

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

VINCO VENTURES, INC.

Petitioner,

vs.

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

Respondent,

and

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

Real Parties in Interest.

Supreme Court Case No. 85315 Filed  
Sep 20 2022 05:23 p.m.  
District Court Case: A-22-83640-1  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENT/REAL PARTY IN INTEREST THEODORE  
FARNSWORTH'S RESPONSE TO PETITIONER'S EMERGENCY  
MOTION UNDER NRAP 27(e) TO STAY DISTRICT COURT'S ORDERS  
AND PROCEEDINGS PENDING VINCO'S INTERLOCUTORY APPEAL  
AS A RIGHT OR, IN THE ALTERNATIVE, EMERGENCY PETITION FOR  
WRIT OF MANDAMUS AND/OR PROHIBITION WRIT PROCEEDING**

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Vinco Ventures, Inc.’s (“Vinco”) fails to demonstrate a stay is warranted pending the outcome of its petition under NRAP 8(e). First and foremost, Vinco’s contention the district court exceeded its jurisdiction is meritless. The district court entered the orders after careful consideration of the issues to preserve the status quo and protect Vinco as a going concern. NRS 78.120(1) does not strip the district court of its considerable discretion to issue orders under NRS 78.010 *et seq.*, NRS 32.010 *et seq.*, NRS 33.010 *et seq.*, NRCP 1, NRCP 65, and general equitable principles. Vinco’s gross exaggeration of the scope and effect of the district court’s status quo orders does not undermine this discretion. The object of Vinco’s appeal, reversal of the challenged orders is not defeated absent a stay. Vinco cannot demonstrate it will suffer any harm absent a stay, let alone serious or irreparable harm. Instead, a stay would permit certain individuals within Vinco to revert back to the egregious and unchecked conduct that prompted the challenged status quo orders in the first place – to Vinco’s detriment. Hence, the NRAP 8(e) factors weigh strongly against a stay and this Court should deny the Motion.

## **I. RELEVANT BACKGROUND**

Respondents are individuals who hold or previously held management roles at Vinco. Beginning in July 2022, just weeks after John Colucci was appointed to Vinco’s Board as an independent director, discord ensued. The discord began shortly after Board members received information calling into question Colucci’s independence. Chairman Vanderbilt then retained Gibson Dunn as independent counsel to, among other things, facilitate the Board’s adherence to its bylaws.<sup>1</sup>

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<sup>1</sup>See **Exhibit A** (Defendants Theodore Farnsworth, Lisa King, and Roderick Vanderbilt’s Opposition to Plaintiff Vinco Ventures, Inc.’s Motion for Temporary Restraining Order and Preliminary Injunction) at RESP003-004; RESP015; RESP066-67; RESP152.

Gibson Dunn confirmed issues existed related to Colucci's disclosures, but Colucci refused to cooperate in Gibson Dunn's investigation or rectify his disclosures.<sup>2</sup> Colucci and the other independent directors Brett Goldstein, and Michael DiStasio, then interfered with that investigation, forcing Gibson Dunn to resign.<sup>3</sup>

After Gibson Dunn's retention and resignation, Colucci embarked on a series of tumultuous Board meetings attempting to remove Vinco's current management and gain control over operations in an apparent effort to conceal his inaccurate disclosures and remain at Vinco. On July 17, 2022, for example, the Board convened a meeting with the attendance of Gibson Dunn, but rather than use the secure, public company account provided by the Chair (where the Chair, King and Gibson Dunn were waiting), Colucci, Goldstein, and DiStasio instead met in private on a personal Zoom link.<sup>4</sup> When the Chair attempted to join their meeting, they refused him entry until after they had purportedly voted to terminate King and appointed Colucci as interim CEO.<sup>5</sup> On July 21, 2022, the Board convened another meeting, rescinded King's termination, appointed her President of ZVV, and appointed Colucci and Farnsworth co-CEOs of the Company.<sup>6</sup>

On July 24, 2022, the Board met again at DiStasio's and Goldstein's request.<sup>7</sup> Just seconds after the Chair announced the directors in attendance, Colucci hijacked the meeting from the Chair in violation of Vinco's bylaws and corporate governance guidelines, muted the Chair throughout the meeting, and prevented him from engaging in deliberations or inquiring into the interestedness or fitness of the

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<sup>2</sup> *Id.* at RESP004-005; RESP016; RESP066; RESP152.

