get to the bottom of it, but for him to claim right now that Mr. Miller was saying profanities on the tape --

MR. TASKA: That's not what I said.

MR. KEMP: Well, whoever you're accusing of doing the profanities, without any further evidence than that, there's not even a transcript of the tape. There's some reference in the pleading on it.

But in any event, Your Honor, I think we've set the procedure in place. Yeah, there's going to be some speed bumps at the beginning. But I'll view that what they've alluded to is anything more than that.

THE COURT: Thank you, sir.

MR. PARKER: You want to go first, Amy, or would you like me to go first?

MS. SUGDEN: No, go ahead, Mr. Parker.

MR. PARKER: I think you must have started something, Joel. We're all coming to the podium now, which I actually like. Your Honor, I'd like to first start off where Mr. Taska started off. He indicated that he

was concerned about my remarks regarding the proper procedure for attacking or addressing the Court's prior order of August 19th.

And I wanted to point this out because I'm sure that Mr. Taska and his office realizes that under EDCR 5.514, you can re-visit an order. That's the proper way of doing so.

And the reason why I know his office is aware of that, if you were to take a look at his motion, the modification, he actually in his declaration says that he's bringing it in accordance with EDCR 5.1 -- 5.514. Let's see if I can find it for the Court.

And when I saw that, I said, well, certainly Mr. Taska knows that the proper way of having this Court re-visit its motion is to do just that file a -- I mean, it's order, is to file a motion.

And so, when I made the comment earlier that this time is not the time set to modify your order, it was simply the time to provide the Court with a status of the company.

So if you were to look at Mr. Taska's motion, Your Honor, Vinco Ventures Inc.'s Motion on Order Shortening Time, the modified order appointing Ross Miller and Lisa King as co-CEOs, they tried to file August 29th, 2022, Monday, page 4 is the declaration of Mr. Taska.

Paragraph 3 is where Mr. Taska says that then he makes this motion or his declaration under EDCR 5.514 on Vinco's behalf and in good faith and that they're supporting the modification of the Court's order of August 19th.

Today's hearing was not an attempt to modify the order with regards to payment of employees. The Court wanted an update

because the Court was concerned about its employee -- the employees of Vinco Ventures, the company that Vinco Ventures is and its of course stockholders.

And so, when he gets up and tries to argue for modification of something that's not on the motion, nothing has been briefed, mainly the payment of bills and employees, I take exception to his procedural infraction.

And so, that's why I brought that forward, especially given his own motion that seems to support my position on this and what's the appropriate procedural mechanism to modify the Court's order.

And I also find it strange that Mr. Taska, after trying this approach last week, is again trying to argue the merits of the Court's order of August 19th after we participated in three lengthy days providing the Court with what we consider to be supporting facts and the case law.

Now if I were to shift gear, Your Honor, if I could, to the current motion, we provide in our opposition a tremendous amount of documents.

And I apologize up front. Some of the documents were a lot longer and would take quite a bit to read, but we pointed to the pages of particular concern to the Court to be able to evaluate the disclosures made by Ms. King.

And if you were to look at Plaintiff's motion, Plaintiff's motions from page 6 to page 12 is simply a collage or criticisms against Ms. King.

And Plaintiff claims that Ms. King did not disclose her interests

or involvement with Magnify You. And so what I did Your Honor, is identify all of these documents, documents filed in accordance with SEC requirements where Magnify You and Ms. King's relationship to Magnify You has been properly disclosed.

And Your Honor, if you would like me to go through Exhibits A through M, I can, but I'm sure the Court read them and referred to the particular pages that we identified in our brief.

But just to hit some of the highlights, Your Honor, Exhibit B is the form 8-K. And it identifies on page 2 of this document related party transactions, Your Honor. Do you have that in front of you, Exhibit B, page 2 which is Bates stamped OPPS, page 8?

THE COURT: Yeah, you can continue on, Mr. Parker.

MR. PARKER: All right. And you see under related party transactions where Magnify You is identified and Ms. King is identified?

In fact, it says it says since the beginning of the company's last fiscal year, the company has not engaged in any transaction in which Ms. King had a direct or indirect material interest within the meaning of item 404 within parenthesis (a) of regulation SK except for certain loans from the company to Magnify You. Are you able to see that, Your Honor?

THE COURT: Yeah, but you're on what page again?

MR. PARKER: This is the second page of Exhibit B, but it's -- if you look at up --

THE COURT: Bates stamp.

MR. PARKER: -- Bates stamp is 8. OPPS --

THE COURT: Okay, I'm right there.

MR. PARKER: All right. If you go to Exhibit C, this is the form 10-Q for Vinco Ventures, Inc. And if you were to look at page 25, but it's actually Bates stamp 39, again, sorry, 38, again, Magnify You is specifically identified in the second full paragraph. And it discusses and discloses Ms. King as a founder of Magnify You and serves as its Chief Executive Officer.

So for Mr. -- for the Plaintiff to suggest that Ms. King has done anything untoward, has failed to disclose, that's ridiculous. It's not supported by a single document.

I would refer now the Court to Exhibit D. And in particular, Bates stamp OPPS 157. This page identifies the loan investment, held for investment by a related party Magnify You in the amount of $4 million.

And it speaks to the October 12th, 2021 loan of 1.25 to Magnify You, the interest rate, and the maturity date, I'm sorry. Again, full disclosure, Your Honor.

Going to Exhibit E, Your Honor, emails between Phillip Jones, the person, the CFO of the company and --

THE COURT: What's the Bates stamp, Mr. Parker, on that?

MR. PARKER: This is OPPS 218, 219, 220, all the way through to 226. And I would direct the Court's attention to page 2, Bates 220.

This is an email from Phillip Jones, May 31st, 2022 regarding Magnify You's payroll. Again, there's no lack of disclosure, no lack of

knowledge to Magnify You's relationship to Vinco, payment of its employees, and Ms. King's involvement.

The promissory note, Your Honor, between the company was actually prepared by Lucosky Brookman. The law firm Dale Boken [phonetic] was here at one time attempting to be admitted pro hac vice, prepared -- and her firm prepared this document. That's Exhibit F.

Exhibit D is the security agreement again prepared by that same firm, the firm retained by Vinco at one time. Your Honor, if you go to Exhibit H, this is the minutes of the meetings of June 12th, 2022.

And if you go to the second to last paragraph, the last full paragraph.

THE COURT: What was the date?

MR. PARKER: Bates -- 245, Your Honor. I apologize.

THE COURT: I got it. I'm right here.

MR. PARKER: Phil Jones explained that ZDB spends approximately $4 million per month and that the company has approximately 95 million of unrestricted cash and 33 million as due to be paid to Hudson Bay in July. $20 million is earmarked as PZAJ, P-Z-A-J. And 2 million earmarked for Magnify You.

Again, the financial relationship between Magnify You and Vinco has been fully vetted, fully disclosed and was -- and everyone involved was aware of it.

Now Exhibit I, Your Honor, is an email chain between Ms. King, Mr. Jones, and Adele Hogan.

THE COURT: What's the date? What's that?

MR. PARKER: These are Bates stamped 247 through 249. And Adele Hogan in this email is indicating that she's drafting the promissory note that we just saw a few moments ago as well as the security agreement.

If you look at 248, the email from Adele Hogan to Lisa King and to Phillip Jones of May 30, 2022 at 12:39 p.m., it says to Lisa, this is from Ms. Hogan, these documents can be forwarded to your counsel. This is a draft of the note and security agreement.

Again, for Plaintiff to come to this Court, suggest to this Court that there wasn't full disclosure between Ms. King and the Vinco Ventures officers, Board members, and counsel regarding Magnify You defines all of these documents, Your Honor, and the filings made with the SEC.

Your Honor, if you were to look at Exhibit J, and these are Bates stamped 250 through 252, further emails between Ms. King and Adele Hogan and John Monna. Adele Hogan and John Monna are both with the Lucosky Brookman firm.

And the first page discusses items that have to be taken care of. One is the secured promissory note, the Magnify You security agreement, the corporate HQ 8-K. Bulletpoints right here on page 1 of this document, Your Honor.

The next exhibit, Exhibit K, Your Honor, is an email again Lucosky Brookman is identified on the email. John Monna, M-O-N-N-A, is attaching as a part of this cover email, the security agreement that was prepared by that firm just to confirm to the Court that that's the firm,

the firm hired by Vinco to prepare these documents on behalf of the company.

And I attached the actual security agreement, which was attached to the original email. And that's Bates stamped 253 through 267.

Exhibit L, Your Honor, is Bates stamped 288 and 289, an email between Ken Slack [phonetic] of ZASH Global, Phillip Jones of Vinco Ventures, and Lisa King of Vinco Ventures. And it talks about the costs related to Magnify You.

The second page, Your Honor, I apologize 289, is 269 I apologize is not very legible. So small-- the figures are small. This is how it was provided to me.

But it's certainly an indication that the costs related to Magnify You is known to all. And Your Honor, the last exhibit, which is also the exhibit that Mr. Kemp gave me, I've already attached as Exhibit M.

And I would have you look at the last two paragraphs of Exhibit M, which is Bates stamped 270, 271. And of particular concern it says here the last toward the bottom of the page, the audit committee considered the pre-revenue nature of Magnify You and how it is essentially a start-up that could fail.

The audit committee also discussed a strategic value of obtaining ownership in and lending to Magnify You and how in their judgment it fits into and appears with the company's current business and future plans, including potential 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 transaction and the related party nature given this is current and prior rules with the company Magnify You and ZASH.

And this is May 19, 2022. Plaintiff's attempt to bring this forward to the Court now three months later, knowing all this has been vetted by counsel and by the officers of Vinco Ventures in an attempt to support a very weak argument that Lisa King should be removed as a CEO.

What I'd like for the Court also to consider is the motion, the actual motion, and some of the comments made in the motion. Mr. Taska gets up and says to this Court we want all the CEOs removed. Your Honor, we re-visit your order in that respect. And let's just have Mr. Jones and Mr. Garrow come in.

Mr. Jones actually sent the termination letters to Rod Vanderbilt and Lisa King. I can't imagine him being neutral. He has shown his bias. He's shown his allegiance to Mr. Colucci. That's number one.

Number two, Mr. Taska's motion actually says that he's not looking for all the CEOs to be released, just everybody except Mr. Colucci.

He changed his position I think on the fly, but the original part of his motion says just make Mr. Colucci the CEO as if he hadn't done enough harm to this company. And if you won't do that, then put Mr. Jones and Mr. Garrows in place.

Your Honor, Mr. Colucci has proven himself to be problematic. He's not an independent director. He's not a competent CEO in our opinion.

The Court has given Mr. -- in my also humble opinion, the Court has given Mr. Colucci a chance to actually make a better -- make better decisions for this company in working with Mr. Miller and Ms. King.

Again, they brought the company along with Mr. Farnsworth to where it was before he came. And in eight short weeks, he's been able to make a mess of that company and its related companies.

I don't believe there's any support to remove Ms. King. I'll let Mr. Miller stand for himself, but we did mention in our brief that Mr. Miller is in an attorney licensed in the state of Nevada in good standing. He is a current county commissioner for Clark County. He's a former Secretary of State.

I don't believe that any personal relationship, professional relationship would come or interfere in his professional judgment. He certainly will not risk his license and his credibility in this community for the faith that this Court has put in him by appointing him as a co-CEO because of any relationships. Unless the Court has any questions, I will turn the mic over to Ms. Sugden.

THE COURT: Not at this time, sir.

MR. PARKER: Thank you.

MS. SUGDEN: Good afternoon, Your Honor. Amy Sugden on behalf of Ross Miller. Your Honor, our opposition is short for a

reason.

That's because despite all the noise, a photograph and an audio file I couldn't either hear, was unable to access, it is not shown with any substantial evidence that there has been any bias that would create the basis then to modify this Court's prior order.

We point out that no less than four days from the first CEO meeting on the 19th of August, somehow Mr. Colucci has determined this is an unworkable tri-party relationship. That is not the case.

We presented through Mr. Miller's affidavit, and he's obviously here in Court as well, regarding the fact that he had voted with Mr. Colucci regarding the contentious issues they feel very strongly about the prior law firm.

He said let's keep him on his counsel. He voted with Mr. Colucci. There is not, despite the Plaintiff's repeated comments of his 2 to 1 dichotomy, that has actually proven to be true.

So therefore, there's no basis. This Court said it's not going to pick sides. What we need to do is keep the status quo. This Court picks Mr. Miller. It wasn't random, but he is as we've shown in the pleadings we all know that he is a former Nevada Secretary of State. He's the current Clark County Commissioner and a licensed bar member in good standing.

So, of course, he did as what Your Honor said when he first got appointed that Saturday became aware and prepared as quickly as he could for that meeting on Monday.

I certainly am here to have Mr. Miller if he has anything else to

weigh in on, but there's no showing that they can prove that there's any bias.

It's just not in the record now. So we would respectfully request that you deny their motion in its entirety.

THE COURT: And as far as there's no evidence of any pre-existing relationship with any of the parties involved in this case; is that correct?

MS. SUGDEN: That is correct, Your Honor. Mr. Miller's affidavit, he sets that forth in the declaration. Up until two weeks ago, he had no knowledge or intimate dealings with this company or any of its players. I believe that's paragraph 4.

THE COURT: Yeah. Okay, ma'am.

MS. SUGDEN: Thank you.

THE COURT: Thank you.

[Counsel confer]

MR. PARKER: Just looking for my pen, Your Honor. There it is.

THE COURT: Yeah.

MR. TASKA: Just very briefly, Your Honor, to go back over some of the issues we talked about. I -- the procedural issue, I wouldn't -- I'm not even sure what we're talking about. We had an order that Your Honor entered on the 17th that said it's to expire on the 31st, 14 days later.

The issue addressed -- one of the issues addressed in that order was the payroll issue. I thought, maybe I'm wrong about this, I

thought today's status conference was to discuss that, hey, this order has expired, what do we do now. All I was doing --

THE COURT: Well, I think it's, the way I understand it's slightly --

MR. TASKA: Yeah.

THE COURT: -- different than that in this regard. And I think Mr. Parker offered this up. We're dealing right now with whether or not Mr. Miller should continue on as one of the three CEOs, right?

MR. TASKA: Understood, Your Honor.

THE COURT: Because he made a recommendation. Let him decide to what to do okay, right? And I'm listening. And I think that's one of the issues that we --

MR. TASKA: I believe that was my recommendation actually, but --

THE COURT: Okay.

MR. TASKA: -- if that's how we do it --

THE COURT: But anyway.

MR. TASKA: -- that's fine.

THE COURT: I heard that from someone.

MR. TASKA: Yeah.

THE COURT: I'll keep it at that, but go ahead, sir.

MR. TASKA: Regarding --

THE COURT: But focusing on Mr. Miller, and understand this. I mean, when we talk about issues regarding his ability to continue to serve in this instance, I mean, number one, we do know this.

And this is from his declaration, it says prior to the last two weeks of August, I had no prior dealings with or relationship with any of the companies' representatives or its affiliates.

And he certainly in parenthetical is including the ZVV Media Partners, LLC and ZASH Global Media and Entertainment Corporation.

And my point is this. We talked about bias, bias and/or enmity, but one thing for sure, I guess we can say this at the very outset, he had no conflicts of interest, right? Because he didn't know anyone involved in this case. He -- and no prior relationships and those types of things.

And then, we say -- said bias. I mean, just because you vote one way doesn't stand for the proposition that you have bias.

Counsel brought up on other areas he supported Mr. Colucci when it came to exercising his discretion and voted along with him as it pertained to keeping the law firm in place.

MR. TASKA: He did, Your Honor. I have no doubt about that. No question about that. My problem is that Mr. Miller has said in the declaration that he's neutral and independent.

We're talking about the fate of a public company turning on his vote. That's what this comes down to.

THE COURT: Right.

MR. TASKA: Okay. I had no opportunity to depose Mr. Miller to make any inquiry into Mr. Miller, to see whether, look, there's people beyond just the people he mentioned there. There's an underlying issue here involving the McGuire Woods law firm. There are other people at

issue.

I would like to have at it and examine Mr. Miller on all of the things that, you know, we want to ask him about to ensure that he's neutral and independent as Your Honor contemplated. I don't have that opportunity. Fox Rothschild never had that opportunity.

THE COURT: But my question is this though. In a general sense, and I think we would know whether he had some sort of relationship with his company in some form or fashion.

MR. TASKA: Why would you say that, Your Honor? I'm not sure how I would know. I didn't get a chance to cross-examine him.

THE COURT: Well --

MR. TASKA: All I did -- all he did was read a sentence from his declaration.

THE COURT: Yeah, but my point is this. I mean, we -- I understand taking your depositions. I mean, I've taken a few over the years, but my point is this. At this point, had -- there's been no evidence from anywhere that there was a prior relationship with the players in this case.

MR. TASKA: But how do you define the players? That's --

THE COURT: I talk about the Board members, the CEOs, the executive officers, and the decision makers as far as the company's concerned.

MR. TASKA: But the problem is there are people who are not in this room who our side believes may be sort of pulling the strings here. And we didn't have any opportunity to ask --

THE COURT: Okay. But when you say Plaintiff -- so what you're saying is this. So that's a different issue. You're saying, look, you're saying Mr. Miller's not giving your side or your client a fair shake as far as decision making's concerned?

MR. TASKA: Okay, well, all I'm saying is --

THE COURT: Right? I mean, because pulling strings is I don't think -- I'm going to be candid with you. I don't necessarily think that Mr. Miller's going to let somebody pull his strings.

MR. TASKA: Your Honor, I don't think his strings are being pulled and he intentionally knows that that's happening. All I'm saying is that the deck stacked here because they planted a mole in there.

There are a lot of people who are on the side of Defendants. They are waging a PR battle out there to -- in support of their side. There's a lot going on here.

And Mr. Miller gets picked out of the crowd. There's no vetting. There's no deposition. There's one line of a declaration. And boom, he's installed as the deciding vote on the fate of a public company. And here are the four declarations, Your Honor. Two from -- may I approach?

THE COURT: Yes.

MR. TASKA: Counsel --

THE COURT: Have you had a chance to receive it? Do we know what this is? Before I see it, I should -- I before --

MR. PARKER: Yeah, we've not seen it, Your Honor.

MR. TASKA: Providing the copies now, Your Honor. Sorry for

doing everything at once.

MR. PARKER: I'm not going to address any procedural irregularities at this point. I already have notes.

MR. TASKA: You beat me up enough on procedural irregularities.

Your Honor, in essence what these are are a declaration from Mr. Distasio, one of the other independent directors, from Mr. Goldstein, one of the other independent directors, from Mr. Garrow and Mr. Jones, who are the COO and CFO of the company.

And in each of those, it says that I haven't had any substantive conversations. Some of them, I think, Your Honor, I just got these two, but at least one of them talks about having reached out to Mr. Miller.

And yet, there have been no discussions outside of these co-CEO meetings with any of the people who have the knowledge in this company. Yet, there are discussions with their guy, Mr. Law. Mr. Law sitting in his room on the Zoom call.

So that's the point, Your Honor. And look, I can tell how -- I think I see the way Your Honor's going to rule on this. And, you know if that's --

THE COURT: But the only reason -- I mean, when we think about, you know, allegations of bias, I'm looking for actually more. I guess one thing for sure there's -- unless there's something we don't know about, there's no pre-existing relationships here.

MR. TASKA: I've had no opportunity -- I'll say this again. I've had no opportunity to explore that question.

THE COURT: I understand that, but --

MR. TASKA: And --

THE COURT: Mr. Miller --

MR. TASKA: -- Your Honor, if this is a *prima facie* case, I would think that I have made a *prima facie* case by showing that their guy is sitting in a room with Mr. Miller.