<sup>3</sup> *Id.* at RESP005; RESP017; RESP152.

<sup>4</sup> *Id.* at RESP004; RESP016; RESP067.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at RESP017; RESP070.

<sup>7</sup> *Id.*

directors about the matters being discussed.<sup>8</sup> Colucci also blocked King’s attempts to engage in discussions; instead, cramming through his agenda, which included several un-noticed, self-interested resolutions.<sup>9</sup> Rather than abstain from votes presenting a conflict of interest, Colucci cast the deciding vote to become Vinco’s *sole* CEO, and awarded himself other titles and powers.<sup>10</sup>

In addition to the concerns raised by the Gibson Dunn investigation, the Chair received whistleblower reports alleging that Colucci, along with DiStasio and Goldstein, among others, have “breached their fiduciary duties, colluded to steal the Company’s trade secrets, and potentially committed fraud.”<sup>11</sup> In spite of these serious whistleblower allegations, the independent directors refused to properly investigate these claims or act accordingly.<sup>12</sup>

## **II. PROCEDURAL HISTORY**

The litigation between the parties first began when Colucci filed a complaint against Farnsworth and King in Rochester, New York on July 27, 2022, seeking a temporary restraining order (“TRO”).<sup>13</sup> After Farnsworth and King responded, the New York court held a hearing on the merits, and refused to enter a TRO. Unable to get the desired outcome in New York, Colucci voluntarily “discontinued” that

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<sup>8</sup> *Id.*; *see also* RESP038 (Bylaws) at § 5.5; RESP045 (Corporate Governance Guidelines) at § 4.

<sup>9</sup> *See id.*

<sup>10</sup> This is the dysfunctional and improper “board meeting”, which Vinco claims is dispositive as to Respondents’ terminations. Vinco claims not only that this was somehow a valid Board meeting, but that the very same self-interested individuals who hijacked the meeting and violated Vinco’s bylaws can also simply ratify any improprieties, without recourse or oversight by the district court.

<sup>11</sup> Ex. A at RESP070-71; RESP152.

<sup>12</sup> *Id.* at RESP005; RESP070-71; RESP152.

<sup>13</sup> *See id.* at RESP189-91 (July 29, 2022 Order to Show Cause).



action,<sup>14</sup> and refiled it with the Nevada district court on August 3, 2022, seeking a second bite at the apple. The district court granted Colucci's *ex parte* request for a TRO.<sup>15</sup>

After Respondents opposed Vinco's Motion, the district court held a three-day hearing, and dissolved the TRO.<sup>16</sup> In the middle of the three-day hearing, Vinco announced that a creditor was on the verge of declaring an \$80 million loan in default.<sup>17</sup> Mr. Colucci even told the district court that "**the company could be bankrupt tomorrow.**"<sup>18</sup> In an effort to maintain the status quo and protect Vinco as a going concern pending resolution of this action, the district court issued various orders. Vinco challenges the district court's August 17 and 19, 2022 orders (collectively the "Status Quo Orders"). The 8/17/22 Order, among other things, requires that a Board of the Directors meeting be held only: (1) with unanimous consent from the Board members, with at least 48-hours' notice and an agenda; or (2) by order of the Court, further directing the Board members must not unreasonably refuse to agree to a board meeting or waive the 48-hours requirement.<sup>19</sup>

The district court's 8/19/22 Order recognizes Lisa King and Colucci as co-CEO's and appoints Ross Miller, Esq. to serve as third co-CEO, finding it was in Vinco's best interest to have "an interim, neutral, and independent party" to serve as the third co-CEO.<sup>20</sup> The 8/19/22 Order further: (a) orders the three co-CEO's will equally share responsibilities and decision-making authority; (b) admonishes them

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<sup>14</sup> See **Exhibit B** (Notice of Voluntary Discontinuance) at RESP194.