That is enough to be able to say, hmm, all right, let's check this out. Let's look a little closer at this issue. Let's explore the independence, the neutrality, to make sure that this person really is, you know.

THE COURT: Okay, but that's not what I'm saying. That's --

MR. TASKA: Okay.

THE COURT: That's slightly different than coming to the conclusion that he has bias or he's pre-disposed or he's in accord with the Defense team.

MR. TASKA: And Your Honor, that's an important distinction. We've not come to that conclusion yet. We think that is the case, but we have evidence of that. We are -- our position is that there's evidence calling into question whether Mr. Miller is neutral and independent.

And before he makes decisions on behalf of his company. And sure, he made a decision about keeping a law firm and sided with Mr. Colucci.

Let's see what happens. Why do you think they're so happy to have them in there? Let's see what happens when issues of consequence actually have to be decided.

And the Board isn't new here. Mr. Kemp, what he's talking about is nonsense. They're never going to have a Board meeting.

If they're going to have a Board meeting, when will it be, Mr. Kemp, tell us? When will that be?

THE COURT: Wait, wait, we're not --

MR. TASKA: No, we -- no, but Your Honor, we did ask. Mr. Colucci asked Ms. King after Ms. King -- after their side complained about the Board meeting, Mr. Colucci asked Ms. King, said, okay, when will you be available for a Board meeting because there are important issues that have to be decided?

And Ms. King never responded. That was two days ago. So there's not going to be a Board meeting. It's not going to happen unless of course, Your Honor, rules our way on the other motion that's not quite ripe yet.

THE COURT: Right, right. But is there anything else I need to know because I mean, don't -- when it comes to bias, even as it relates to some of the decision making, is there any evidence of bias in that regard?

MR. TASKA: Well, most of the decisions, except for that attorney -- retaining the attorney decision either did not decide. This is my understanding, either didn't decide it at all or he sided with Ms. King. That's what happened in the decisions. I have a list of them somewhere which I can dig up if Your Honor would like to see them. But with respect --

THE COURT: Yeah, I mean, but at the end of the day, I do

understand the business judgment rule. And I'm quite sure Mr. Miller does, too.

Whether -- I don't think it's a question of -- you know what it kind of reminds me of. And I don't mind saying this. I remember as a trial judge about 16, 17 years ago in a hotly contested trial and a lawyer approached the bench and he said, look, Judge, you've ruled in favor of the adverse party 10 times in a row. I remember that, right?

And I looked at him. I said, sure, the only problem here that I see is this. You need to throw more strikes. And see, that's kind of my point, you know. It's just because you vote one way or another. And that's really important to point out as a trial judge, right?

It's not a question of whether -- because this is one thing I've never done. I don't mind saying this. I mean, I try to approach every case the same way, but I don't sit back as a trial judge and say, well, I've ruled four or five times in favor of this side. I have to kind of balance it out, right?

So I go four or five ways the other way, right? And that kind of balances it out. No, it doesn't. I look at each pitch as it comes across the plate and I make the call.

And that's why I use the example throw more strikes and maybe you'll get some calls here, right, which is how it should be. Because I mean, I agree with Justice Roberts. And that's typically the role of the trial court.

The call -- I mean, the Courts in general call balls and strikes. And just as important, too, I don't mind saying this, historically, if there's

no pitch. I don't make a call, right?

And that's another reason why that lawyers try to work things out because there's no pitch. And if there's no pitch, and they've come to some sort of accord, then there's no appeal, right, and the case goes away.

But -- so am I supposed to look at the number of times they voted one way or another and that shows bias?

MR. TASKA: I didn't say that, Your Honor. Actually, Your Honor asked that question.

THE COURT: Yeah.

MR. TASKA: I don't think you should actually. What I think you should focus on is the fact that on Day 1, Mr. Miller was sitting in a room with Defendant's guy and has never reached out to what they define as the other side, the three independent directors and the people, the top officers of the company, the CFO and the COO. Hasn't happened, but he's talking to them.

And that's it, Your Honor. It's plain and simple. Is this -- am I saying that Your Honor should conclude that Mr. Miller is absolutely not neutral and not independent? No.

But what I'm saying is we put on a *prima facie* case here with no opportunity to examine Mr. Miller, to take any discovery from him, to vett him in any way at all.

We've seen in private --

THE COURT: It's interesting. That's what this case is all about, vetting.

MR. PARKER: Vetting, surely.

THE COURT: Right? And I'm not going to disagree with you in that regard, but I understand what you're saying. I do. I do. I kind of get that. I understand.

So what is your recommendation or what are you saying it look -- Judge, we need to do because the -- it was my understanding that we have a -- I mean, we could call it a question here. And I always have to come back to that. We're requesting modification and appointing the modified order appointing Ross Miller and Ms. King as co-CEOs.

MR. TASKA: Yeah, I mean, Your Honor, our recommendation is --

THE COURT: I should say motion, but go ahead, sir.

MR. TASKA: Yeah, the recommendation is that the CFO and the COO be installed to run this company. They have no -- their declarations that I just handed Your Honor confirm this. They have no allegiance to Mr. Colucci. They just met Mr. Colucci. They don't care about Mr. Colucci.

They've known Defendants for much longer than they've known Mr. Colucci. And yet, they -- they're of a like mind on how to run this company and how to save it from disaster.

Those are the people who we believe should be in there running the company temporarily until Your Honor decides who it should be, not a person who was picked out of a crowd, never vetted, and is sitting in the room with one of two warring factions. I think we can agree

on that. I mean, this is war. And we've got the neutral sitting in a room.

THE COURT: Yeah.

MR. TASKA: And not calling the other ones.

THE COURT: Yeah, well here's my next question. As far as the decision making of Mr. Miller, and I don't know exactly what all decisions that were made at the only meeting, but were any of those decisions detrimental to the ongoing operations of the company?

MR. TASKA: We believe they were, Your Honor. Any time he sided with Ms. King on approving a payment, a payment or any kind of company action that benefitted their private company, because that's the big thing. They want you -- I don't want to get into this, Your Honor, because I don't want to get into a, oh, you know, he said, she said evidence --

THE COURT: I understand, I understand.

MR. TASKA: -- but our position is that they have a singular objective, which is to drain this company of money, merge it into ZASH, maybe that's what they want to do. And then, drain it and bankrupt the company. That's what's going to happen here.

And so, that's the path it's on. They are very happy to have Mr. Miller in there because you know, Mr. Miller, his presence in there whether he, you know, he's cognizant of it or not, is allowing them to push their agenda.

Mr. Colucci, he sounds like a wild man. They keep saying that he's a crazy man. He's a mother F'er, but Mr. Colucci is only in there complaining about things and pleading for his side because he's trying to

save this company from getting looted by these other folks.

THE COURT: All right, and I think -- isn't that the argument from both sides, the same argument?

MR. TASKA: Everybody's looting, Your Honor.

THE COURT: I know. All right. Okay, anything else, sir?

MR. TASKA: No, sir.

THE COURT: Okay.

MR. TASKA: Your Honor, can I address one of the new things that Mr. Taska raised?

THE COURT: Well, just one second. Now one of the -- he brought up one important point. And I know there was an issue as it pertains to at the very outset of this journey regarding the litigation and also this whole issue of [indiscernible], dealt with the vetting of Mr. Colucci, I think, and whether it was independent or not.

And I understand the allegations here. But my point is this. If for example the Plaintiff wants to have an opportunity to vett Mr. Miller, I'm not going to preclude him from doing that, right, because we need to have more facts.

But at least at this point, I'm looking at it from this perspective when it comes to issues regarding bias. And that's why I brought up the issue regarding any potential conflicts.

And I'm focusing on number 1, it doesn't appear there's to be any evidence to support any allegations that Mr. Miller had a pre-existing relationship both from a friendship or financial interest, or any of those things with any of the parties to this litigation, number one. I think that's

important point to make.

Second, whether or not he reached out or didn't at this point because understand we're talking how long has it been, two weeks?

MR. PARKER: Yes, Your Honor since the --

THE COURT: Yeah, I mean, I can't say that's fatal to him being neutral in this case. And so, what I'm going to do, number one as far as the motion's concerned, and I'm going to keep everything in place for now.

Just as important, too, if there's a request that for vetting of Mr. Miller, that's fine. I mean, and you can see if he has some sort of relationship, both financially and/or from a friendship perspective of any of the parties to this litigation, because we do want neutrality.

Just as important, too, as far as it pertains to how someone votes at the end of the day, I would think it really comes down to the business judgment, right, as far as decision-making's concerned for a member in that -- for a CEO in that position, right?

And as far as for now, I guess there's issues regarding Ms. King. I'm going to keep her on, too. Because it does appear that and this is my concern and I've expressed this before. I mean, this is a publicly-traded company and there's certain requirements that have to be met in that respect.

And just as important, I guess, and I can't say that I'm intimately familiar with the requirements as it pertains to the Security Exchange Commission, but maybe there's a requirement to have Mr. Miller vetted anyway. Is that true or not in his current role or is that just

for CEO?

MR. KEMP: I don't think so, Your Honor, but I'm sure --

THE COURT: Is that just for Board members?

MR. KEMP: The Board members, yes.

THE COURT: Okay, I understand. That's why I said I'm not intimately family with all the workings, but anyway.

MR. PARKER: Your Honor, can I now address the new documents that we received after we made -- submitted our opposition both --

THE COURT: Yeah, go ahead, Mr. Parker.

MR. PARKER: Thank you. Your Honor, we did not mention earlier, although attached as exhibits to Plaintiff's motion, Plaintiff's Exhibit I believe it was Exhibit B.

THE COURT: Was that Plaintiff's exhibit?

MR. PARKER: Yes, Your Honor, I believe it was Plaintiff's --

THE COURT: D?

MR. PARKER: B. All right, it's actually Plaintiff's Exhibit 5, Your Honor, I apologize. It's the photograph of Jesse Law submitted. And he seems to be sitting next to John Colucci.

THE COURT: Okay.

MR. PARKER: So if just sitting next to someone means that they're biased, I would suggest that Mr. Colucci and Mr. Law had some relationship that would make Mr. Colucci biased.

It makes no sense to me that they claim that Mr. Ross Miller is biased because he was sitting next to Mr. Law, but I guess it doesn't go

both ways.

Mr. Colucci, can sit next to Mr. Law and he doesn't become biased. So I just want the Court to be aware of that. It doesn't support their position.

The other reason I wanted to discuss this -- these new documents, these three of these affidavits or declarations, Your Honor, from Phil Jones, the CFO; Steve Garrow, the CEO -- COO; and Mike Distasio, the Board member, they differ in some respects. And I had to, you know, look at this on the fly, Your Honor.

But looking at Mr. Jones' declaration on page 2, it says here despite my offer to Mr. Miller to provide information regarding the company, I've had no substantive discussion with Mr. Miller outside of meetings attended by all the CEOs.

So I don't really understand how that helps Mr. Taska's position. He's been available at the meetings, all of these meetings that are occurring with Mr. Ross Miller involved, Mr. Jones is there.

To the extent he wants to say whatever he wants to say, provide whatever valuable information he wants to provide, he's had that opportunity in the meetings.

To suggest now that he had no opportunity and no influence on Mr. Miller stands in the face of his own declaration.

Mr. Garrow says the same thing. Paragraph 4, I have had no substantive discussions with Mr. Miller outside of meetings attended by all of the CEOs.

That's exactly what this Court wants. This Court wants all the

CEOs to have the same information to have the benefit of the CFO and the COO in front of them providing them all the same information.

One of our concerns, one of the reasons why we brought our motion for TRO is because our Board members were not getting the same information or any information.

Ms. King was shut out. Mr. Vanderbilt shut out. Mr. Farnsworth shut out. And so, now the Court puts the three CEOs in a push position where they can get the benefit of all of the information at front -- up front in front of all of them. And Mr. Taska complains of that.

So I suggest to you, Your Honor, the declarations just given to you today in Court after we filed our oppositions and prior to us being and after we've had a chance to actually present our first round of oral arguments support our position, our oppositions as opposed to Plaintiff's motion.

The other thing I want to point out, Your Honor, is Ms. King also indicated that Mr. Jones has attended every meeting with Mr. Ross since he started.

And I know Mr. Ross Miller has not had a chance to come up and maybe Ms. Sugden didn't even know that, but Mr. Jones was there in every meeting, not just some, not half, but all.

And so, for Mr. Taska to get up, wave these declarations in the Court's face, and suggest that it supports their motion is simply untrue.

I supports our Court's our Opposition that Mr. Garrows and Mr. Jones have participated in the meetings and have the opportunity to

explain to Mr. Miller their positions as COO and CFO.

The other thing I wanted to point out, Your Honor, and I won't attribute this to Mr. Taska because he wasn't here at the time, but Mr. Connot did not suggest someone other than Mr. Miller in their proposed order to the Court.

If the Court recalls, Mr. Kemp suggested an additional CEO. I suggested simply Mr. Farnsworth and Ms. King. And Mr. Connot suggested just Mr. Colucci.

So if they didn't like Mr. Miller, they could have put all of that in their proposed order. Or they could have suggested someone else, but they chose not to.

Additionally, McGuire Woods --

THE COURT: I don't mind saying this. If there's going to be anyone else, they're going to have no pre-existing relationship with any of the parties.

MR. PARKER: That's right. And McGuire Woods --

THE COURT: I mean, that's how I would go. And the primary reason I went along with it I think was Mr. Kemp's suggestion at the time was essentially this. It was my understanding that Mr. Miller had no pre-existing relationship on any level with the parties.

MR. PARKER: Right.

THE COURT: And so, it's one of -- and so, it's why I get someone that's truly independent, I think that would be the first predicate to that. No pre-existing relationship.

MR. PARKER: And that's --

THE COURT: And that's why we do voir dire here to find out if you know somebody or you have some sort of pre-existing relationship.

And I like what the Court said and maybe this is somewhat tongue and cheek, but I found it ironic that we started this -- the -- our arguments talking about a full vetting of Mr. Colucci.

THE COURT: Right.

MR. PARKER: And now we've come full circle and they want some vetting to be done. They're still not supportive of us vetting Mr. Colucci, but now they want to vett Mr. Miller.

And so, Your Honor, if you're -- if your -- and this I think --

THE COURT: I mean, I don't mind saying this. If -- I have I think it's important to have transparency under these types of situations, right.

And or of course, if they want to vett Mr. Miller, they can. You know, and just is important. I don't know, I mean, I don't know how you feel this personally, but I don't know if I want to be dealing with this for a longer period of time and whether it's worth vetting or not.

MR. PARKER: Well, I'll tell you --

THE COURT: On some level, remember, at some point, and I didn't of course, this was this was -- I was just trying to think and this started a whole I guess journey. I was trying to think of a fair way to handle this because I was concerned about it.

And then, I thought about -- I mentioned the R word, receiver. And I realized that had a significant negative connotation as far as the ongoing concerns of this business.

But in essence, by bringing in an independent Board member --

MR. PARKER: CEO.

THE COURT: -- CEO, I'm sorry. CEO, I was kind of doing that in a way. You know, where you keep the corporate structure in place.

You don't have the negative connotation of a receivership. That's not a good word when it comes to businesses. I get that. You know, I've appointed a receiver many times.

Typically, you're talking about dissolution --

MR. PARKER: That's right.

THE COURT: -- all those types of things and so on.

But that's why I think when that suggestion was made, I thought it was in a general sense a good idea. I just did. You know, I don't mind telling you that, because I always tell you what I'm thinking about. And you're right, there was no significant objection to Mr. Miller at the time.

MR. PARKER: There wasn't. And there was no proposed order to the Court suggesting someone else from Plaintiff's counsel.

THE COURT: I understand, yeah.

MR. PARKER: And the only thing I would say, Your Honor, in terms of vetting, Mr. -- I think Mr. Taska uses Mr. Law as some type of scapegoat, some type of strawman argument.

There's no evidence, no argument, no documentation that has been put before this Court that shows that Mr. Miller made a decision

based upon something Mr. Law told or gave him. Nothing.

This is probably the least supported motion I've seen in a long time. And I think at some level, Mr. Taska has already conceded that he doesn't have the information.

He says there may come a time when he has it, but he said to this Court I don't want to go back and forth at this point. He just wants the opportunity to vett Mr. Miller in some form or fashion.

And I guess he's implied that he's conceding that we have a right to vett not only Mr. Colucci as a CEO, but as a Board member, which is required by the SEC requirements.

So on a higher level, Mr. Colucci has to be vetted. And I believe that segues into the motion we have, the only remaining motion today, Your Honor.

THE COURT: All right.

And sir, is there something else you want to add to that --

MR. TASKA: You're --

THE COURT: -- because I'm going to give you time -- I'm going to give a full and fair opportunity to make any record you want to make.

MR. TASKA: Yeah, Your Honor. I just really commend Mr. Parker for arguing more after a Court has ruled in its favor than I've ever seen anyone before, but I -- because we're making a record here.

THE COURT: Yeah, he had something to say and he wanted to make sure he said it. That's probably the best way to say that.

MR. TASKA: I'll just briefly respond just to get it on the record.

Look, Mr. -- the point about Mr. Law is simply that he is Defendant's guy. They know that. They're not denying it. Mr. Law is Defendant's guy. He's the one who Mr. Miller says advising him, plain and simple.

The point about Mr. Law and Mr. Colucci being in bed together is just silly. Yeah, they were all in a retreat together, all of them together but that -- I mean, that's comparing apples and oranges.

The difference is Mr. Law then didn't wind up in the room with Mr. Colucci at the first co-CEO meeting. That's the difference. That's what happened with Mr. Miller.

I -- nobody ever said that Mr. Miller was not in the presence of Mr. Jones or Mr. Garrow during the CEO meetings. Your Honor, I've seen those, the videos of those co-CEO meetings. They're pretty chaotic.

If the only way Mr. Miller is learning about how to run the company is in those meetings, oh, God help him. He needs to be having conversations with both sides as he said in his papers. And so far, that's not happening.

In terms of Mr. Colucci being vetted, Mr. Colucci was vetted. And so, that's a side show, Your Honor. It's just a side issue. It has nothing to do with the issue at hand.

The whole NASDAQ thing, which Your Honor will learn eventually when the appropriate time comes is all a red herring. The NASDAQ rules have nothing to do with the efficacy of his vote on the Board.

And look, the last thing I would say is that Mr. Colucci is just

trying to keep this company afloat. He will resign as CEO. He authorized me to say he will resign as CEO after all this is over. He wants nothing out of this. It's not a hostile takeover.

I'm on the record right now saying that. Mr. Colucci will be out after this, but that's it, Your Honor. Thank you.

THE COURT: Okay, and I don't mind, and this is more thoughts than anything. I mean, hypothetically, I mean, I don't know how long Mr. Miller's willing to serve in the current position, but if he stepped down, I would probably appoint someone independent again, right?

I just don't mind telling -- I'm going to tell everybody that because right now, we're at the stage of the proceedings where there has been a lot of allegations, but the facts haven't been fully developed. Do you understand what I'm saying?

And so, and here's my point. And we argued about what the status quo was. Well, I look at it from this perspective. The status quo as far as I'm concerned is trying to make sure the business can continue to operate first of all.

And secondly, operate in some form or fashion where there's a, quote, independent voice assisting in the decision making that won't benefit either side, but would benefit by operation of the business judgment rule what's in the best interest for the organization.

And that's how I see it. But anyway, Mr. Parker, you had a -- there's another motion, sir?

MR. KEMP: Yeah, Judge, could we have a five-minute break

before the next motion? It's 3:00, 3:08. We've been going.

THE COURT: Yeah.

MR. KEMP: And before we do that, I have a proposed order I get counsel on special master situation.

THE COURT: Yeah, we can --

MR. KEMP: If I can --

THE COURT: I guess I have a lot entered this afternoon.

MR. KEMP: Yeah. Your Honor, if I can approach and give the Court the proposed special master order, too?

THE COURT: Oh, okay.

MR. KEMP: You can look at it during the break. Five minute's fine, Your Honor.

THE COURT: Yeah, we're taking five.

[Recess taken at 3:05 p.m.]

[Proceedings resumed at 3:28 p.m.]

THE MARSHAL: Be seated and come to order.

THE COURT: Okay, I guess we'll continue on. And I just want to make sure we have some clarification as far as the record's concerned. Can we have your notes, because we're trying to keep track of everything that's going on.

MR. KEMP: We have one left, which is the motion to appoint special counsel to conduct investigation.

THE COURT: All right.

MR. PARKER: That's correct.

MR. KEMP: And, Judge, I talked to opposing counsel about

the special master order. And he wanted an opportunity to look at it overnight. And I said I have no problem with that.

THE COURT: Okay.

MR. KEMP: You know, maybe if you can make this -- there is a potential time concern, though, because Mr. Hale [phonetic] wants to be appointed in a written order before he does anything, which I understand.

THE COURT: Which makes perfect sense.

MR. KEMP: Right. But we do have a deposition set for Tuesday, a Mr. Yang. And Mr. Yang is the name that you've heard a couple times in connection with AI-Pros.

And we've been in communication with Mr. Yang. He's -- Mr. Rulis sent an email. Mr. Yang sent it back and he suggested that we do the deposition video out of whatever that right word is.

And then, he said he was going to talk to his lawyer. And as soon as he said that he was going to talk to his lawyer, we sent an email back, saying give us the name of your lawyer and we'll try to work something out.

So, you know, the deposition is set for Tuesday as we speak, but I'm anticipating they're going to ask for a brief continuance. And that gets to my problem, which is I've already served a subpoena on Mr. Yang. He lives in California and he's a resident of the Philippines, I think, or spends a lot of times in Philippines.

So I don't mind continuing it, but I'd rather have it done through a special master order, which is why I think we need to get in

front of a special master sooner as opposed to later, which is why I want to get the order signed, so we can have the hearing to do this.

And it may be moot. Mr. Yang may agree to a week or two weeks down the road or whatever, which I'm fine with, but it's better for me to protect myself, because like I said, I have served a subpoena on him. I do have a special master order to continue the deposition.

THE COURT: All right, sir?

MR. TASKA: Your Honor, I think we just need one night with this to circulate to our team. And then, we should be able be get back to Mr. Kemp tomorrow.

THE COURT: Okay.

MR. KEMP: Yeah, I don't think there's anything esoteric in the proposed order, Your Honor.

THE COURT: All right.

MR. KEMP: It's pretty run of the mill special master order.

THE COURT: So where does that put us though? Because are we circulating it to make a determination as to whether Mr. Hale can sit or whether it's appropriate to have a special master or?

MR. KEMP: I thought we'd already decided Mr. Hale --

THE COURT: Yeah.

MR. KEMP: -- to be the special master, which is --

THE COURT: Yeah.

MR. KEMP: -- we brought the order along. I think Mr. Rulis sent --

Did you send this to --

MR. RULIS: Earlier today.

MR. KEMP: Yeah, earlier today. We sent --

THE COURT: Right.

MR. KEMP: -- it to the Court.

THE COURT: So all you need to do, sir, is review the order, is that it?

MR. PARKER: Joel?

MR. TASKA: I'm sorry, Your Honor. We need to review it. I just want to give some other eyes on our team a chance to look at it and then we'll probably agree to it.

THE COURT: I have no problem with that.

MR. KEMP: Yeah, I have no problem with that.

THE COURT: Okay. Now next, we had one matter. And I think this is currently set. It was Plaintiff's Motion for Clarification on an Order Shortening Time. That hasn't been set yet, right?

MR. PARKER: No.

MR. CLARK: Correct, Your Honor. We submitted that last night in response to their Motion for Contempt.

THE COURT: Okay.

MR. CLARK: But yeah, that is response.

THE COURT: All right, I just want to make sure. Okay. And I mean, I have everyone here. When would be a good time to hear that?

MR. KEMP: Your Honor, Wednesday's don't seem to be bad for our side.

MR. TASKA: Um --

MR. KEMP: Monday -- next Monday's a holiday.

THE COURT: Yes.

MR. KEMP: Tuesday we maybe do it Mr. Yang's depo so --

MR. TASKA: Right, yeah, I --

THE COURT: The following Wednesday after that?

MR. PARKER: No opposition on the 7th, Your Honor.

THE COURT: Okay. The 7th is better?

MR. TASKA: I mean, I think we would like to get it going sooner rather than later. I mean, I could even do Friday if --

THE COURT: Yeah, I don't think we can hear it on Friday.

And you said that -- what day is the 7th?

THE CLERK: It's a Wednesday.

MR. TASKA: That's a Wednesday.

THE COURT: Next Wednesday. That's pretty quick, right?

MR. TASKA: Yeah, I think we can live with it next Wednesday. Thank you, Your Honor.

THE COURT: Yeah, and it's okay to -- if you want to appear telephonically or whatever. It doesn't matter actually. Everybody do what it needs. But -- and so what we'll do and we'll go ahead and set that for the 7th at 1:30. How's that?

MR. PARKER: Sounds great, Your Honor.

THE COURT: Okay, I mean, I'll sign that order after we're done within probably 15 minutes or so. Exhibit in the OIC?

THE CLERK: No.

THE COURT: Okay, it's in the OIC, so that's taken care of.

Okay.

MR. PARKER: So last motion, Your Honor.

THE COURT: Yes.

MR. KEMP: Your Honor, this is our motion with regards to Mr. Colucci. And let me start out with explaining once again how Mr. Colucci came to be involved with this company.

One of the other independent directors, there were three independent directors at the time, indicated that he could no longer serve as an independent director because he had discovered that he made $120,000 I think from a subsidiary company.

So he indicated that he couldn't be an independent director. So they started casting a ballot for an independent director. And Mr. -- and they were trying to fill it within 60 days for some reason.

Mr. Colucci's name came up. At the end of the time period, he was rather quickly vetted. I would say preliminary vetting, filled out a questionnaire. And then, he was appointed.

After he was appointed, Mr. Vanderbilt, who was Chairman of the Board, got some information with regards to some financial information financial involvement that Mr. Colucci may have had with the company.

Specifically, a $240,000 -- approximately 240. I can't remember if it was 220- or it's 2-something invoice from i-Heart Radio. His wife worked for i-Heart Radio.

So that's twice as much as the previous guy who signed over. And then also, a situation where the company was making direct

payments to Highway Data, which is a miss -- company that's owned by Mr. Colucci.

And I don't know the amount of those as we sit here today. But because of those two things, Mr. Vanderbilt as chairman called up, Gibson Dunn and said, hey, can you do an independent -- can you do an investigation to determine whether this guys independent. Gibson Dunn said fine. They started it. They called Mr. Colucci.

And then, sometime thereafter, call a couple days, they received a -- an email I think from Mr. Goldstein saying that what we're going to do is unethical. And Gibson Dunn backed out. So there's never an investigation done as to whether or not Mr. Colucci had financial interest with the company.

After that occurred, they had these serious of directors meetings that we've already talked about. I won't go back into that.

And but I will say that Mr. Colucci is the deciding vote on all -- in most of these meetings. You know, in counsel's opposition they talk about, well, it doesn't matter if Mr. Colucci was independent or not because he wasn't the deciding vote on the terminations.

You know, that's not the issue today, Your Honor. Whether it's *void ab initio* or not, you know, we'll get to that a later -- before you determine that, you have to determine whether he's independent or not.

So what we're requesting is that someone -- an independent counsel be appointed to conduct an investigation.

Now earlier, I suggested that perhaps Mr. Urda [phonetic] do it. Since then, I've been educated this is kind of a specialty area. And

it's probably better to get someone from New York or maybe L.A., who's got experience with SEC regs and this independent counsel situation.

And so, what I proposed to counsel we do is we put pick three names. They pick three names. We flip a coin and then we knock one out. They knock one out. We knock one out. They knock one out. Kind of similar to what we do when we pick an arbitrator.

And that way, we can get someone who's pretty independent, I would think, as the independent counsel.

And I'm willing to listen to any other procedure. I think the Court would have a tough time just picking someone out from Nevada Bar, because like I already said, it's kind of a specialty area.

So I think maybe having the parties propose candidates, maybe even propose them to the Court. I'm not adverse to that, either.

But in their opposition, they also say, well, we should hire Howard & Howard to do it. Well, Howard & Howard was the firm that did what I call the whistleblowers white wash.

And you know, when we had all these whistleblower complaints against the current CFO and CE -- and COO, Howard & Howard wrote us a letter saying, well, can we review your client tomorrow with your relationship with the whistleblower complaint.

And we said, well, we got hearing starting on Monday. So tomorrow, Friday, is probably not good for us. And so, but we will set a date immediately after the hearing's over.

And so instead of listening to our side of the story, they issued a report on Sunday saying, oh, these whistleblower complaints have no

merit, which was kind of astounding I think when you issue a report without hearing the whistleblower's -- any of the whistleblowers as I think there are five or six of these, any of their concerns. Didn't listen to any of them.

So that's who they proposed as independent counsel or special counsel. I don't think that Howard & Howard would be appropriate.

You know, I don't have anything against Howard & Howard. We actually represent Howard & Howard, but I just don't think they'd be appropriate because of their prior relationship on the whistleblower case.

But anyway, I think there is a need for a special counsel. There's been no dispute whatsoever at any time that Chairman Vanderbilt did not have the authority.

And remember, he's still the Chairman. He's on the Board of directors. He's the Chairman as we sit here today.

There's been no dispute that he did not have the authority to start an investigation. And I don't think there's been any dispute -- there's any dispute that there should be some vetting here.

I mean, counsel wants to vett Mr. Miller with really no reason that I can see, but in any event, he wants to do vetting and he is going to do vetting of some sort.

I think where we've got Mr. Colucci here and we have two known instances that both -- either one of which arguably violate the independent status, two known ones right now, that I think we should appoint a special counsel to do that. I see no reason not to.

And so, for that reason, and this is probably the oldest motion on the docket because we've been talking about this from day one.

And so, Your Honor, we'd ask that the Court grant the motion to appoint a special counsel. And that the procedure would be as I indicated, the Court come up with its own procedures to determine who that person would be.

THE COURT: Okay, thank you.

MR. KEMP: Oh, yeah, also, Your Honor, I forgot there's -- there was a failure there -- it's not just the financial interests, but on the questionnaire or his resume he lists that he has certain position with certain companies.

We don't think those are accurate statements. And we also think he's failed to disclose some interests, too. So it's not just the two financial interests. It's those other subjects as well.

THE COURT: All right, sir?

MR. CLARK: Your Honor in response, I just want to make a couple points. First, this idea that Mr. Colucci wasn't vetted at all is just simply not true as Mr. Kemp admitted.

He did fill out the paperwork. It was the Board itself that vetted him. And just like Mr. Kemp said kind of rushed him through because they wanted him on the Board as an independent director.

As far as what -- whether it's a somehow voiding his vote ab initio whether the NASDAQ rules or NRS 78 supports him invalidating his votes because of his supposed dependence, none of those sources support voiding his vote in any way.

In fact, even if we were going to accept the NASDAQ rules as a basis for voiding Mr. Colucci's vote, the NASDAQ rules themselves allow a cure -- I'm sorry, a curative provision, not a expulsion provision for a Board member.

And so, even if we were going to accept that the NASDAQ rule somehow would govern here, it simply would not apply to any of the votes that he made before. And their reliance there is a red herring.

As for Howard & Howard, Your Honor, when the whistleblower complaints came in, the timing of them was somewhat suspect after the filing of this lawsuit. The first thing that they did, the first thing that Mr. Colucci and the other Board members did was retain independent counsel.

And this kind of assumption that Howard & Howard white washed that investigation or didn't do -- didn't fulfill their own duty under the Rules of Professional Conduct to the client, the company, not to Mr. Colucci or excuse me to the Board not to Mr. Colucci has no evidentiary support. There's no contention that Howard & Howard was in any way partial here.

Similarly, this idea --

THE COURT: I have a question for you. And understand this similar to Mr. Miller, I'm looking at this from the position that I think I won't call it a presumption or inference, but if I do, lawyers will try to hold that to me.

But my point is this. I'm looking at it through the lens that hypothetically, Mr. Colucci is impotent, right? But here's my point. Don't

we have to go through some processes to make that determination?

And the reason why I bring that up is this. If they found out that he was independent, I don't have to worry about any potential penalties or anything like that, right? Do we discontinue the -- in that position.

I only have to worry about that if there's some sort of negative result from the investigation, right?

MR. CLARK: That's correct, Your Honor. If he's independent, then this is baseless.

The problem is that's kind of the ultimate issue of the case. And Defendants have said they wanted to conduct 30 depositions. I mean, they're going to have a chance to explore this supposed dependence or lack of independence of Mr. Colucci.

And to say that another firm that the Board hired to do that and who is our proposal couldn't do that is frankly absurd.

The -- and really, the -- their excuse me, the fact that he could be dependent or could independent I think at this point, Your Honor, the presumption or the status quo is that he was independent and made votes as an independent director. The Board found him to be that at the very --

THE COURT: And I'm not necessarily disagreeing with it. I'm just looking at this slightly differently in this regard. It's just like as it pertained to Mr. Miller, there appears to be an issue here.

And I realize it wasn't a significant issue before the appointment of Mr. Miller, but there's been allegations of lack of

independence, right?

And I said, okay, that's fine, but if you want to conduct some discovery or some sort of investigation on that, that's fine.

Why shouldn't I say the same thing as it pertains to Mr. Colucci, especially under the facts where there are NASDAQ rules in place, right, as it pertains to independence?

And why would that not make sense? Why wouldn't that be the appropriate way to handle this?

MR. CLARK: Well, I think Your Honor's already answered that question by expediting discovery allowing the Defendants to hold that positions and explore this.

If there is truly an issue, and I think we could re-visit whether a special counsel needed to flush that out, but at this point, I think it would be redundant to the discovery of the Defendants are already going to do.

And it kind of goes to the ultimate issue of their payment. And to kind of refresh the Court's memory, when this was filed, there were no claims from the Defendants. The Defendants' claims were brought on I think a Monday in some counterclaims.

And so, when we opposed this motion, and when they requested this relief, the only claims here were Vinco's claims.

And so, to kind of expand where and spend more of the company's money on special counsel, when the Defendants are going to be investigating that on their own, probably you know, with a finetooth comb, the appointment of a third-party is just unnecessary.

And this contention that Mr. Kemp makes it somehow the

Board pressured Gibson Dunn into not conducting an investigation, I mean, we're talking about Gibson Dunn. This is no slouch.

And so, if they did not see there was going to be an issue with their investigation, they could have remained on. They chose not to. It wasn't that they were forced from the situation.

And so, with that, Your Honor, the NASDAQ rules, while they govern listing of the company shares, and while that's important, Mr. Colucci was vetted at the beginning. The Board approved them. They sat him. He made the votes and the votes were valid.

When we get to the July 24th hearing pursuant to July 24th meeting, the Defendant simply lost that vote. And we make the point that even if he took Mr. Colucci's vote out and you did find as the Defendants asked that it was void, the vote was still 2 to 1. They still lost.

THE COURT: Here's my next question. What if hypothetically there was an independent investigation conducted prior to his appointment on the Board and it was determined that he was not independent, wouldn't that have impacted his ability to sit on the Board?

MR. CLARK: It could have, Your Honor, but if we're looking at the NRS 78, I mean, where independence really comes in is what committees you can sit on, where you can -- what your what you're able to do relative to your own compensation.

But I haven't seen authority from Defendants other than these NASDAQ rules that would support his removal and voiding all of his votes just based simply on the allegations that he is not an independent.

THE COURT: All right. Anything else, sir?

MR. CLARK: No, I would just note, Your Honor, that it's somewhat ironic that we need to select names -- six names. We're going to flip a coin to appoint a special counsel to investigate Mr. Colucci when we didn't get to do that with Mr. Miller, who will be making the same choices as Mr. Colucci.

And so, given that it certainly has not seemed to go, we didn't have the opportunity despite Mr. Connot's suggestion at the hearing. I just find it a little bit inequitable here now that we're talking about Mr. Colucci that this -- that we'll get a choice under this special counsel.

So with that, Your Honor, unless you have any other questions?

THE COURT: Not at this time, sir, but thank you.

MR. PARKER: Your Honor, Mr. Kemp has ceded his rebuttal to me so if I could. Your Honor, the -- I appreciate the question you asked and the comments you made regarding the NASDAQ rules.

THE COURT: Right.

MR. PARKER: And as soon as you said that, it triggered the difference in the requirement to vett and the importance of the difference in the requirements to vett.

You've already given the Plaintiff an opportunity to vet Mr. Miller as a CEO. The vetting we're speaking of concerns a person who's not only a CEO, but a Board member. Supposedly, an independent Board member.

NASDAQ Rule 5605 defines what a independent director is

and what precludes a person from being an independent director, one of which is being an executive officer.

So as soon as Mr. Colucci became a CEO, he could no longer qualify as an independent director pursuant to NASDAQ Rule 5605.

So, certainly, if Mr. Taska and Mr. Clark believe that there's some real importance to vetting Mr. Miller, certainly they cannot contest the higher level of scrutiny that's involved in vetting a CEO and a supposed independent Board member.

That's what the NASDAQ Rule requires. And Mr. Clark hit something that Mr. Rulis was whispering in my ears. All of his decisions, all of Mr. Colucci's votes as a Board member, supposed independent Board member as well as his votes for recommendations as a member of the audit committee or the compensation committee are now all in question, Your Honor.

And when Mr. Clark mentioned sitting on a committee, that rung true. And it should resonate with the Court.

Not only his votes as a Board member, his decisions as a CEO, but his decisions, his votes, his participation in decisions as a audit committee and compensation committee member are all now perhaps void, voidable, or *void ab initio*.

And so, Your Honor, I think Mr. Clark has helped support our motion. And certainly, I don't believe that there's any way of refuting that the Gibson Dunn investigation was not completed.

We provided the emails where the lawyers from Gibson Dunn asked to set up time to meet with Mr. Colucci to speak with Mr. Colucci.

And he failed to participate in those discussions.

And then right after that, they terminated Gibson and Dunn. I don't want to say terminate. They encouraged them to walk away from the assignment based upon I would say less than supported ethical claims by Mr. Goldstein.

So, at this point, Your Honor, we've asked for a vetting. And by the way, Mr. Clark says that all that's before the Court in the form of pleadings is Plaintiff's claims.

Well, that's not true. On Tuesday, we filed our answer to the complaint, as well as our counterclaims. And we discussed in our counterclaims the general allegations within our counterclaims Mr. Colucci's activities and the ownership of Highway Data.

And I believe the amount that Mr. Kemp was looking for that escaped him earlier was $100,000 was paid by way of Acuity and we believe through Highway Data.

The amount for his -- that was paid to i-Heart Radio, his wife reported to him, was $215,000. We know that he did not properly disclose initially.

So there's more than enough reasons. And it certainly has been a litany of paper, indicating that that vetting was not completed.

I would also inform the Court that the vetting that was done initially Mr. McPhillin [phonetic] was done by Lucosky Brookman found to be flawed later on.