<sup>15</sup> Mot. at Ex. 3.

<sup>16</sup> Ex. A; Mot. at Exs. 4-5.

<sup>17</sup> See Mot. at Ex. 8 (8/17/22 Hrg. Trns.) at 8:15-25.

<sup>18</sup> See Mot. at Ex. 8 (8/17/22 Hrg. Trns.) at 46:21-22 (bold added).

<sup>19</sup> Mot. at Ex. 4 (8/17/22 Order).

<sup>20</sup> Mot. at Ex. 5 at (8/19/22 Order) at ¶¶ 3-5.

to work together in good faith in the best interests of Vinco; and (c) orders that Vinco's Board and executives "shall take all reasonable steps necessary to ensure [Vinco's] ongoing business operations."<sup>21</sup> The district court made clear the court-appointed CEO was **not** a receiver, which it wanted to avoid for the negative connotations.<sup>22</sup> The district court was unequivocal that the purpose its Status Quo Orders was to maintain the status quo to protect Vinco's business operations and employees as a going concern.<sup>23</sup>

On August 27, 2022, after a director requested a board meeting, King informed the directors she was unavailable, suggesting the Board handle the issue by unanimous written consent.<sup>24</sup> Thereafter, counsel for the parties conferred on the issue, and the meeting did not go forward as both parties sought relief from the district court. The district court confirmed its 8/17/22 Order requires unanimous consent among the directors to hold board meetings.<sup>25</sup> The district court requested Vinco fully brief its contentions under NRS 78.120 (which is the main basis for Vinco's petition), but Vinco's counsel refused, instead filing the petition.<sup>26</sup> Thus, the district court did not have the opportunity to fully consider this issue.

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<sup>21</sup> *Id.*

<sup>22</sup> *See* Mot. at Ex. 7 (8/18/22 Hrg. Trns.) at 31:5-12; 35:3-21; 36:8-15.

<sup>23</sup> *See* Mot. at Ex. 8 (8/17/22 Hrg. Trns.) at 55:5-56:8; 58:-12; 59:2-3; 64:16-19; Mot. at Ex. 7 (8/18/22 Hrg. Trns.) at 6:9-19; **Exhibit C** (8/24/22 Hrg. Trns.) at 16:22-18:5; Mot. at Ex. 6 (8/31/22 Hrg. Trns.) at 62:15-18.

<sup>24</sup> **Exhibit D** (9/6/22 Opposition to Motion for Clarification) at RESP280.

<sup>25</sup> *See* **Exhibit E** (9/9/22 Hrg. Trans.) at 50:13-53:25.

<sup>26</sup> *Id.* at 53:14-54:2, 54:14-15, 54:24-55:7, 56:10-14. Neither Vinco's August 29, 2022 Motion to Modify or its August 31, 2022 Motion for Clarification, on which its petition is based, cite to NRS 78.120(2).

### III. LEGAL ARGUMENT

#### A. Legal Standard.

To decide whether to issue a stay, this Court generally considers the following factors: (1) whether the object of the appeal will be defeated without a stay; (2) whether petitioner will suffer irreparable or serious injury absent a stay; (3) whether respondent will suffer irreparable or serious injury if stay is granted; and (4) whether petitioner is likely to prevail on the merits of the petition. Nev. R. App. P. 8(c). No one factor carries more weight than the others, 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).

#### B. No Reason Exists to Stay the District Court Orders or Proceedings.

The NRAP 8(c) factors weigh heavily against a stay. ***First***, the object of Vinco’s petition, which is simply to overturn the district court’s Status Quo Orders, is not defeated absent a stay. Vinco can obtain this outcome regardless of whether the Status Quo Orders are stayed pending this Court’s decision on the merits of Vinco’s petition.