And the initial vetting of Mr. Colucci was done by that very same firm. So there's no confidence that should be given to that initial

investigation.

So additionally, Your Honor, the --

THE COURT: I mean, at the end of the day, this is what's really kind of important at least in my view. I can't overlook the mandate of rule and I'm talking about the NASDAQ Rules. And this is 5605A.2.

MR. PARKER: That's right.

THE COURT: And it specifically focuses on the confidence of the investors, right? It's right there in the rule.

MR. PARKER: That's right.

THE COURT: And it goes further. It says, "It's important for the investors to have confidence that individuals serving as independent directors are not going to have a relationship with the listed company that would impair their independence, period.

And it goes further. Since the Board has the responsibility to make affirmative determination that no such relationship exists even -- exists though the application of Rule 56(a)(2). And it goes further. But my -- and it even lists out the types of relationships --

MR. PARKER: Correct.

THE COURT: -- and those types of things.

And so, my question is this. And has this been done as required by NASDAQ is the first issue?

And secondly, I -- as a trial judge, I can't look -- overlook the mandate of the NASDAQ regulations. Is that -- that's a two part question.

MR. PARKER: And the answers, Your Honor, no, the vetting

had not been completed. We tried, and I say we, under Mr. Vanderbilt's position as Chairman of the Board, he selected Gibson Dunn.

THE COURT: And as a further point, I mean, I don't think the vetting should be necessarily, especially under this rule, an adversarial process. And that's really an important point to make.

MR. PARKER: Yes.

THE COURT: I mean, I understand you're saying well, Judge, I can take his deposition, but that's going to be slanted.

MR. PARKER: I agree 100 percent, Your Honor.

THE COURT: I mean --

MR. PARKER: Let me say right now we -- I'm not going to speak out of turn for Mr. Kemp, but I believe --

THE COURT: I'm not saying -- I don't mean that in a negative way, but that's an adversarial process.

MR. PARKER: It is.

THE COURT: You know, versus having an independent investigation, but that's a slightly different animal.

MR. PARKER: And that's why we came to the Court.

THE COURT: And the reason why I bring that up, I would hope that whoever was independent wouldn't slant --

MR. PARKER: Right.

THE COURT: -- arguments, right? Just present facts and come to some sort of conclusion and make a determination as to whether the mandate of Rule 5605 has been met.

MR. PARKER: Correct, Your Honor. That is 100 percent

correct. Not unlike when the Court appoints at times experts to bring an opinion or recommendation to the Court separate and apart from the litigants.

THE COURT: Right.

MR. PARKER: And so, that's what we're asking.

THE COURT: And sir, when I look at it through that lens, why would I not appoint an independent investigation if one hasn't been completed pursuant to the mandate of -- because this is what I would think I would have. If there was an independent investigation then, wouldn't I have findings?

MR. CLARK: Sure. Your Honor, you would get findings from the independent counsel I'm sure. The -- all that I will say, Your Honor, and on to --

THE COURT: Because I just want to make sure I'm correct on that because I've never been involved in a Rule 5605 independence investigation.

But I think if you appointed independent counsel or someone to conduct that investigation, at the end of the day, there'd be a report produced and generated that would look in the definitions and make a determination as to whether or not there's been any violations of the definition of independence pursuant to the SEC rules.

MR. CLARK: And Your Honor, we're -- as Vinco, we're grateful for your support of the investors' confidence, the shareholders' confidence.

But in respect, the NASDAQ rules have a way to police this

themselves. And that's through de-listing the stock, which happened. And we've overcome that as a company.

And so, we can, you know, Your Honor says that you're concerned and I understand that. But the NASDAQ can police that on their own. They can de-list the company shares, which would be awful.

THE COURT: That's not a good thing.

MR. CLARK: That hasn't happened.

THE COURT: That's not a good thing to happen.

MR. CLARK: It has happened for this issue. And I only make that point, Your Honor, because we're kind of importing the NASDAQ rules and saying now under Nevada law, we have to do X.

And I think that we don't need to do that, especially in this case, where you mentioned that the investigation would be slanted. Of course, they're going to pull up everything they can on Mr. Colucci and have everything that the special counsel could possibly want and more I'm sure.

And to give the special counsel that if it ended up being necessary, I wouldn't be --

THE COURT: Don't you think it would be fair to Mr. Colucci to have an independent investigation?

MR. CLARK: Well, whether it's fair or not, Your Honor, at this point, the -- where we stand is that they're going to do that. They're going to have the adversarial process with him.

And so, if we could -- if we could say, yeah, let's do an independent investigation, which would might be fair and easier for Mr.

Colucci, but he's also going to have to do the adversarial proceeding and do the depositions that you've already allowed the Defendants to do. I just think it's duplicating the work at this point for a company that's already in a cash crisis. So --

THE COURT: But my question is this. Maybe the independent investigator would come to a different conclusion or argument than Mr. Parker or Mr. Kemp.

MR. CLARK: Sure.

THE COURT: And I'm looking at it from a -- of a position of being fair to Mr. Colucci, right? Because if they're truly independent.

And just as important, too, I want it -- and I don't mind saying this unless someone's learned in Las Vegas in conducting these types of investigations, I think it would serve everyone best.

And I don't know if L.A., Chicago, New York are the best places to go for that type of investigation, but based upon in the general sense, I would probably think they would be because it would involve the major economic centers of this country.

We have law firms that are -- that conduct this type of event. Like Chicago, they have a couple of exchanges there. You know, and I'm just trying to think.

And, of course, New York is where most of all the trading and those types of things occur and so on, but I'm looking at it from a fairness perspective.

MR. CLARK: But from a fairness perspective, Your Honor, we did retain Howard & Howard to do some of these same investigations

into the --

THE COURT: Well --

MR. CLARK: -- the whistleblower complaint.

THE COURT: -- and Howard & Howard --

MR. CLARK: That wasn't enough for the Defendants.

THE COURT: -- were retained by -- I'm looking at it from a purely independent perspective. I don't mind saying that, because that's my question. Wouldn't that be fair? And you don't think it would be or wouldn't be or?

MR. CLARK: No, I don't dispute, Your Honor, that an independent investigation would be fairer or easier for Mr. Colucci to go through.

What I'm saying is at this point, where we are in these proceedings, it would duplicate what the Defendants already planning to do. It would incur a greater cost for the company itself for an investigation that he didn't evade really in the first place.

I mean, he wasn't independent. So that's my point, Your Honor. And not --

THE COURT: I think it potentially could save time.

MR. PARKER: Absolutely.

THE COURT: Right? Because I mean, look at it from this perspective. We don't know, but because I'm looking at I don't mind saying it. I'm giving everybody presumption.

It's like counsel indicated before. I'm not accepting anybody's arguments as far as who the bad guy or gal might be in this case. I'm

not doing that.

I'm letting the processes work. And I'm just wondering would it be fairer to Mr. Colucci as far as an independent investigation?

And just as important, say hypothetically if this independent investigator comes back and says, look, he's independent. He doesn't meet the requirements, if he could say look, Judge, use this as a sword.

They don't need to talk to Mr. Colucci about this anymore potentially. There's a lot of ways this works out, right? Or maybe it limits the scope. I'm not sure, but I'm just thinking about what I perceive as issues down the road.

MR. CLARK: And Your Honor, I think I've conveyed my point. I think that --

THE COURT: No, I understand. I just wanted to offer that up. I mean, anything else you want to add, sir?

MR. PARKER: Your Honor, I think you've hit every issue. I agree with the Court's position.

THE COURT: I never have positions. I'm not a litigant. I always have comments.

MR. PARKER: I appreciate the Court's comments.

THE COURT: Yes, and thoughts. And I share them with you on the record because that's what I'm thinking. You know, and every time and I always tee it up because you don't have to agree with me. You can tell me, look, Judge, you're wrong and it's a lie. I have no problem with that. I just want to make sure you're right.

Is there anything else?

MR. PARKER: Nothing further, Your Honor.

MR. CLARK: Not for us, Your Honor.

THE COURT: This is what I'm going to do. And as far as the motion's concerned, last question, any idea as to cost?

MR. PARKER: Your Honor, my suspicion is it won't cost any more than what Gibson and Dunn intend to spend or, you know, I don't want to speak ill of Howard and their report, because they only interviewed those who were being charged with the violation.

So plus they did it on a Sunday. I really don't know how much -- I really don't know how much they spend on theirs, Your Honor, but my suspicion is it won't be any more than what the -- Vinco intended to spend originally.

MR. KEMP: Probably between 25 and 50.

MR. PARKER: Mr. Kemp is thinking somewhere between 25 and 50. I don't know if it will be that much or not, Your Honor, only because I don't have experience with doing the NASDAQ Independent evaluation, independent director evaluation, but given that there's information already available, they have a good starting point I believe.

MR. KEMP: Yeah, and Your Honor, and that's based on very premature conversations with opposing counsel. Mr. Rulis is 0 for 10 if everyone agrees to it.

No, seriously though, Your Honor, I think 25 to 50's probably what we're talking about here.

THE COURT: All right. Well, I'm going to grab the request for -- and I feel as a trial court, I realize I'm not a federal court. I get that,

but I can't ignore federal rules and regulations. So they have an impact.

Just as important, too, and I don't mind saying this at the end of the day, I actually think this is a fairer way to handle this, because we're going to appoint someone that's learned, independent, no relationship with the parties, that does this type of work pursuant to a court order.

And as far as recommendations are concerned, when are they coming back?

THE CLERK: In a couple days before you, Judge. We could -- it's just a status check.

THE COURT: Status check.

THE CLERK: Then --

THE COURT: But we need them to come back in quicker than this.

THE CLERK: Absolutely.

THE COURT: What -- and because you need to -- one of two things we can handle it this way. You can either agree or you can submit three names, assuming all three names or three firms are acceptable, we can just arbitrarily decide which one it's going to be.

MR. KEMP: Judge, I'm happy to submit three names and give them to counsel at the same time he gives me three names. And then we can --

THE COURT: Yeah. I'd rather have you agree. But if you can't, we'll just, you know, they're all I would anticipate learned and experienced in this type of area. They have a history of being the type

of law firm that conducts these types of investigations.

And if you can't agree, I'll decide it for you, but I'm going to look at it from this perspective. I would assume all names that would be submitted would be more than competent enough to accomplish this task, this investigatory task. So that's kind of how I look at that.

MR. PARKER: Maybe we'll agree to something. Pleasant surprise, I think.

THE COURT: Yes, you're here next week on the OST, so we should do this on 10/7, right?

MR. PARKER: Sounds great, Your Honor.

THE COURT: 1:30?

MR. PARKER: Perfect.

MR. KEMP: You said 10/7 at --

MR. PARKER: No, 8 -- 9/7.

THE COURT: 9/7. 9/7, right. Okay.

THE CLERK: It's next Wednesday.

THE COURT: Next Wednesday. Oh, okay, don't we have an order expiring today?

MR. PARKER: Yeah, that's the one we -- you already granted for us to continue the order, Your Honor.

THE COURT: Okay.

MR. PARKER: So we'll do an order confirming that, Your Honor. We continue it for another 30 days.

THE COURT: We don't have a lot -- you know, I will admit my Law Clerk's really good. Anyway, what about the 10 -- I think this -- we

have an October 5th hearing in light of the emails from Ray Camucci [phonetic]. Is that moot?

MR. TASKA: Sorry, Your Honor, can you repeat that? I'm --

THE COURT: Yeah, we have the -- wasn't there an issue regarding the email -- no, what was it? It was the -- they had already produced them, right?

THE CLERK: This was in regards to SEC pass codes.

THE COURT: I'm sorry, SEC pass codes.

MR. PARKER: Yeah, I think that's been handled, Your Honor. We submitted an opposition, an email showing that we had given those pass codes. So.

THE COURT: Right.

MR. KEMP: And they haven't filed anything, Your Honor.

THE COURT: And that's currently set for 10/5, right?

MR. PARKER: It is, Your Honor.

THE COURT: Do we need to keep that on calendar or?

MR. PARKER: Mr. Taska?

MR. TASKA: No, I don't think so.

THE COURT: We'll keep it -- no, we'll keep it on. If you can tell me next Wednesday.

MR. TASKA: Okay, that would be great, Your Honor.

THE COURT: We'll do that.

MR. TASKA: Can we go -- two more things, Your Honor. One is I don't know that we agreed to Your Honor ruled that the order that's expired today gets extended a month. I don't know that I heard that.

Maybe I missed it, but I think we agreed that the payroll issue --

THE COURT: Right.

MR. TASKA: -- that's set forth in the order would be something that the three CEOs would take a crack at.

THE COURT: Right.

MR. TASKA: Correct?

THE COURT: Right, but here's my -- I mean, I don't know about the timing of that issue, but here's my question. Do the three CEOs have an opportunity to do it before the next payroll comes up?

MR. TASKA: My understanding is the three CEOs are meeting every day.

THE COURT: Okay. All right.

MR. PARKER: Your Honor, it was my understanding that the order would remain in place for another 30 days. The only issue that was subject to modification of the order was the one motion that was filed by Plaintiff to modify the appointing of Ross Miller and Lisa King, which we've already discussed.

THE COURT: I dealt with that.

MR. PARKER: There was no other particular provision of your order that was subject to the motion of today's hearing.

MR. TASKA: So I think this gets back into the thing that Mr. Parker and I have duking it out all day about, which is procedurally how does this work?

To me, the order is -- expires by its terms. And then, all these issues are up for discussion. I think -- what Mr. Parker's saying is that

there's a presumption that that order continues on and that we have to move to get relief from it, even though it expires by its terms.

THE COURT: Well, actually, and I don't think that's necessarily correct, because my entire intent was to hold status checks and I sent the order at a shorter time period, because we could come in and discuss it at the status check.

MR. PARKER: Exactly.

THE COURT: It was never the intent to -- because what I wanted to do was the exact opposite. I wanted to prevent you from having to come down and file motions and those types of things unnecessarily.

MR. TASKA: So the Court is ruling that the payroll has to be made rather than letting the three CEOs decide?

THE COURT: What I think we'll do is this. And unless there's a problem, I -- where are we at from a payroll perspective? Is this another payroll time period? I mean, I don't know.

MR. PARKER: Every two weeks, Your Honor.

THE COURT: Every two weeks, right?

MR. PARKER: Plus the other vendor bills. And so, that's why --

THE COURT: At the end of the day, this is what I want to do. I don't want to get involved in those -- that decision making. I will say this that I will extend it until Wednesday of next week. And then, it can be in the hands of the CEOs or to take care of this.

MR. TASKA: Just so I understand. So you're saying that

payroll needs to be made between now and Wednesday of next week?

THE COURT: No, no, I don't know if it's due now -- due -- only when it's due. I just want to make sure that I'm not cutting off payroll hypothetically for tomorrow. Is payroll due tomorrow?

MR. TASKA: You know, I don't know. Do you know?

MR. CLARK: I don't know.

THE COURT: You see what I mean? I want to begin I want to give --

MR. PARKER: Yes, Your Honor. Two weeks from the 19th. So this Friday would be --

MS. SUGDEN: The 2nd.

THE COURT: Yeah, and my point is this. I don't want to have people cut off of payroll tomorrow, but I want to give the Board, the co-CEOs an opportunity to make those decisions. That's what I want to do.

MR. TASKA: So, okay, but so I understand Your Honor's ruling. It's the Court's directive rather than it's the three CEOs to decide that payroll needs to be made this Friday?

THE COURT: This -- and then, we will -- my hope is we can stop it next Wednesday and I can put it in the hands of the CEOs. Because what I don't want to have happen is this. We've had problems with meetings, right, and getting together, and issuing directives, and those types of things.

MR. PARKER: Not from the CEOs. They're -- that was --

THE COURT: And I understand.

MR. PARKER: Yeah.

THE COURT: But I don't want any impediment. I want to give them an opportunity to get past this next payroll period and put it in their hands and let them conduct business for the company and exercise their business judgment. That's what I want to do.

MR. PARKER: Sounds great, Your Honor.

MR. TASKA: All right, and the last thing, Your Honor, respectfully --

THE COURT: Am I clear on that?

MR. TASKA: Understood, Your Honor.

THE COURT: Okay.

MR. TASKA: And the final thing on our list is just that we may seek an emergency writ on one or more of the rulings.

THE COURT: Sir, and that's -- you got to understand. That's to be expected. And that never impacts any decision I ever made. I remember it's like one of the larger class action cases we had. It must have ran up 50 writs, right?

And the Supreme Court kept sending it back down again. And sometimes they entertain and accept them, but I've been around long enough to understand that's part of the process.

I'm not saying I'm the last word. So that never offends me. That never impacts my decision making. Don't worry about that because at the end of the day, you have to do what's in the best interest of your client. That's all that really matters.

MR. TASKA: And I appreciate Your Honor's --

THE COURT: Yeah.

MR. TASKA: -- understanding.

THE COURT: I have a very thick skin on that. I really do. I mean, I just -- that's the process.

MR. TASKA: That makes --

THE COURT: If the Supreme Court or the Court Appeals say, look, Judge you blew it on this, I will -- I'm a good soldier. I'll follow their order.

MR. TASKA: And --

THE COURT: I will. I am.

MR. TASKA: -- in connection with that, Your Honor, we just to get it on the record, and I think I know what Your Honor's ruling would be, but we would ask for a -- I would orally move for a stay of all proceedings in this case until the Supreme Court decides whether to take our writ.

THE COURT: This is what I'll do, though. I'll deny that without prejudice. And all I mean by that is this. From a fairness perspective, you're free to file it -- whatever appropriate motion regarding the stay at the district court level you want to file, but it would be unfair to make that type of decision without being fully briefed.

MR. PARKER: Thank you, Your Honor.

MR. TASKA: Understood, Your Honor. Thank you.

THE COURT: Yeah, but you're free to do it. And I -- in fact, I'll entertain an order shortening time. However, understand this. This is a different issue. It won't be as short, but I'll shorten it. I'll make sure

they get enough time to file an opposition. I give them 14 days to file the appropriate opposition.

But it won't be October or November. I would shorten it. And sometimes, I do that on issues like this. And you know, it depends on the complexity issues.

Certain things, we can get in much quicker. Like some of the things we've done, but things that are going to be really -- issues that are going to be really I would anticipate hotly contested, I want to make sure we -- both sides have a full and fair opportunity to make the appropriate written record. Understand that?

MR. PARKER: Understood.

MR. TASKA: Understood, Your Honor.

MR. PARKER: Thank you so much.

THE COURT: All right.

MR. TASKA: Thank you.

MR. PARKER: Thank you, Your Honor. Have a good holiday.

THE COURT: Have a good day. All right, everyone, enjoy your day.

[Proceedings concluded at 4:14 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

Exhibit 7

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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

APPEARANCES:

For the Plaintiff:	MARK CONNOT, ESQ. REX D. GARNER, ESQ.
For the Defendants:	WILLIAM S. KEMP, ESQ. THEODORE PARKER, III, ESQ NATHANIEL R. RULIS, ESQ. MADISON ZORNES-VELA, ESQ.

APPEARANCES (continued):

Also Appearing:

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

RECORDED BY: MARIA GARIBAY, COURT RECORDER

Las Vegas, Nevada, Thursday, August 18, 2022

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

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

MR. CONNOT: Good afternoon, Your Honor.

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

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

THE COURT: All right.

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

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

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

THE COURT: All right. And have --

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

THE COURT: Good afternoon. Does that cover everyone?

MR. CONNOT: Yes, Your Honor.

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

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

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

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

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

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

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

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

CEOs have family emergencies.