***Second***, Vinco cannot demonstrate serious injury or irreparable harm. The district court did not appoint a receiver under NRS Chapter 78 or NRS 32.010. The receiver cases Vinco cites are thus immaterial. The 8/19/22 Order provides all three co-CEOs *share equal responsibilities and decision-making authority*, and admonishes them to work together in good faith in the best interests of Vinco.<sup>27</sup> Vinco’s claim this order “functionally appoints” Mr. Miller as a receiver grossly exaggerates the order and has no basis in law or fact. Mr. Miller does not become a receiver simply because Vinco says so, nor is he a receiver simply because he

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<sup>27</sup> Mot. at Ex. 5.

sometimes votes differently than Colucci. Vinco cannot demonstrate irreparable harm on this basis.

Vinco also failed to demonstrate serious or irreparable harm if King, who served as Vinco's CEO without issue from October 2021 until the Colucci-induced chaos that ensued, serves as a co-CEO pending Vinco's petition. Vinco's bare citation to *Zhou v. Deng*, No. CV 2021-0026-JRS, 2022 WL 1617218 (Del. Ch. May 23, 2022), an unpublished case, does nothing to support Vinco's contention here. Vinco's manufactured contention the Status Quo Orders preclude Vinco's board from fulfilling its fiduciary duties is also insufficient. Nothing in the Status Quo Orders preclude the Board from holding a meeting or otherwise fulfilling its duties.

To the contrary, Vinco will almost certainly suffer serious harm if this Court enters a stay. Despite CEO King's direction to the CFO not to make any additional payments to AI-Pros pending resolution of serious issues, and the numerous whistleblower complaints alleging collusion between Colucci, AI-Pros, and others to steal Vinco's intellectual property, before and during the pendency of the *ex parte* TRO, Colucci (purportedly on behalf of Vinco); (1) entered into two additional agreements with AI-Pros.; (2) directed payment of an additional \$1.5 million in funds to AI-Pros; and (3) earmarked an additional \$4 million in payments to AI-Pros. Simultaneously, Colucci directed over a \$1 million in payments to attorneys, including an \$875,000 payment to the attorneys implicated in some of the whistleblower complaints. And, all of this was done despite Vinco's claims to the district court it is in a cash crisis.<sup>28</sup> If this Court stays the district court's Status Quo Orders, nothing will stop these individuals from resuming this egregious behavior, to the detriment of the shareholders and employees. As such, as to the *third factor*,

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<sup>28</sup> See Mot. at Ex. 6 (8/31 Hrg. Trns.) at 13:6-8.

while Respondents may not personally suffer serious or irreparable harm if this Court enters a stay, as set forth above, Vinco (not Colucci, DiStasio, Goldstein, and the executives, vendors, and attorneys they are apparently protecting) will suffer serious harm if these individuals are allowed to revert to raiding Vinco's coffers for their own individual benefit, with no court oversight. *See Sobol v. Capital Management*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986) (concluding, in the context of an injunction, that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury").

Vinco is also not likely to prevail on the merits of its petition. Initially, Vinco's petition is premature because Vinco refused the district court's request to brief Vinco's contentions under NRS 78.120(1), and instead filed this petition.<sup>29</sup> This Court should not only deny Vinco's petition on this basis alone, but also because the crux of Vinco's petition is the unsupported proposition the district court does not have the authority to issue orders pertaining to Vinco's corporate governance. Vinco offers two unpersuasive arguments in support of its petition. First, Vinco claims NRS 78.120(1) precludes a district court (specifically including a business court) from ever issuing any order in any circumstance that could conceivably limit the power of a board of directors. Vinco does not cite any authority for this proposition, instead ignoring the district court's considerable discretion to issue orders and control the business court proceedings before it. *See* NRS 78.010 *et seq.*, NRS 32.010 *et seq.*, NRS 33.010 *et seq.*, NRCP 65, NRCP 1, and general equitable principles. 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

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<sup>29</sup> *See* fn. 24. *supra*.