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

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

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

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

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

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

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

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

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

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

MR. KEMP: Right.

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

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

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

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

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

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

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

THE COURT: Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: I understand.

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

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

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

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

MR. KEMP: 8-K.

MR. CONNOT: 8-K.

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

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

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

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

THE COURT: Right?

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

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

MR. KEMP: Yes, Your Honor.

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

THE COURT: I understand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Right.

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

THE COURT: But I mean --

MR. CONNOT: The Board voted on those issues.

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. CONNOT: I --

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

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

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

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

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

THE COURT: Reduction in force because --

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

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

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

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

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

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

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

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

MR. CONNOT: Okay.

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

MR. CONNOT: Exactly, but --

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

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

MR. CONNOT: Right.

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

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

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

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

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

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

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

MR. CONNOT: Maybe suggestion.

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

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

THE COURT: I don't.

MR. CONNOT: I -- you know --

THE COURT: I'm not a CEO.

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

THE COURT: That's what --

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

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

MR. PARKER: Agree, agree, Your Honor.

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

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

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

Is that correct, sir?

THE CLERK: Correct, Judge.

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

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

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

THE COURT: Uh-huh.

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

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

MR. CONNOT: But --

THE COURT: I want something worked out today.

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

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

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

THE COURT: Well --

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

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

THE COURT: Absolutely.

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

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

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

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

MR. CONNOT: Yeah.

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

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

THE COURT: Yeah.

MR. KEMP: -- we dropped everything.

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

MR. CONNOT: Yeah.

MR. KEMP: Yeah --

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

MR. CONNOT: Yeah.

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

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

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

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

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

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

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

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

and their learned counsel.

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

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

MR. CONNOT: Yeah.

THE COURT: -- organization.

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

THE COURT: Yeah, no, no.

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

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

MR. KEMP: You made a plain --

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

MR. CONNOT: My --

MR. PARKER: Your --

MR. CONNOT: Sorry, Teddy.

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

MR. CONNOT: Absolutely, sorry.

MR. PARKER: -- counsel?

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

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

MR. CONNOT: Surprisingly.

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

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

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

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

The Court is familiar with ordinary and routine business expenditures.

THE COURT: Right.

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

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

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

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

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

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

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

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

MR. PARKER: Absolutely.

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

MR. PARKER: Right, the other --

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

MR. PARKER: And I --

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

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

MR. CONNOT: 96 million, Your Honor.

MR. PARKER: 96.

THE COURT: 96 million?

MR. CONNOT: $80 million loan.

THE COURT: 80?

MR. CONNOT: $16 million penalty.

THE COURT: Yeah, okay.

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

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

MR. CONNOT: Yeah.

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

pocket --

THE COURT: And understand --

MR. PARKER: -- this default.

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

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

MR. PARKER: Uh-huh.

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

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

THE COURT: Yeah.

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

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

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

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

few --

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

MR. PARKER: You'll step out.

THE COURT: Yeah, I'll step out.

MR. PARKER: We got the Marshal here.

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

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

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

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

THE COURT: I have.

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

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

THE MARSHAL: All rise.

MR. CONNOT: Thank you, Your Honor.

THE COURT: Yeah.

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

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

THE MARSHAL: Please be seated.

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

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

MR. KEMP: Will Kemp for Mr. Farnsworth.

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

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

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

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

MR. CONNOT: Yeah.

THE COURT: Okay, gentlemen?

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

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

or?

THE COURT: You can.

MR. CONNOT: Okay.

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

MR. CONNOT: Okay.

THE COURT: Is that fine?

THE LAW CLERK: Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE CLERK: Oh, 13, not 30 days?

THE COURT: No.

THE CLERK: Then that would be --

THE COURT: 8/31, right?

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

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

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

THE COURT: Okay, all right.

THE CLERK: Any time?

THE COURT: 9:00.

MR. KEMP: Judge, we did -- when we discussed it with Mr. Miller, we told him it would be an interim gig. We didn't say that he's been doing this forever.

THE COURT: Okay.

MR. KEMP: And I bring that up, because I have talked to counsel about continuing to explore another solution that both people could live with. But our position was we just can't --

MR. CONNOT: So --

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

THE COURT: I see.

MR. CONNOT: So just for sake of clarity then, Will, you wouldn't be advocating necessarily at this point for Ross to do anything beyond a 14-day period? I'm not saying you couldn't actually at this point.

MR. KEMP: I was going to put 30 -- yeah, I was going to put 30 in the order, but I wasn't saying a limited time period.

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

MR. KEMP: Right.

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

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

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

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

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

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

THE COURT: Yes.

MR. PARKER: Absolutely.

THE COURT: Yes, Mr. Parker?

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

THE COURT: Yes.

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

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

THE COURT: Yes, absolutely.

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

MR. CONNOT: Yeah.

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

MR. CONNOT: 14ish.

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

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

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

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

MR. PARKER: Right.

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

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

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

MR. PARKER: Absolutely.

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

MR. PARKER: Right.

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

MR. PARKER: Complexion.

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

MR. PARKER: Right.

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

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

THE COURT: Yeah, I mean.

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

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

THE COURT: Yeah.

MR. CONNOT: -- whatever order the judge.

THE COURT: Yeah.

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

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

MR. PARKER: Sure.

MR. CONNOT: Yeah.

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

MR. CONNOT: Right.

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

MR. CONNOT: But I think the --

THE COURT: I get it.

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

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

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

THE COURT: Yeah.

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

THE COURT: Every order --

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

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

MR. CONNOT: Uh-huh.

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

MR. CONNOT: Understood.

THE COURT: Right?

MR. PARKER: Makes sense.

THE COURT: But yes --

MR. PARKER: Very well, Your Honor.

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

THE CLERK: Correct.

THE COURT: Is that fine with everyone?

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

MR. CONNOT: Sounds great.

THE COURT: Okay, and everyone enjoy your day.

MR. PARKER: You, too.

MR. KEMP: Thank you.

MR. CONNOT: Thank you, Your Honor.

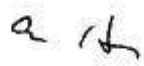
MR. RULIS: Thank you, Your Honor.

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

Exhibit 8

Electronically Filed
8/25/2022 8:49 AM
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CLERK OF THE COURT

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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 C. WILLIAMS, DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 17, 2022

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

APPEARANCES:

For the Plaintiff:	MARK CONNOT, ESQ. REX D. GARNER, ESQ. JOHN M. ORR, ESQ.
For the Defendant: (Theodore Farnsworth)	WILLIAM S. KEMP, ESQ. NATHANIEL R. RULIS, ESQ. MADISON ZORNES-VELA, ESQ.

APPEARANCES (continued):

For the Defendant: (Lisa King and Roderick Vanderbilt)	THEODORE PARKER, III, ESQ
Also Appearing:	ADELE HOGAN, ESQ. LISA KING JOHN COLUCCI RODERICK VANDERBILT ERIK NOBLE [BlueJeans]

RECORDED BY: MARIA GARIBAY, COURT RECORDER

INDEX

Las Vegas, Nevada, Wednesday, August 17, 2022

[Case called at 1:40 p.m.]

THE MARSHAL: Department 16 is now in session, the Honorable Timothy Williams presiding. Please be seated.

THE COURT: All right, I just want to say good afternoon to everyone. And let's go ahead and set forth our appearances on the record?

MR. CONNOT: Thank you, Your Honor and good afternoon. Mark Connot. Also with me Rex Garner and John Orr with my office. Adele Hogan, who has in the process of submitting a pro hac, but has not yet been admitted pro hac and John Colucci here at counsel table as well.

THE COURT: Right, and good afternoon.

MR. CONNOT: Thank you.

MR. KEMP: Your Honor, Will Kemp with Kemp Jones representing Mr. Farnsworth.

MR. PARKER: Good afternoon, Your Honor, Theodore Parker as well as Lisa King and Rod Vanderbilt sitting right behind her.

MR. RULIS: Good afternoon, Your Honor, Nate Rulis on behalf of Defendants. We also have Mr. Noble, who's here on BlueJeans and with me, we have another associate in our office, Madison Zornes-Vela.

THE COURT: Okay, once again, good afternoon to everyone. And I just want to bring up a preliminary matter. It has nothing to do with

conduct of counsel in this case, but yesterday, we did have some problems with BlueJeans. I think everyone is well aware of that. It's my understanding that we had potentially 200-plus shareholders try to connect and we had problems with the audio visual and all those things.

And so, I had a discussion and sought the guidance of the Chief Judge, Judge Wiese. And here's his response. I just wanted to make sure that this is read into the record because what I've done is I have limited access in BlueJeans for the purposes of this hearing.

And see, normally I have no problem with access, but we have bandwidth issues. And just as important, too, it's my understanding or it's come to my attention that apparently, the hearing yesterday was linked to what is it?

THE JEA: Twitter.

THE COURT: Twitter, you tube all these things, right?

And when it comes to transmission, you have to get the consent of the Court, right? You do. I mean, there's a process you go through. I can't remember any time I have declined giving consent, but nonetheless, there's procedures you have to go through. Heck, the media has to go through it and I've never declined them.

But anyway, what did judge -- and this is what he said. He quote, and this is from Judge Wiese. He suggested that Judge Williams place on the record at the start of the hearing this afternoon that on 8/16/2022, he allowed BlueJeans link to be provided to the investors who called for the information, which was under 10 or so who called.

One of them blasted the information on Twitter, which resulted

to in over 200 people logging into the hearing.

Additionally, some livestreamed the session on YouTube. The observers on BlueJeans did not mute their phones as requested, clogged up BlueJeans chat, and which it could only be used by counsel, and there were other disruptions and things like that noted.

And so, I just wanted to make sure that the record's real clear on that. I believe in access, right? I really and truly do. I always been a proponent of that, but access can't result in chaos, right? That's kind of how that works.

And so, anyway, if there's any question on that issue, I just wanted to make sure everyone understood. And at the end of the day, I follow the guidance of the Chief Judge. And that's why I did what I did, so everyone understands. It's not just something I decided to do randomly or whatever.

But anyway, I know we have some matters to deal with today. And I guess we might as well get started, right?

MR. CONNOT: I think maybe the first issue, Your Honor, Mark Connot, the first issue Your Honor, and Mr. Kemp and I have had some discussions, there's still some daylight between us --

THE COURT: I understand.

MR. CONNOT: -- on the language of the proposed order. I don't know, you want to approach, you want me to take it up, or whichever? This --

THE COURT: You can hand it to the Clerk.

MR. CONNOT: What I've just handed the Clerk, Your Honor,

is my office's redline. So Plaintiff's redline of Defendant's most recent version of the proposed order.

So when you see the redline edits, those are provisions that the Plaintiff disagrees with and believes should be taken out.

And you know, the first one the Court will see on page 2, paragraph 2, the company as it currently sits is authorized to do so. It has the ability to get the funds from the bank. And fact, the bank has advised them we don't believe that's necessary.

As far as the following, you see at the bottom of page 2, the entry of the paragraph begins Plaintiff stipulates and agrees will not terminate any employees of the following any of these on or before Monday, August 22nd, 2022. And it lists various entities.

The last one, (f), Lomotif, we have no control over. The company has no control over, so we can't terminate them anyway.

And I don't think, I don't want to speak for Mr. Kemp, but in our discussions, I don't recall that that is a area of concern. I think Defendants may be agreeable to that.

On 3, the position is and maybe I get a little bit of context and if I'm incorrect, one of the competent people will correct me. But there is a -- is it a loan payment Lomotif? What was the --

UNIDENTIFIED SPEAKER: It's a loan payment [indiscernible].

MR. CONNOT: What's the purpose of the monthly payment to Lomotif?

[Counsel confers with client]

MR. CONNOT: Okay, so the company loans money to Lomotif, which is a separate company with no, has -- you know, Lomotif -- Vinco Ventures has no ownership interest or otherwise.

And so, it shouldn't be that Vinco Ventures has to pay Lomotif payroll.

MR. COLUCCI: It's not to be paid GDD, but you do have the ownership of Lomotif.

MR. CONNOT: You do have an ownership.

MR. COLUCCI: Small minority ownership.

MR. CONNOT: Okay, so minority. What's percentage?

MR. COLUCCI: I don't know off the top of my head.

MR. CONNOT: Okay. A percent of Lomotif but they -- company feels it shouldn't have to fund the payroll for Lomotif. That should be Lomotif's issue.

And then, the final paragraph because of the fact that the company may need to hold board meetings, given the fact as noted yesterday there's an event of default that was received from really the sole creditor and my understanding of one if the only, if not the sole creditor of the company, where they issued a notice of default on a $80 million note, which also has a $16 million penalty.

And the company may need to take swift action on that. So we'd like the ability to, you know, notice and call board meetings if necessary or seek an order of the Court. So that's the basis and reasons for our redlines to the most recent version provided by the Defendants.

THE COURT: Right.

MR. KEMP: Your Honor, our response is, as counsel indicated, the thing without redlines is our last proposal to them. And this has gone through four or five iterations, Your Honor.

With regards to taking a Lomotif out of the bottom of 3, I don't have a problem with that, but we do have to provide for the payment to Lomotif.

This is an organizational chart. [Indiscernible.] If you see Lomotif is a subsidiary of the company on the far right. They don't own all Lomotif. It's understanding we own 80 percent. That's what we got for the $113 million.

We paid $113 million for Lomotif. That's was a big purchase. And, again, Lomotif is the one that has the product. It's kind of like TikTok. And so, that's a big [indiscernible].

So Lomotif funds their payroll out of payments made to a private company. Their payroll is done I'm informed is made once a month.

THE COURT RECORDER: Mr. -- I can't hear him. [Indiscernible].

MR. KEMP: Yeah, the LoMotif payroll, I'm informed, is made once a month. If the Lomotif payroll is not made, potentially every employee we have in this company, and this company's located in Singapore, Your Honor, which has different laws. I don't profess to be an expert on Singapore law, but I'm told if people don't get paid in Singapore, it's a big problem.

So that's why we think Lomotif -- and this is not an unusual payment for the company. This payment has been being made, Your Honor.

Why they want us to spend it now, I don't know. But it jeopardizes an asset that they paid $113 million for last year. So, you know, for the life of me, I can't understand why they don't want to fund that payment, but that is our first.

THE COURT: I mean, I'm going to tell everybody I kind of see this slightly different. I'm wondering why should I even make a decision regarding this order until because -- I might go a company different way as far as I know there's a TRO in place. There's a request from a TRO from the defense.

I've read the points and authorities. I understand there's issues regarding whether or not the chairman should have been involved and directed the board meetings pursuant to Section 5.5 of the bylaws. I get that.

And there's issues being raised regarding breach of fiduciary duty and responsibility. There's issues regarding corporate governance. I kind of understand what's going on with the case.

And so, what I'm saying is this. We can spend a lot of time on this, but at the end of the day, it's going to come down to what my ultimate decision is today. I don't mind telling you that.

Secondly, and this is really important to me as a judicial officer, because I'm looking at this case, right? And I realize there's a lot of money at stake. There is a lot of investments.

And I don't mind saying this. This isn't the largest case I presided over. Heck, I think I have the Wynn shareholder derivative litigation case. You know that, right?

MR. CONNOT: Yes.

THE COURT: And you know how that ended up? Because --

MR. CONNOT: Yes, Your Honor.

THE COURT: Okay, and we've had some payments, but my point is this. There's a lot of competing interests here. And I get it, right?

But what potentially could occur would be a rush to judgment by a trial court. And I think that's ever appeared in front of me over the last almost 17 years know -- they know one fact. I don't rush. I don't do things to respond. I do things when I think the record has been well enough developed and I'm clear on what the appropriate case law would be and/or there rules.

Because I don't mind saying this. I think the case law and the rules are my best friend. I also seek safe haven in the rules and in the case law. I do. And the statutes. And potentially the bylaws and other corporate governance issues that pertain in this case.

So I have a general idea as to what's going on. I understand there's been a lot dropped in my lap over the last 48 hours or so, right? But I'm looking at it through that lens, because I don't mind telling everybody what I'm thinking about, you know. I don't.

So I think what we need to do is to dig in as far as the --

MR. KEMP: Judge, can I suggest --

THE COURT: Yeah, go ahead.

MR. KEMP: -- we'll drop the Lomotif issue. And I think we can agree to the stipulation and protect at least the other 90 employees.

THE COURT: Yeah, I mean, and one thing, I mean, historically, at this stage, I don't mind you telling you this. I don't want to make any rash decisions that impact the viability of the business, right? I don't.

MR. KEMP: Well Your Honor, if we drop the Lomotif issue, you know, that would be accepting their change deleting Lomotif from paragraph 3 and deleting our proposed paragraph 4.

The only issue we have left really is the stipulated agreement not to hold Board of Director's meetings.

There -- they came back and they made a reasonable point, which is what if there's an emergency? And there may be an emergency.

So I said, okay, how about absent agreement of the parties or order of the Court, which I thought was a reasonable compromise, because obviously, we don't want this entity to go under. That's why we're here, Your Honor.

So I thought that was a reasonable proposal which modifies the dispute on the last paragraph.

THE COURT: Mr. Connot, sir?

MR. CONNOT: The position of the company is that, you know, the shareholders, you know, and elected directors, the directors have fiduciary duties and if they need to hold a board meeting, they

need to hold a board meeting.

THE COURT: Right.

MR. CONNOT: Certainly, you know, without 48 hours' notice, it would take the unanimous consent of all five directors, so including Mr. Vanderbilt and Ms. King.

On less than 48 hours' notice, it would require their consent or we'd have to seek an order of the Court in any event. But certainly upon 48 hours' notice, they should be able notice -- properly notice up under the bylaws and statute a director meeting and transact business that's properly before the company.

THE COURT: Okay. Are there any issues regarding the composition of the board?

MR. KEMP: Yes, Your Honor. There is. We --

THE COURT: I mean, that's kind of where -- that's where the rubber meets the road.

MR. KEMP: That's where the rubber meets the road, Your Honor.

THE COURT: Yeah.

MR. KEMP: So what happens when Mr. Colucci came in. And the reason he came in is because the previously independent director was found to have a financial interest in the amount of $120,000. So he was no longer an independent director.

So that director went out and they had to bring in a new director. Mr. Colucci came in relatively late in the replacement process. We contend he should have been vetted a little more. We think and

that's why as --

THE COURT: Well, and I think there was an investigation going on, something like that?

MR. KEMP: Well what happened is the chairman of the board asked Gibson and Dunn to --

THE COURT: Yeah.

MR. KEMP: -- do an independent investigation. And the attorney at Gibson Dunn was a former vice something or other of the SEC, so he was eminently qualified to do it.

And so, they were taking a look at two things. One, disclosures that were made on the application that Mr. Colucci submitted.

And we contend that those weren't adequate for a couple reasons, one of which some of the positions he claimed to have in his -- to be diplomatic, enhanced his status a little bit.

And two, we think he had a financial interest that should have been disclosed and wasn't disqualified, but we didn't want to make that determination. So we asked Gibson Dunn to do it.

And then, Gibson Dune started on it. They contacted Mr. Colucci. And then all of a sudden, the -- they noticed an emergency board meeting to fire Gibson and Dunn.

So Gibson and Dunn has never been allowed to finish the investigation. Excuse me, they sent an email to Gibson Dunn threatening them, saying that they were suspicious of their ethical -- they thought their ethics were compromised. And Gibson Dunn said I don't

want any part of it and they backed out.

So today, there has been no investigation even started on Mr. Colucci's number one disclosures, and two, his financial interests if any.

So that is the -- that is the problem, Your Honor. If they had let Gibson Dunn finish it, that probably would have been done a month ago, you know, but it hasn't been done.

And so, that's why we filed the motion that we sent to counsel on Monday night, even the Court hasn't signed the OST on it. I'd like to have my card on the table.

But in any event, we filed a motion on order shortening time asking the Court to pick an attorney, someone like Mr. Erga [phonetic], maybe, someone who knows this stuff to do the investigation on the disclosures and the financial [indiscernible].

And that would solve the problem with regards to whether or not Mr. Colucci should or should or not be an independent director.

Obviously, they don't want to do that. They want to rely upon the determinations that they have made Mr. Colucci voting on each one of them.

Obviously, they can't win and get a majority vote without Mr. Colucci voting. So he votes himself in as CEO. He votes himself a payment package of 250,000 and we haven't seen the contract.

He votes to fire all these 80 percent employees. He votes to give $5 million to Mr. Yang's company to presumably duplicate what they paid the other company $113 million for, which doesn't sound like a sound business judgment to me, but then it was.

In any event, Your Honor, that's why we think that continuing this, and I'll call it fiasco because wait till you here the tape of one of the board meetings. It is embarrassing I think for all participants. And to think that this is an NASDAQ company, they have a board meeting like that.

But anyway, we just can't keep continuing the fiasco of noticing board meetings on 48 hours' notice, not have a real board meeting, just have Mr. Colucci ram through whatever he wants without him being vetted. That's the fundamental problem here, Your Honor.

And that's why we don't think that there's a problem having some minor prohibition on the ability to have a board meeting.

Yesterday, the Court suggested there be no more board meetings because every time we turn around, there's a board meeting voting on something.

So our proposed language, I think, you know, and obviously, we don't want this corporation go under, Your Honor. That's why we're here. You know, this is Mr. Farnsworth, he's got years and years of work on this thing.

Ms. King has years and years of work on this thing. The chairman's got years and years of work on this thing. We don't want this going under.

So to suggest that there's going to be some emergency that we're not going to be responsive to, I don't think it's appropriate. And if there is, they can call up the Court and I'll be down here in an hour, Your Honor.

But you know, there's got to be some -- there's got to some stop to this perpetual board meeting to keep supposedly doing things until Mr. Colucci get properly vetted.

MR. CONNOT: Your Honor, there's a lot wrapped up in what counsel has stated and certainly a lot that we disagree with.

So I mean, and I don't wouldn't to like go through history, but if we're sitting here complaining about board meetings and we go back to the July 8th board meeting, which sort of kicked us off, called on one hours' notice, not compliant, and so we can go through of that.

The issues about Mr. Colucci, it's a NASDAQ rule as to whether or not he can sit on an independent committee of the board. Has nothing to do with whether or not he can be on the board of directors.

And what it comes down to is whether or not he has received $120,000 or more in each of the last three years, which he has not, which he has not.

And so, Gibson Dunn, I mean, if you believe that Gibson Dunn you know I -- that they were coerced into something by the company, you know, they're not shrinking violets. They know how to take care of themselves.

And the investigation, you know, to sit here and say that, well, that would then make him ineligible as a board member. No, it makes him even if the allegations were true, it makes him under the NASDAQ rule, he can't sit on an independent committee of the board.

And so, someone else can fill that seat. We also have a

shareholders meeting, this Court notes, on the 23rd.

So to state that meetings are being noticed, the 48 hours' notice has been done. And if you want to talk about a fiasco, yeah. I mean, it's -- there -- that July 24th board meeting, but certainly Mr. Colucci was entitled to vote on the issues.

Once again, it's an NASDAQ issue as to whether or not he can sit on an independent committee. He can vote on those issues. He was put on the board in June of 2022, July 24th of 2022, he's a director. He can vote on any of those issues.

The Gibson Dunn investigation would not have changed any of that, other than him being able to sit on certain independent committees under the NASDAQ.

THE COURT: But here's my question. How do we know that for sure, because the investigation wasn't completed?

MR. CONNOT: But --

THE COURT: I mean, and only reason I say that is this.

MR. CONNOT: Yeah.

THE COURT: We don't know what's in a person's past. And I can say that. I mean, for example, I know this. When Kitty Gwynn [phonetic] appointed me to the bench, I was well vetted, right, in 2006 because I went to the judicial selection process.

And they did an FBI background check and all sorts of things, right? Fortunately, nothing came up, you know.

And that's kind of my point, but we just can't assume that because someone represents that they don't have a problem that there

is.

I'm not -- and I'm being really specific on that, because that's why when it comes to appointments and those types of things, many times, people are vetted. And that's -- and I don't see anything wrong with vetting. I just don't.

MR. CONNOT: Well, I don't see anything wrong with vetting, Your Honor, but the issue is is it wouldn't make any difference as to whether or not he could vote and act on the issues that were before the board on July 24th because --

THE COURT: But would have the impact --

MR. CONNOT: -- that only has to do with whether or not he can sit on the independent employee.

THE COURT: But here's my question. Would that impact his position potentially as an independent director?

MR. CONNOT: Not -- there's a --

THE COURT: Depending on what they found, right?

MR. CONNOT: An NASDAQ rule that says -- it doesn't mean -- you can still be a director even if you had received more than $120,000 per year for each of the last three years. You can still be a director.

You cannot be on an independent committee of the board under the NASDAQ rule. That's one of the documents. I know there's a plethora of documents submitted to the Court.

That's one of the documents that we submitted earlier today and it's one of the exhibits is the specific NASDAQ rule.

It does not say you can not be a director. It does not say you cannot vote on things. You can vote on anything except you cannot be on one of the independent committees that are required in publicly traded companies.

THE COURT: Okay, here's my next question. And I know the answer to this, because all these business cases, here's a lot of overlap, but all of them have different issues.

What about the initial selection of a -- as a member independent director on the board? Are you saying that hypothetically, after investigation, that might not have impacted his potential appointment and approval as an independent director?

MR. CONNOT: Your Honor, there was a vetting process. Ms. King and Mr. Vanderbilt -- Mr. Vanderbilt was Chairman of the Board at the time. There was a vetting process. So now they're saying they improperly vet him?

THE COURT: What was that process, do you know?

MR. CONNOT: I --

MR. KEMP: The process was Vanderbilt --

THE COURT: I mean, no, I'm going to let him finish. What was the process?

MR. CONNOT: I don't know what the process was. What was the process? Hold on.

THE COURT: So we don't -- wait a second, wait a second. If you don't know what the process is, we don't know if there's a vetting process.

[Counsel confer]

MR. CONNOT: So what I've been told is the background investigation, all of the normal vetting that would be done for a publicly traded company, the only thing that wasn't done was whether or not he'd received more than $120,000 in each of the last three years, which he hasn't. And he's prepared to present testimony on that, Your Honor.

MR. KEMP: Your Honor, here's what really happened. I don't want to castigate anybody, but if we're going to start talking about the issues a little deeper, Mr. Colucci three years ago was a telemarketer. We've presented affidavits.

You know, and I don't say that derogatorily because you know, people have to call up and ask little old ladies to buy pens. You know, that's a profession in this country, but that was his background. He was a telemarketer.

When the independent director resigned, over the $120,000, they had to come up with another independent director. Mr. Colucci came up late in the process.

And there's a reason for that, that gets a little deeper, but this law firm that purported to do the investigation has literally been fired five times now. Okay, they don't want to let go of this file, the New York firm that's sitting there, five times now.

So they came up with Mr. Colucci. They were the ones that did the vetting. So Mr. Vanderbilt is the Chairman of Board. Said let's get Gibson Dunn do a real job on this and send it off to Mr. -- to Gibson and Dunn to do, which they started. They contacted Mr. Colucci.

Okay, they didn't want a vetting, okay. Okay, we think we know some of the things that are going to come up. And we've alluded to it in some of the affidavits, but they didn't want a real vetting by Gibson and Dunn.

So what they did is they contacted Gibson and Dunn and said something to the effect in the emails in the record that you're -- we challenge your ethics or you're ethically compromised or they said something like that to Gibson and Dunn.

And again, this is one of the former -- he's not chairman, but he was right under the chairman of the SEC from the counsel's office.

He was the one responsible for this vetting at date of hire. So it's not like we hired a -- or Mr. Vanderbilt appointed a schmuck.

And so, they started the vetting. So they scare aware Gibson Dunn. And then we see these ridiculous series of directors meetings being noticed, some on no notice, some on 48 hours.

And I guarantee you, Judge, when you hear this 35, 40 minute meeting where everybody is shouting at everybody else, you'll go, oh, my God, you know, this is -- I've never heard anything like it.

But in any event, that's why we need to vet Mr. Colucci because there's a serious problem here. You can't just turn your back on it and say, oh, Judge, NASDAQ rules. NASDAQ doesn't go in and do independent vetting.

THE COURT: Well, I mean, and got to remember, this is a Nevada corporation.

MR. KEMP: It is.

THE COURT: So Nevada, it's a business Court, right? And I understand there's NASDAQ rules, but there's also corporate rules here in Nevada regarding fiduciary duties and responsibilities and all those things.

MR. CONNOT: And --

THE COURT: It's quite different. I mean, I understand NASDAQ a little bit.

MR. CONNOT: And there's no allegation that any of that, any violation of Nevada law has occurred here. They want to talk about this independent investigation. They want to talk about board meetings.

Let's go back to the July 8th board meeting. One hour notice. Okay, they make all of these major changes, including retaining Gibson Dunn.

If you want to look at timing of things, that's when it starts.

THE COURT: Well, that's kind of --

MR. CONNOT: They start without authorization, the board never even voted on it.

THE COURT: Right, kind of, but here's my point. And I think both of you might be missing this. We have all these allegations, all these arrows being -- from both sides, right?

And but yet, everyone wants me to make a monumental decision that potentially can control the outcome of this business, right, number one.

Number two, who does it impact? It impacts the Board.

MR. CONNOT: Sure.

THE COURT: It impacts not just the board, but employees, shareholders, and all these things. I kind of get it.

And I don't mind saying it. I don't mind making monumental decisions. Heck, I've made some big ones, but my point is this. I always think about the impact of my decisions and number one.

Number two, what are the facts? What's the appropriate law? Always come back to that.

MR. KEMP: And Judge, you know, he keep talking about this July 8th meeting. At the July 8th meeting, Mr. Colucci voted for Mr. Farnsworth to be the co-CEO.

Mr. -- five weeks ago, Mr. Colucci exercising his fiduciary duty as a board member said Mr. Farnsworth should be the co-CEO with Lisa King.

He voted for that, okay? He voted for that five weeks ago. What changed? What changed is on July 17th, nine days later, Mr. Vanderbilt contacted Gibson Dunn to do the independent investigation.

So five weeks ago, Mr. Colucci thought it was great for the company to be running as the way it's been run for the last two years. And then, when the independent investigation started, that's when all these problems started, Your Honor.

So that's why we think the status quo should be what Mr. Colucci voted for. He voted for it five weeks ago. He voted to continue Lisa King as the Chief Executive Officer and Mr. Farnsworth as the co-CEO. And you know --

MR. CONNOT: The --

MR. KEMP: It just seems to me, excuse me.

MR. CONNOT: [Indiscernible.]

MR. KEMP: It just seems to me that pretty simple issue here, you know. If we have a bad penny, let's find out. If we don't, great. Simple issue.

MR. CONNOT: And, Your Honor, there's a whole lot to that timing issue that's left out there. I mean, it is interesting that July 8th, this meeting on one hour notice. It was an invalid meeting.

And then, suddenly, when there's a flurry of board meetings in the midst of it, it's suddenly on July 17th, we have to do this investigation of Mr. Colucci.

I mean, before that, there was no issues with Mr. Colucci. Mr. Colucci was perfectly fine to be a director of this company.

You know, somebody that they want to call a telemarketer that they then turn around and make a director of a company of this size?

I mean, that seems incredulous that they're going to, you know, impugn him on one hand, and on the other hand, you know, we felt confident enough in him to make him a director of this company.

But all of that aside Your Honor --

THE COURT: But what I want you to understand, I mean, that comment is not controlling my thought process --

MR. CONNOT: I.

THE COURT: -- and/or decision making.

MR. CONNOT: Okay.

THE COURT: Please understand that.

MR. CONNOT: Yeah, I get it.

THE COURT: I'm looking at it through a different lens. I'm looking at it we have an ongoing apparently successful business, right, generating monies, employing people.

You have a board. There's a board issue. I know there's issues regarding the bylaws and following by the laws.

For example, 5.5 not letting the Chairman run the meetings. I mean, but my -- but then I come back to and it seems like this. And I don't mind saying this, that potentially the direction that I'm being asked to go as far as decisionmaking in this case would be essentially this, let the judges continue on.

And then, I sit back and look at the mandated Rule 65 dealing specifically with issues regarding probability of success on the merits and/or irreparable harm. I should say and irreparable harm. And I'm thinking about all this as I'm reading this.

And I'm saying wait a second. Maybe we should slow down little bit and develop the case and the evidence versus argument of counsel. I don't mind telling you that.

But continue on, sir.

MR. CONNOT: Now, I think, you know, we -- I think I'm not trying to invade on your territory or comments you want to make, Mr. Parker, but I think the issue has been -- this specific issue has been pretty well argued in its allegations and the Court hasn't heard any real evidence on it yet, but you know, with that --

THE COURT: That's -- you know what? And that's kind of the

point --

MR. CONNOT: Yeah.

THE COURT: -- I'm really heading to.

MR. CONNOT: Uh-huh.

THE COURT: You know, I mean, trust me, we have, you know, there's one thing good about this case, we have splendid lawyers involved. We do, you know. And I've heard all of you many, many times.

That's -- and so, I listen and there's no question everybody's convincing. But then, I always circle back, okay, what are the true facts, right? That's what I come back to.

You know, and lawyers are really great at -- and what lawyers should do, no question they spin facts a little bit, you know, to benefit their client.

But right now, I don't have a lot of facts in this [indiscernible]. And I'm -- that's what I'm really thinking about. You know, and so, how can I make monumental decisions like this?

MR. PARKER: Your Honor, this is I would say a tremendous challenge for the Court, because you do have a lot of information that we've provided. And as of this afternoon, or late this morning, quite a bit of information that Mr. Connot provided.

Certainly I would not ever ask this or any other Court in this 8th Judicial District to decide something without having the ability to go through the paperwork first, of course, consider the arguments of counsel, and then if necessary take the evidence to some point of

evidentiary hearing so the Court would have some fact finding to support a decision.

What we do have and what the Court has been faced with about two weeks ago was a TRO that I believe does not fit our rule, Rule 65. And it does not fit --

THE COURT: Irreparable harm, right? And/or --

MR. PARKER: Irreparable harm.

THE COURT: -- probability of success on the merits.

MR. PARKER: Thank you. I mean, that's what I'm trying to get back to, because that's what this was actually scheduled for.

THE COURT: Right.

MR. PARKER: Thank you, Your Honor.

THE COURT: And after getting all the information, I -- and I was reading some of the facts, then I circle back to the rule.

MR. PARKER: That's what I did, Your Honor. And so, yesterday, I started out. And I know Mr. Connot may take some offense to me starting out with the Rules of the Professional Conduct, but our Rule 65 unlike a lot of states is very particular in terms of what your obligations are to the Court.

And so, Mr. Connot in the information he gave us today, which you know, all of us here have been trying to go through, indicates in part and this is attached as a declaration from Mr. Goldstein [phonetic], that among other things that the argument before the New York Supreme Court dealt with the location of where cases should be brought for Vinco.

And I'm referring to the paragraph 49. This is on page 7 of Mr.

Goldstein's declaration.

At least Mr. Connot has recognized I'm assuming his office prepared that declaration that there were arguments on the merits in front of the New York Supreme Court judge that dealt with these very same issues.

And when you compare your order, the order provided by Mr. Connot's office, to the order that was provided to the New York state judge, they're very similar Your Honor, asking for identical forms of relief.

Your Honor asked a few moments ago and no one directly answered the question. What should be the make-up of the board? How do you as a Court preserve the status quo, prevent irreparable harm, consider the success of either party, the probability of the success of either party, and make a decision with only I say a smattering of information without any true sworn testimony?

You have declarations, but it's not in front of the Court. And I know the struggle, Your Honor. And when I consider that --

THE COURT: Well, that's why I asked the ultimate. I mean, I look at this and I see some complex factual issues. I don't think the cases is as complex from a legal perspective.

But I have -- I mean, from a historical perspective, I mean, I've had a lot more documents, but still there's a lot of here. And there's a lot of exhibits.

But more importantly, what I don't have is this. And I have declarations. And declarations are fine, but as we know, declarations don't always withstand rigorous cross-examination.

MR. CONNOT: That's right.

THE COURT: We know that, right?

MR. PARKER: We do.

THE COURT: And so, I'm -- and that's why I asked the initial question. Because I don't mind telling everyone this. I'm concerned about maintaining the status quo and what that really means.

I know there was a request to conduct discovery. I mean, discovery's always really important to develop a factual record.

And at the end of the day, and I know you know this, Mr. Parker, because I mean, I always look at cases in this regard. Whatever decision I make, I try to follow the law, the rules and the like, but I also look through it through lens of would this case withstand appellate review?

MR. PARKER: Absolutely.

THE COURT: I mean, that's one of -- I always sit back. That's how I try to sit back objectively, and say, oh, okay, before I pull the trigger, let me sit back. Do we have an adequate record developed? Right? That's one of the first things I do, you know.

MR. PARKER: That's right.

THE COURT: And okay, make sure I understand the facts. Am I applying the appropriate law or standard?

MR. PARKER: And Your Honor, and that's why you've been so successful in being -- having your cases affirmed, because you look at it from both -- well, you've been a practitioner.

THE COURT: Right.

MR. PARKER: So you understand creating and developing the appropriate record. What we have here and why I decided to get up when I did is because to maintain the status quo, you have to have a --

THE COURT: And what does that mean?

MR. PARKER: It --

THE COURT: Right?

MR. PARKER: Absolutely. And --

THE COURT: I don't know exactly what that means.

MR. PARKER: And it's difficult to know until you go through the information. And I know you're reading here. So I know spent a lot of time between yesterday and today familiarizing yourself with this case, right? I have no doubt in my mind.

But I know also know you knew the rules and you know the case law around -- surrounding TROs and permanent injunctions.

So when it comes to Ms. King and Mr. Vanderbilt, they were board members when everything transpired. They weren't allowed to vote.

They were not allowed to -- Mr. Vanderbilt was not allowed to preside as the Chairman of the Board. And the meeting that Mr. Kemp was speaking of is abomination to the procedural process of any organized meeting, the protocol, the decorum that you'd expect.

It's not just a breach of fiduciary duty that this Court's going to be required to look at, but it's also our own conflicts of interest issues that I can't imagine the Court not finding ultimately that Mr. Colucci through other -- his other company, Highway [phonetic] Data, through

his wife invoicing this company for over $215,000 for deals that were not approved by this board, committing to millions of dollars to AI Pro for zero deliverables.

Ultimately, I believe that's where the Court will go, but I know the Court's not there yet because we've not presented all of that information.

THE COURT: Well, and here's my point when I talk about maintaining the status quo. I don't necessarily mean the status quo and maintaining it reflects the TRO that was entered in this case.

MR. PARKER: And that's where I'm going, but we --

THE COURT: I mean, I'm not saying that because I have more evidence now. I understand --

MR. PARKER: That's right.

THE COURT: -- there's a lot of factual disputes and the like. So my -- but at the end of the day, and this is my overwhelming concern is going back to the company, the business organization, the viability, the paying the bills, apparently making -- paying employees until these issues can be resolved.

MR. PARKER: And Your Honor, the status quo, when I look at all the cases developed in Nevada, when I -- you know, pronouncements from our Supreme Court, the status quo is supposed to be a shield, not a sword. It's supposed to be a shield.