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, 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).

Vinco’s own citation to *Klaassen v. Allegro Dev. Corp.*, No. CA 8626-VCL, 2013 WL 5967028, at \*2 (Del. Ch. Nov. 7, 2013) wholly undermines its contention that the district court did not have the authority to enter the Status Quo Orders. In *Klaassen*, the court notes it is “customary” in corporate governance dispute actions for the court to enter a status quo order precluding “the directors presently in control of the corporation from engaging in transactions outside the ordinary course of the corporation’s business until the control issue is resolved”, which derives from the recognition that where corporate power is disputed between two groups, the risk of unauthorized exercise of power over a company’s assets and processes justifies a court’s imposition of reasonable restrictions on the exercise of corporate power in actions concerning corporate governance disputes. *Id.* at \*2 (citations omitted).

Perhaps more ironically, it was Vinco that submitted itself to the district court’s jurisdiction when it initiated this action and sought *ex parte* relief after it was unable to get a TRO in New York. Now that those who purportedly currently control

Vinco do not like the Court's Status Quo Orders leveling the playing field – issued after the district court heard both sides of the story – it suddenly contends the district court lacks authority to issue orders pertaining to Vinco's operations. Vinco cannot demonstrate the Status Quo orders exceeded the district court's considerable authority as provided herein and is not likely to succeed on its petition.

Vinco contends the district court exceeded its discretion by appointing a receiver without making the necessary statutory findings. The district court, however, **did not appoint a receiver**. Vinco's reliance on *Hill. v. Cohen*, 40 F.4th 101, 110 (3d Cir. 2022) is misplaced, especially as Mr. Miller does not solely control Vinco or its assets, but shares equal responsibilities and decision-making authority with two other individuals, subject to oversight by Vinco's board. Vinco cannot change the plain and simple fact Mr. Miller is not a receiver.

Contrary to Vinco's self-serving contentions, the district court did not improperly "usurp" Vinco's ability to govern itself but simply put some reasonable conditions in place to help preserve the status quo and protect Vinco as a going concern pending resolution of this action on the merits. Vinco fails to cite any authority demonstrating the district court abused its discretion or exceeded its jurisdiction in issuing orders setting certain restrictions and limitations on Vinco's operations under these circumstances. Vinco's one-sided narrative and its refusal to even attempt to work in good faith as required by the Status Quo Orders is wholly insufficient to warrant relief. Accordingly, the NRAP 8(e) factors weigh strongly against a stay of the Court's 8/17/22 and 8/19/22 Orders or the proceedings below.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court should deny Petitioner's Motion as a stay is not warranted.

DATED this 20th day of September, 2022.

KEMP JONES, LLP

/s/ Nathanael Rulis

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## CERTIFICATE OF SERVICE

I certify that on the 20<sup>th</sup> day of September, 2022, I submitted the foregoing Respondent/Real Party In Interest Theodore Farnsworth's Response to Petitioner's Emergency Motion Under NRAP 27(e) to Stay District Court's Orders and Proceedings Pending Vinco's Interlocutory Appeal as A Right or, in the Alternative, Emergency Petition for Writ of Mandamus and/or Prohibition Writ Proceeding for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

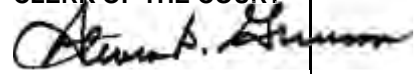
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# EXHIBIT A



**OPPS**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

VINCO VENTURES, INC.,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-22-856404-B

DEPT. NO.: XVI

**DEFENDANTS THEODORE  
FARNSWORTH, LISA KING, AND  
RODERICK VANDERBILT'S OPPOSITION  
TO PLAINTIFF VINCO VENTURES, INC.'S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

COMES NOW Defendants, Theodore Farnsworth ("Farnsworth"), by and through his attorneys of record, the law firm of Kemp Jones, LLP, and Defendants Lisa King ("King") and Roderick Vanderbilt ("Vanderbilt"), by and through their attorneys of record, the law firm of Parker

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1 Nelson & Associates, and hereby files this Opposition to Plaintiff Vinco Ventures Inc.'s Motion for  
2 Temporary Restraining Order and Preliminary Injunction filed on August 4, 2022.