It's supposed to protect the company or the agency or the plaintiff from harm that the Court would otherwise believe would occur if not for the TRO.

Conversely, Mr. Colucci has used this as a sword. Firing people, intending to do the RIF. Thank God the Court has put -- has indicated from the bench that that's something that's not going to happen between now and August 22nd.

But what we don't have like at this point in terms of the status quo having our --

THE COURT: I'm defining the status quo.

MR. PARKER: Is defining it.

THE COURT: Yes.

MR. PARKER: Well, you mentioned up front what is the make-up of this board that we are to come to a status quo position or determine determination? Well, we definitely know that these two Defendants were --

THE COURT: You say, well, I thought about it. Can I appoint a receiver?

MR. PARKER: Well, you know, we had two ideas on that.

THE COURT: You know what I mean?

MR. PARKER: I will tell you. We wrestled with the idea, but because there's a cost to the receiver.

THE COURT: No, I understand that, I do.

MR. PARKER: But we have -- we've asked for and certainly I don't know if the Court has seen this, but we're asking for --

THE COURT: I haven't seen that.

MR. PARKER: -- the appointment of a special master.

THE COURT: I saw that. I saw that.

MR. PARKER: Okay. So that's one of the concerns in terms of discovery and handling it on expedited basis.

But Your Honor, we do want, and I don't believe this is reflected the proposed order, but we do need a determination of the status quo for purposes of the membership of the board, your ability to prevent any unauthorized board meetings.

And we also need a status quo developed in terms of co-CEOs, which we believe going back to what Mr. Kemp said on July 8th, Mr. Colucci, and we got to -- we have notes. I don't complete minutes, but we do have notes that Mr. Connot provided yet this morning where Mr. Colucci agreed that Mr. Farnsworth would be the co-CEO.

This is the first time because there's no evidence of this that I've seen thus far where between the 8th and the 17th, Mr. Colucci objected to the notice -- notification of the meeting or the vote during the meeting.

In fact, he I believe suggested to Mr. Goldstein that Mr. Farnsworth was the appropriate person to be co-CEO.

And so, I -- when I looked at this, and we've provided -- this is something that I'm not just arguing, but we added this to the declaration of Mr. Vanderbilt.

And it's the actual letters between Mr. Vanderbilt as the Chair to the board members. Then Mr. Goldstein's letter to Gibson Dunn. Then Joseph Warren's [phonetic] letter from Gibson Dunn withdrawing because of what I consider to be coercion on the part of Mr. Goldstein, and all of the documentation leading up to these unauthorized board

meetings after the fact.

And so, what Mr. Kemp was trying to articulate is between the 8th and the 17th, the only thing that changed was this interest in getting a full vetting done of Mr. Colucci.

Now Mr. Colucci may be found completely innocent. Perhaps his wife's invoicing of $215,000 through I-Bar [phonetic], perhaps that's not a violation that would disqualify her. I doubt it, but perhaps.

Perhaps him charging $100,000 through his own company -- for his own company related to EDC, perhaps that's not a violation that would disqualify him.

Perhaps allowing AI Pros potentially to have stolen IP information from Vinco while paying AI Pros over a million dollars and then supporting paying them more than that, perhaps that's not a disqualification.

But I believe a full vetting will tell us one way or the other. And until then, Your Honor, is it appropriate to have someone with those issues be a part of this board?

Originally, my ask was that the true status quo was June 9th, 2022 before Mr. Colucci became a board member. That to me would be the true status quo because before then, and we provided this as an exhibit, the value of the company was higher. There was this chaos that they complain about in their moving papers was not there.

There was no indication of some significant RIF. I don't see the downside of going back to June 9th, 2022, the day before Mr. Colucci came on board.

For purposes of our motion, and that's why we're here today, Your Honor, I think the only thing that we need to do in terms of that proposed order is we definitely need to have Ms. King and Mr. Vanderbilt have full participation in the board. I think Mr. Farnsworth should return as a co-CEO.

And I think we have to put the brakes on any corporate changes in terms of employment, especially this self-dealing it appears contract that Mr. Colucci has devised for himself where he's gone from being paid as a board member to being an employee, and any other transactions with AI Pro.

MR. CONNOT: Your Honor, there's a lot of allegations and argument. And now, we want to roll this back to June. Okay, there's no dispute. And I stated yesterday that Mr. King and Mr. Vanderbilt are currently board members. There's a process to remove a board member.

Mr. Colucci's a board member. Mr. Distasio's a gold -- a board member and Mr. Goldstein are board members. This company has five board members, five board members.

And they make an allegation. They make an allegation that's unfounded. And we'll present the evidence to show why it's unfounded, that somehow, you know, Mr. Colucci may not be independent under the NASDAQ rules, but that does not remove him as a director of the board, Your Honor.

And so, we have five directors in this company. Five directors. And you want to talk about the timing of things. I hear, well, these

unauthorized board meetings.

Yeah, they don't want to recognize what the July 8th board meeting was other than an unauthorized board meeting. They can't defend it. It was on one hour's notice. One hour's notice.

And so to come in here. And that's what spun this whole thing out of control. And you'll hear the minutes of the July 24th or the recording of the July 24th meeting where constantly, constantly, Mr. Vanderbilt was shouting and interrupting and refused to participate. And he mute and unmute it, because it was an attempt to control some sort of decorum at this meeting.

And so, you got a situation here where, yeah, what do they want for the status quo? Status quo is take Mr. Colucci off the board with zero evidence, an allegation, zero evidence that he did anything wrong.

And so, the Court hadn't heard any evidence yet as to what he did wrong. And so, you know, now we see what the real power play and the stretch is here.

They don't like the situation. You know, they did not have the adequate number of votes. Ms. King and Mr. Vanderbilt were outvoted. Okay? That's how the world works. That's how elections work, whether it's politics, whether you're running for judicial office. Whether you're on a board and it's a majority rule. That's what happened on July 24th.

It was a proper meeting. Mr. Colucci until found otherwise is a director just as Mr. Vanderbilt, Ms. King, Mr. Goldstein, or Mr. Distasio are board members until found otherwise or voted out by the

shareholders.

And we have an upcoming shareholder meeting, Your Honor. So I mean, we sit here now getting into a lot of arguments and allegations.

THE COURT: But I mean, how much power can we -- here's my question. We have an upcoming shareholders meeting, but how much power would a shareholders really have in this case in light of the current business posture?

MR. KEMP: Yeah, none of the board members are up for consideration at the upcoming meeting, Your Honor. So that's a false promise.

THE COURT: Yeah.

MR. PARKER: In fact, I believe not until October, Your Honor.

THE COURT: Yeah, but my point is.

MR. PARKER: It may not be a company around by then.

THE COURT: That's my point.

MR. PARKER: Exactly.

MR. CONNOT: Well --

MR. PARKER: And that's the purpose of the TRO. It's a shield.

THE COURT: And understand this, Mr. Connot, I'm not saying you're not right. I'm looking at through this lens. I want the case to develop factually. I do.

MR. CONNOT: Absolutely.

THE COURT: But I want to make sure it's an ongoing

concern without any decisions made that rise to the level of being terminal, right?

I mean, I wanted to keep going ongoing and those decisions potentially to be made later. What the ultimate solution should be, I'm not sure yet. I have some ideas.

MR. CONNOT: Okay.

THE COURT: But that's my big concern because I want to make sure we can have enough time -- because I don't want to make a decision that one way or the other, yet that impacts this organization.

MR. CONNOT: Without evidence from the witness stand and properly coming in, Your Honor.

THE COURT: Right.

MR. CONNOT: Absolutely.

THE COURT: And so, and just as important opportunity to develop it. And so, I don't know what would be quote the status quo right now. I have thoughts on it, but how about this? Does this make any sense? Maybe you Mr. Kemp, Mr. Parker, and so on, you go to the ante room and talk about it for a few minutes. If you can't, then you can make suggestions to me.

MR. PARKER: Would that be, Your Honor, and I've seen you do this before. You've allowed counsel to create a document. And then, you -- we send it to you in Word or WordPerfect, however you like it.

THE COURT: In a general sense, I don't mind saying if everybody agrees, then I typically don't get involved.

MR. PARKER: Right.

THE COURT: Unless it's a blatant violation of the rule of law, and if I have a question on it, right? But that doesn't happen very often. But and so, if everyone agrees, I tend to go with it.

But I just want everyone to understand, that's my concern. I haven't -- I understand there's two sides to it, right, but my primary concern now is the ongoing viability of the business of the corporation until the facts can be thoroughly vetted and decisions made based upon bylaws, you got corporate law, all those types of things.

MR. PARKER: I appreciate that, Your Honor. We certainly can sit down together and try to put a document together for the Court where we can indicate things we agree to. And then, indicate where there's a different. And the Court can devise or fashion the appropriate order. The --

THE COURT: No, no, I don't want to write orders. Somebody would be charged with that and I'd review it. It might take you -- it could be next week with as much work as I have to do.

MR. PARKER: My concern is when I say the order, Your Honor, I've seen judges just like the New York Supreme Court judge --

THE COURT: Well, I understand.

MR. PARKER: -- put into a --

THE COURT: But here's my thought, see, for example, if you can agree on principle on certain key issues, and others you don't maybe I'll make those, I'll break the tie on that.

MR. PARKER: Sounds good, Your Honor.

MR. CONNOT: Yeah, that makes sense.

THE COURT: Mr. Connot?

MR. CONNOT: As long Mr. Kemp and Mr. Parker don't get a vote, each time and I only have one. Not --

THE COURT: No.

MR. CONNOT: I understand what you're saying, Your Honor. That was a sad attempt at humor.

THE COURT: [Indiscernible.] So how about this? Maybe I should step down for a little while and when you're ready?

MR. KEMP: And Judge, what about the other little housekeeping matters? We're asking for the expat discovery and the special master?

THE COURT: Well, I think -- well, we haven't talked about a special master, but I think we do need discovery probably expedited, right?

MR. KEMP: Right.

THE COURT: Whether there's a need for special master or not, of course if you agreed on that, I would agree, you know.

MR. KEMP: The reason I think there's a need for a special master, Your Honor, is not that we can't work through the discovery, but a lot of these where this is going to be out of state of Nevada and some of them potentially even outside of the country.

And I think that's why you're going to need a special master because there's people -- a lot of people in New York, a lot of people in Florida. Mr. Yang, who's in the courtroom today, is I understand in Canada and his business is in the Philippines, but there's a lot of people.

And I think a special master would be helpful in that regard, Your Honor.

THE COURT: All right.

MR. KEMP: And especially order of discovery because I imagine we're going to want to take 30, 40 depos. I would think they're going to want to take 30, 40 depos. That's a lot to do before a preliminary injunction hearing, which you know, I'm just assuming the Court's going to give us one some time somewhere --

THE COURT: I'll give you one, you know.

MR. KEMP: Yeah, but so that's why we --

THE COURT: Yeah, I want to give everybody input. Mr. Connot, whatever you need.

MR. KEMP: That's the only reason we thought -- we propose a special master. We haven't presented any names because I haven't talked to opposing counsel about any names, but.

THE COURT: I mean, you have Peggy Lane [phonetic. You have Boris Rachel [phonetic]. You know those are some of the main individuals that kind of -- from what I understand now because I understand Judge Leung [phonetic] is doing now too this year.

MR. CONNOT: She is over at the jail.

THE COURT: Yes. You know, what's wonderful -- what I really like about Mr. Hill, I mean, I've used him on some really big cases before. And I think what he's really good at is turnaround time.

MR. CONNOT: Well --

THE COURT: Because he's one of those that can make a decision and you walk out. By the time you get back to your office,

there's an order sitting there, you know, which is little different than -- I mean, to be candid with you, I don't know anybody else that does that [indiscernible] like that.

MR. KEMP: Yeah, well, he monitors the docket so.

THE COURT: Oh, he does.

MR. KEMP: Yes.

THE COURT: Yes, he's a different level guy. I don't -- he loves to go for a swim every morning, but other than that, he lives what he does. There's no question about it.

MR. KEMP: Well, in any event, Your Honor, we think we need expedited discovery and some special master who we don't we haven't proposed.

THE COURT: I'll give you guys a chance to talk about that.

MR. PARKER: Thank you, Your Honor.

THE COURT: Okay, I'll sit down.

[Recess taken at 2:34 p.m.]

[Proceedings resumed at 4:24 p.m.]

THE MARSHAL: Please be seated.

THE COURT: All right, let's go ahead and set forth our appearances once again for the record.

MR. CONNOT: Certainly, Your Honor. Mark Connot, Rex Garner, John Orr on behalf of the Plaintiff. Also present is John Colucci and Adele Hogan, who has -- in the process of submitting a -- I think actually he submitted the OST pro hac today.

THE COURT: Okay.

MR. CONNOT: On behalf of Plaintiff, Your Honor.

MR. KEMP: Your Honor, Will Kemp for Defendant Farnsworth.

UNIDENTIFIED SPEAKER: Appearance?

MR. PARKER: Oh, I'm sorry, Your Honor, Theodore Parker on behalf of Ms. Lisa King and Mr. Rod Vanderbilt.

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

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

THE COURT: All right.

MS. ZORNES-VELA: Okay.

THE COURT: And you can update me on the status. I see there's a copy of a stipulation and order that was submitted to me just moments ago. And I would anticipate there might be some agreements and some disagreements.

MR. KEMP: Yeah, Judge --

THE COURT: As far as the content, is that it?

MR. KEMP: Now, Judge, pages 1 and 2 I think were agreed to. I think the first disagreement's on page 3, the last page.

MR. CONNOT: Although I would say, Will, just to make sure because I don't think this has [indiscernible].

MR. KEMP: Oh, yeah I thought -- I think the new one. Because the one [indiscernible] under 3?

MR. CONNOT: It does not, but --

MR. KEMP: Okay.

MR. CONNOT: Yeah, Judge.

MR. KEMP: Bottom of page 3, yeah, counsel brought to my attention the fact that there's some language advance on a loan that should be added to, which -- or report, excuse me, which we've agreed to do, but it's not in your draft.

MR. RULIS: So where it says Plaintiff agreed, stipulation agrees to pay Lomotif $710,000 on or before August 18, 2022, I will be treating as an advance on the loan.

[Counsel confer]

MR. RULIS: Okay, so we'll pay it to ZDD.

UNIDENTIFIED SPEAKER: Okay.

MR. RULIS: Which is where the payment is coming to.

MR. KEMP: That's fine with us.

MR. CONNOT: That's fine.

MR. RULIS: Yeah payment will be paid to ZDD.

MR. KEMP: Okay.

[Counsel confer]

MR. KEMP: Your Honor, so 4 and 5 are the points of contention at this point. So 4, what we proposed is that they wouldn't hold any board meetings unless there's 48 hours', written notice, and there's unanimous agreement of the board members. The parties agree to the board members.

And we agree that we would not withhold consent in the event of the emergency. And in the event that they really need a board

meeting, we withhold consent, they have the right to come to Court and ask the Court to authorize the board meeting.

So that's the proposal I thought was agreed to, but I guess it's not now, but I think that's a reasonable decision because right now, it's 48 hours. And we just want to stop this thing where everyone -- notices the board meeting.

MR. CONNOT: And the specific issue there, Your Honor, is the major lender, the Hudson Bay that's been mentioned previously, the $80 million dollar note.

There's a restructuring proposal that's just been circulated all the board members. And it's just been and those discussions were ongoing this week.

And there's this proposal was received today. My understanding is this afternoon and has just [indiscernible] all the board members, the company would like or the other three board members would like to have a board meeting this evening because there's a --

UNIDENTIFIED SPEAKER: What's the drop?

UNIDENTIFIED SPEAKER: That date on this [indiscernible].

UNIDENTIFIED SPEAKER: Wanting it tonight.

MR. CONNOT: They're wanting a response tonight.

UNIDENTIFIED SPEAKER: Or the company could be bankrupt tomorrow.

MR. KEMP: So, Judge, it's 5:00. They haven't shown us what the proposal is. They said they emailed it to us. We still don't have it. Does anyone have a meeting tonight by midnight? I mean --

MR. CONNOT: Well, you've got major lender.

MR. KEMP: Kind of shows you --

MR. CONNOT: Sorry.

MR. KEMP: Kind of shows you what's been doing on, Your Honor. But I would submit we use the language as we drafted it. You know, Mr. Farnsworth has excellent relationships with this particular lender. He was actually the one that negotiated the loan. And I don't know what the terms are, but I can't believe that Mr. Farnsworth's participation wouldn't help this transaction get resolved.

So you know, and I like I said, we don't know what the loan terms or what.

UNIDENTIFIED SPEAKER: Yeah.

MR. CONNOT: So on that specific issue, Your Honor, to say they can't believe it just came up, the default came on Monday of this week. And you know, it's our position as a result of the actions of the Defendants, but that aside, the default notice was issued on Monday. This has been in a whirlwind this week not just with what's going on here in Court, but the company itself.

That email was just sent out to all of the board members. None of the other board members other than Mr. Colucci, because he's also the CEO at CNAP [phonetic] okay until just within you know, it's only been received by the company within the last -- this afternoon.

And so, that's why there's a need for a board meeting this evening. We have no issue with Mr. Farnsworth. You know, certainly doesn't have a vote, but you know, whatever his relationship may be

with Hudson Bay being involved in this discussion and this board meeting to the extent the Court wants to have him involved, certainly on our side, there's no objection to that. So I think we can accomplish that, but there's -- there is a need to have a board meeting tonight. .

UNIDENTIFIED SPEAKER: [Indiscernible.]

MR. CONNOT: Your Honor --

MR. KEMP: Judge, come on, just a major transaction.

THE COURT: No, well, you know, and I'm going to share with you my thoughts because I was sitting here listening. And I'm looking at the language. And it appears to me the big issue is this notice of default and potentially the note being called. I understand that.

And so I'm sitting here saying to myself, okay, two things. Can't we have a carve-out for that meeting, but before action is formalized, we have a status check tomorrow morning at 9:00 and tell me what's the proposal?

MR. PARKER: Your Honor, I was going to ask -- you read minds I'm sure all of our minds, but your TR --

THE COURT: That makes sense, right?

MR. PARKER: It does. But your TRO says, and this is what I -- I cannot reconcile Mr. Connot's comment when the TRO that he prepared says item 180 for the duration of this TRO, the Defendants, these three individuals here, are enjoined from holding themselves out internally or externally of course with the bank, as employed by company or acting on its behalf in any capacity.

And yet, they now say that this was sent out on Monday.

Didn't let us know on Monday. We get this right before Your Honor came and took the bench, we were told that they were sending it to us.

And now, they want these three people, one who raised all rights of coming in the first place and the two board members, the chair, Mr. Vanderbilt, that turn on a dime to make a decision about a $33 million loan.

MR. CONNOT: It's actually $80 million.

MR. PARKER: 80 million I'm sorry. $80 million loan.

MR. CONNOT: The notice --

UNIDENTIFIED SPEAKER: 96 million.

MR. PARKER: Now it's a 96 million loan, Your Honor.

MR. CONNOT: It's an $80 million loan --

MR. PARKER: So --

MR. CONNOT: -- and $16 million penalty. And the notice of default was just received on Monday.

MR. PARKER: And.

MR. CONNOT: Not this [indiscernible].

MR. PARKER: So Mr. Connot, let me basically --

THE COURT: But gentlemen, you have to understand. I'll listen to everybody.

MR. PARKER: Thank you, right?

THE COURT: But here's my point. And I'm concerned about the economic viability of the company. If there's a notice of default. I'm concerned about that.

But just as important, I realize there has to be some action

potentially, but I'm sitting here saying in a general sense, I have no problem with the -- with paragraph 4.

And if we have a concern about an opening called in the sum of -- including penalties of $96 million, it seems to me why can't you make a decision, come in, Mr. Farnsworth participates in the meeting. He can make a decision and say, yes, this is a problem. He can report back tomorrow. And then, I can make a decision.

MR. PARKER: Your Honor, we are suggesting --

THE COURT: That's why this is business court, right?

MR. PARKER: Exactly, we're suggesting a --

UNIDENTIFIED SPEAKER: That's good.

MR. PARKER: -- a rescinding of the TRO as it pertains to this issue and as it pertains to these two board members participating.

And that's why I cannot for the life of me understand how Mr. Connot's clients can want them to participate when they choose to and then hold them at bay when they choose to.

THE COURT: Because at the end of the day --

MR. PARKER: Makes no sense.

THE COURT: And tell me if I'm wrong or not. I mean, I don't know anything about the terms and conditions of the note other than it appears to be in excess of 80 million with a $16 million penalty. See I listen, sir.

But anyway, it seems to me if that's an issue, that should be resolved immediately, right?

MR. CONNOT: Yeah, we don't need to rescind the TRO.

They want to roll back the entire TRO. I sent an email last week to their counsel the same counsel that accepted service. Said look, they remain as board members. Tell me how you want to communicate? Crickets, Your Honor.

So to sit here and come in here, well, we didn't understand. They had every opportunity. So I mean, let's move past the bluster and all of that and focus on what the issues are as the Court has noted.

THE COURT: And as far as issue number 4 is concerned, I'm looking here and I understand your issues, sir, I do. And my point is this. We can have a carve-out for that.

MR. CONNOT: Okay.

THE COURT: And we can under the conditions that I set forth.

MR. CONNOT: Yes.

THE COURT: Sir, you can participate, so you have just make sure what's going on. And it's -- I guess it gives you some sort of confidence or whatever that it's appropriate. That's fine.

And then, tomorrow morning at 9:00, we can meet. You can report back to me exactly what it is. And then, it's taken care of because I don't want to the note called.

UNIDENTIFIED SPEAKER: Okay.

THE COURT: There's no objection to that, Mr. Kemp.

MR. KEMP: What language should we use for the carve-out?

THE COURT: I guess language --

MR. KEMP: This not apply to the --

THE COURT: -- specifically related to the potential call of the note in the sum of $80 million.

MR. KEMP: This should not apply to the Hudson Bay.

MR. CONNOT: The Hudson Bay.

MR. KEMP: Default?

MR. CONNOT: Default.

THE COURT: Yes, you know what it is better than I do, sir.

MR. KEMP: Yeah. Add that, please.

Your Honor, the last dispute was 5. And so, they proposed that this order be in effect through Friday. I said 6 -- Mr. Parker said 60 days. I said let's just make it 30 days. But I think just keep this in effect Friday is really not what we want.

MR. PARKER: We're talking about payment terms, Your Honor, just to make sure the Court understands what we're talking about duration. We don't want to come back to Court every week -- every other week for payroll.

So we figured until the evidentiary hearings concluded and the Court makes a final decision, that this -- these terms should govern as a stipulated order or as an order, but not as a restraining order against our clients any further.

MR. CONNOT: Well --

MR. KEMP: You know, Friday, Your Honor. I mean --

MR. CONNOT: -- I think with this, Your Honor, I think the Court has sort of roadmap. The issue is how long it's going to stay in effect. The other -- this Court has the authority to Friday comes around

and you're like I think I'm going to extend this for another 3 days, 5 days, 10 days, 30 days at that point.

But at this point, before you heard a shred of actual evidence or testimony, you know, to say, oh, I'm going to keep this in place for 30 or 60 days to hamstring the company? And under this provision, I mean, I don't think there's a need for that at this point to get us through today and the next two days.

And it sounds like that's the one area of disagreement then that we have on this. Have we agreed on everything else in here?

MR. KEMP: No, we haven't because we still haven't.

MR. CONNOT: Oh.

MR. KEMP: We don't agree the restraining orders being continued. We do agree with some parameters being placed, so that the Court than prevent this company from --

MR. CONNOT: But we don't need to do that in this order. I think we can do that.

MR. PARKER: But this is the time set for your TRO to be considered.

MR. CONNOT: Right and --

MR. PARKER: And that's what the Court's doing.

MR. CONNOT: And we've also got tomorrow's schedule.

MR. PARKER: So but Mr. Connot, I'm not here to take the judge's time if it's not necessary. We've given the judge more in I would say evidence, documentary evidence at least, than you did when you asked for the TRO. I think there's enough given to the Court to make a

decision that your TRO should be set aside.

Now the question is and I think what the judge is trying to determine is the appropriate parameters that's been placed for everyone. That's my belief.

MR. CONNOT: What's been provided is a whole lot of documents not much in the way of the evidence.

MR. PARKER: More than you've provided, more than you've provided --

THE COURT: Well, here's -- and gentlemen, there's always two sides to every story. I get that. Number one.

Secondly, and I thought it was pretty clear when we started this journey together today that one thing I won't do, I'm not going to rush to make a decision specifically when it involves the life of this company, right?

UNIDENTIFIED SPEAKER: Yes.

THE COURT: I'm not going to do that. In fact, I think I pointed out it potentially would be unfair to me as a decision maker, right? Because I'm not going to rush. I mean, if this was a simple tort case, I wouldn't rush, but we're talking about tens of millions of dollars if not more than that.

And so, I'm going to be very careful as to how I proceed. I just want everybody to understand that.

And so, I understand there's a TRO in place, but at the very outset, and it's been challenged. And then, I always come back to the issues that we talked about under NRCP 65 as it pertains to probability

of success on the merits and irreparable harm, right?

And so, I'm not sure on that right now because I have two sides. Because remember when I issued it all I was your affidavit.

MR. CONNOT: Yes.

THE COURT: Now I'm at this point where I don't know if I'm at the probability of success on the merits because there's questions of fact right now.

Now all I'm trying to do is accomplish is one task and that's to keep the company healthy. Nothing more, nothing less. I mean, it's one of -- and I want let due process work. That's all.

MR. CONNOT: Yeah.

THE COURT: Nothing more, nothing less of that. My mind's pretty open.

And so, what I'm thinking is this because number one and this is my question, when it comes to evidence, what type of evidence are we talking about?

Number two, what's the necessity for discovery? Because I'm going to -- I think whatever language that meets the intent of my carve-out, I have no problem with that.

Secondly, as far as the TRO's concerned in this situation, and maybe everybody -- under the facts of this case, I should say, I think potentially everyone misread me in this -- not everyone, but my intent is, look, I'm not giving either side at this point a headstart.

You understand what I'm saying? I'm not. I'm just, but I want to maintain the integrity of this company. That's all I'm concerned about

right now. And the facts will ultimately determine which direction I go, whether it's going to by permanent injunctive relief one way. There's another request from the Defense and so on.

But I'm not even close to that. And so, I'm just looking at it through one lens. And that's why I ultimately started about preserving the status quo.

And when I'm talking about that, I want to preserve the health of this company.

MR. KEMP: And, Judge, the reason with chose 60 days is two-fold. One, we anticipated, like I said before, that there be 20 or 30 depositions on each side. Some short.

And we were hoping that we cut a preliminary injunction hearing before Your Honor sometime in September. So today being August 17th, we thought 60 days would take us to September 17th.

UNIDENTIFIED SPEAKER: October 17.

MR. KEMP: Yeah, October 17 that would be plenty of time.

The second point is Your Honor, as you know, companies are just pieces of paper and names. It's the employees that make the company.

THE COURT: I understand that.

MR. KEMP: We thought something that went into effect -- that stayed in effect at least 30, 60 days would be reassuring to the employees.

And because just because they're getting one more paycheck on Friday doesn't mean they're not going to start looking around. You

know, I would, if I saw, you know, a significant shareholder or corporate suit, I would probably listen to other offers.

But anyway, that was our thought process in these 60 days, Your Honor. That's why we submit 60 days.

MR. CONNOT: And the start of this whole discussion was about getting employees paid. You know, that's resolved here. This is not a discussion to resolve the TRO issues, dissolve the TR -- or dissolve the TRO.

I mean, it was let's get this done, get to evidence, start to put on testimony so the Court can actually hear some testimony and know what's going on here and get a sense and a flavor of actual evidence and testimony, not attorneys' arguments, not spin on facts, not allegations, but actual testimony from the witness stand and explain some of this stuff. So --

THE COURT: And I -- and that's due process. But here's my question. And I think this is very important to really focus on. Are we in the position today to accomplish that task?

And what I'm talking about tomorrow, yeah, we can put a few people on the stand, but there are -- it appears to me there's a myriad of factual issues here, right?

I realize in a general sense July 18th -- July 8th might be an important date. I get that, but there's a history here.

And so, how can I make the ultimate decision based upon a four-hour hearing, preliminary injunction hearing?

Mr. Kemp talks about 30 depositions. I don't know if that's

necessary, but 30 depositions is a lot of depositions, right, that is. You know, and that's a lot of depositions.

But who am I to say they're not required or necessary? I mean, I don't know the facts of this case, right? And it may be in many respects, maybe the lawyers don't know all the facts of this case because typically you don't know all the facts until after the close of discovery, right, we just don't know. And so, there's one side and there's another side.

I'm looking at it through a different lens, not favoring either side. I just want to make sure. And when I say maintain the status quo, I'm more focusing on making sure this is an ongoing entity until I can make sure there's a decision. Nothing more than that.

MR. PARKER: Originally, Your Honor, I still have -- because I was concerned with the case law that the Supreme Court has handed down for direction and instruction to the district court.

And it seemed to me that Mr. Connot continues to place the cart ahead of the horse. He's suggesting that this Court should maintain a TRO, but the Court had less evidence, less information.

THE COURT: I mean, I get that, Mr. Parker.

MR. PARKER: Thank you. Thank you.

THE COURT: I understand that.

MR. PARKER: And so, it makes no sense and again.

THE COURT: Because this is an ex parte application.

MR. PARKER: That's right.

THE COURT: I've got nothing from anybody.

MR. PARKER: Exactly.

THE COURT: And that's why at the very outset, I talked about maintaining the status quo is maintaining the health of this business.

MR. PARKER: Thank you. And when you said that, Your Honor, I wrote it down, I wrote it down right here because whatever the Court does, it's not like you said before, it's not hear to preserve a TRO for purposes of preserving a TRO. You're actually --

THE COURT: That would -- maybe be that would be appropriate under a preliminary injunction setting where we've got a complete --

MR. PARKER: You've had someone sit in that stand.

THE COURT: Right.

MR. PARKER: Absolutely, but at this point, certainly, this Court has been given more information than Mr. Connot provided when the Court issued the ex parte TRO.

And certainly, the Court also recognizes the value of this company monetarily as well as the value of keeping these employees. And so --

THE COURT: Well, that's what I really recognize is this because I mean, I don't know -- I haven't heard evidence as to the value of the business, right, but I would anticipate based upon some of the long figures that were just raised, there's a probability that investors have made significant investments in this company. I know that.

I don't know if it's 2 -- 100 million. I don't know if it's 500,000 million. I mean, I don't know what level, but it's a lot.

MR. PARKER: Mr. Farnsworth raised 400 million.

THE COURT: 400 million. I mean, and so, and you know in many respects, it doesn't really matter if was 4 million or 400,000. It's a lot of money to people. It really and truly is from an investment perspective because sometimes I deal with small businesses. Sometimes I have Caesars or MGM or somebody like that in here. This varies you know.

And sometimes I'm dealing with 2 billion claims. I don't mind saying that. That is true.

MR. PARKER: Yes, Your Honor.

THE COURT: Right? And --

MR. PARKER: And so.

THE COURT: All moneys important to everybody. It just is.

MR. PARKER: Yeah, and all the jobs are important.

THE COURT: They are. I get it.

MR. PARKER: And so Your Honor, when you look at the Department Of Conservation versus Natural Resources, the 121 Nev. 77. That's a 2005 Nevada Supreme Court case, as well as the University of Community College System Nevada versus Nevadans for Secured and Sound Government, which is a 2004 Nevada Supreme Court. Then the case that everyone always mentions, the Dixon versus Patrick case in 1987, Nevada Supreme Court case, it all indicates the criteria for granting a TRO.

We have given this Court a lot more information leading up to today. And we got information of course from Mr. Connot late this

morning or early this afternoon, some of which I believe support our position that the TRO originally granted was not appropriate.

It was overbroad in restricting Ms. King and the shareholder board Mr. Vanderbilt. And it set aside the person most instrumental in raising the money for this company.

There's certainly enough evidence here, I would think that the likelihood of success does not weigh in favor of the Plaintiffs in this case.

It's still questionable whether or not Mr. Colucci has standing to bringing this case in the name of Vinco Ventures. So I would ask --

THE COURT: And I will say this. And I don't necessarily look at it in that regard, because my thoughts are slightly different from yours, Mr. Parker.

MR. PARKER: Uh-huh.

THE COURT: And I will say this that when I granted the TRO, I did weight one of the factors, probability of success on the merits.

MR. PARKER: Uh-huh.

THE COURT: Now after you and Mr. Kemp have brought in other evidence and other affidavits and things like that, instead of being kind of like this, we're kind of back here --

MR. PARKER: Right.

THE COURT: -- where I can't say as a matter of law there's a probability of success on the merits because we have competing evidence here. And at the end of the day, I'm going to have to weigh and balance the evidence.

MR. PARKER: Oh, of course.

THE COURT: And so, I can't say that.

MR. PARKER: That's right.

THE COURT: And as we all know, as a foundation to Rule 65(c) relief, there has to be a probability of success on the merits.

And secondly, there has to be irreparable harm. And I know everyone here knows that.

MR. PARKER: Right.

THE COURT: You know, but --

MR. PARKER: Given what you just said, Your Honor, given what you just said, because you did weigh as I know you follow the rules. And I know you follow the Nevada Supreme Court pronouncements on this issue when you made your decision.

And just like you just said, the information you've been given now has changed the lens that you're looking through or at least what you see through that lens.

And the other part of the case law that I just cited says that in addition to the reasonable probability that the -- there has to be a thought that the nonmovants conduct will cause irreparable harm if allowed to continue.

We've seen the harm caused by the Plaintiffs since August 8th. And to create and determine I should say what the status quo is, but that's where you started this conversation today, what is the status quo and how do we protect it?

We know that from August 8th until the present, we've had at least two board meetings where these two board members were not

allowed to participate and that includes the Chair of Board.

We know that as of Monday, there was a loan default notification that these two board members were not made aware of.

We know we sit on the precipice of a default that we just made aware of this afternoon. They have used and I take this from -- this word from Mr. Rulis. They have weaponized that TRO.

It should not be allowed to stand. We have done our best. Mr. Kemp and I, have done our best. I'm not saying -- Mr. Connot worked hard in the ante chamber over there because I believe he has as hard as he could, but I will tell you this TRO based upon Nevada law and Rule 65 should not be allowed to stand.

And I suspect that we'll be submitting competing orders to the Court. And I don't know how tomorrow helps because I don't know if the Court's going to allow us to put anybody on the stand tomorrow, but if we're not, if it's just argument and references the case law and the rules, and the --

THE COURT: And the thing about that is I don't need help on that issue.

MR. PARKER: That's right.

THE COURT: I don't need that.

MR. PARKER: You don't.

MR. CONNOT: Right.

THE COURT: I mean, I need help on the facts.

MR. PARKER: That's right.

THE COURT: And there's a tremendous factual dispute here.

And so, I don't know who all the key witnesses are. And Mr. Kemp says we need to take 30 depositions. I'll take him as his word.

But maybe at the end of the day, there's 10 key depositions because sometimes you take depositions and I do understand that sometimes the anticipated value doesn't rise to the level that you expect.

But you got to go through the process and say and to find out who knows, right? And so, for example, there's no question, Mr. Parker, you focused on an area we've been talking about probability of success on the merits, but then you have the issue regarding irreparable harm. I understand the analysis.

MR. CONNOT: Sure.

MR. PARKER: That's right.

THE COURT: I do and because -- and I don't mind telling everyone this. And this is really what I just really hope and then and I was hoping this was the read.

The TRO can't stand in this current form. But I want some sort of stipulation that over the next 30, 60 days that preserves the investment for the investors, preserves the company, preserves the employees, all those types of things that it makes this an ongoing entity.

Just as important, and this actually is a tremendous concern to me and was just brought up. Why do we have a loan default?

MR. CONNOT: Because here's what happened, Your Honor. Let me explain that.

THE COURT: I mean, that shouldn't happen, right?

MR. CONNOT: Because when they lock up the SEC codes

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

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

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

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

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

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

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

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

MR. CONNOT: Yeah.

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

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

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

THE COURT: Right.

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

THE COURT: Thank you.

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

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

THE COURT: Right, yeah.

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

THE COURT: Yeah.

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

THE COURT: Yeah.

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

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

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

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

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

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

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

MR. CONNOT: Uh-huh.

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

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

MR. CONNOT: Uh-huh.

MR. PARKER: Okay.

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

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

THE COURT: Right.

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

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

THE COURT: I have no problem with that.

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

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

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

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

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

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

THE COURT: Yeah.

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

THE COURT: Yeah.

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

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

THE COURT: Now I understand this.

MR. CONNOT: You know, resolving --

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

MR. CONNOT: Yeah.

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

MR. CONNOT: Yes.

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

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

THE COURT: Yeah.

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

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

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

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

THE COURT: No, I understand.

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

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

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

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

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

Again, Your Honor mentioned the wane of the likelihood of

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

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

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

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

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

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

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

MR. CONNOT: So --

THE COURT: Mr. Connot, go ahead.

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

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

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

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

MR. PARKER: You --

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

THE COURT: Absolutely.

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

THE COURT: Exactly.

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

THE COURT: Right.

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

back tomorrow, submit our competing position.

THE COURT: Well, and this is --

MR. CONNOT: What we can agree on --

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

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

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

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

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

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

Sir?

MR. RULIS: Your Honor, if I might?

THE COURT: Absolutely.

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

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

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

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

UNIDENTIFIED SPEAKER: [Indiscernible.]

MR. CONNOT: Well, for right now.

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

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

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

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

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

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

MR. PARKER: Like Docusign.

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

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

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

MR. KEMP: Okay.

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

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

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

maintaining the status quo will be.

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

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

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

MR. CONNOT: We'll stipulate.

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

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

THE COURT: Yes.

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

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

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

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

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

THE COURT: Okay, that's okay.

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

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

MR. CONNOT: Okay.

MR. KEMP: Thank you, Your Honor.

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

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

THE COURT: 1:30.

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

THE COURT: I'm not going anywhere.

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

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

but I --

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

MR. CONNOT: Talk about it.

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

MR. CONNOT: Yeah.

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

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

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

MR. CONNOT: Right, but --

THE COURT: Gentlemen, understand this, right?

MR. KEMP: [Indiscernible.]

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

THE COURT: Guys.

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

MR. KEMP: No.

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

MR. KEMP: I [indiscernible].

MR. CONNOT: I tend to think so.

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

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

MR. KEMP: They do.

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

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

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

MR. KEMP: Yeah, Judge.

MR. CONNOT: To get your smiling faces.

THE COURT: Yes.

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

THE COURT: I understand.

MR. KEMP: Okay.

THE COURT: Okay, I understand.

MR. KEMP: So it's not lost.

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

MR. KEMP: Okay.

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

MR. KEMP: Okay.

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.]

* * * * * * *

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