3 This Motion is made and based upon the Complaint on file herein, the Memorandum of Points  
4 and Authorities submitted herewith, the declarations of Theodore Farnsworth, Lisa King, Roderick  
5 Vanderbilt, and Erik Noble, the exhibits attached hereto, and any such oral argument as permitted by  
6 the Court.

7 DATED this 15<sup>th</sup> day of August, 2022.

8 KEMP JONES, LLP

PARKER, NELSON & ASSOCIATES, CHTD.

9 /s/ Nathanael R. Rulis

/s/ Theodore Parker, III

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1 by failing to disclose the transactions in the questionnaire. (Exhibit A, King Declaration and Exhibit  
2 D, Noble Declaration.)

3 On July 8, 2022, then CEO King proposed that Ted Farnsworth be appointed co-CEO. (Exhibit  
4 A, King Declaration). Doing so would benefit the company as King could focus on operations and  
5 Farnsworth could focus on IR, PR and raising capital. (Exhibit A, King Declaration). At the meeting,  
6 Colucci, in his role as independent director, Rod Vanderbilt, Chairman of the Board and CEO King  
7 voted in favor of Farnsworth as co-CEO. (Exhibit A and B, King/Vanderbilt Declaration). Vinco  
8 Ventures filed an 8k on July 14, 2022 announcing Farnsworth as co-CEO. (Exhibit A, King  
9 Declaration).

10 Just prior to the announcement, on July 13, 2022 the compensation committee met privately  
11 and “terminated” King. The Compensation Committee had no authority to do and, further, never  
12 informed the Chairman of the Board, Vanderbilt or Farnsworth, the co-CEO.

13 By July 17, 2022, Colucci had served as an independent director for just six weeks. But during  
14 that time, the board learned Colucci had concealed information relating to his independent status. The  
15 board, via Vanderbilt, announced at a July 17, 2022 board meeting that Vinco Ventures had engaged  
16 the Gibson and Dunn law firm to act as independent counsel to investigate Colucci’s non-disclosures  
17 and failure to meet the requirements to be an independent director. (Exhibit A and B, King/Vanderbilt  
18 Declarations).

19 Colucci obstructed the July 17, 2022 meeting. Vanderbilt provided the independent directors  
20 with a secure meeting link. However, the independent directors, via notification from Elliott Goldstein,  
21 refused to join the secure link and conducted their own meeting on a private Zoom platform. (Exhibit  
22 A and B, King/Vanderbilt Declarations). The independent directors would not let Vanderbilt  
23 participate. Without participation from the board, the independent directors voted to terminate King  
24 as CEO of Vinco Ventures. Colucci announced that at the July 17, 2022 meeting, he was “appointed  
25 the position of interim CEO.”

26 Independent counsel, Thomas Kim, Esq. of Gibson and Dunn quickly confirmed issues related  
27 to Colucci’s non-disclosures and initiated an independent investigation into Colucci’s independent  
28 status. (Exhibit A and B, King/Vanderbilt Declarations). Vinco Ventures Code of Business Conduct

1 and Ethics required Colucci to cooperate in the investigation. (Exhibit A, King Declaration and Exhibit  
2 1 attached thereto, Code of Business Conduct and Ethics, Section 10.1(d)). Colucci, however, refused  
3 to cooperate. (Exhibit A and B, King/Vanderbilt Declarations). Worse, Colucci, together with  
4 independent directors Elliot Goldstein and Mike Destasio, successfully coerced independent counsel  
5 to withdraw and discontinue the investigation into Colucci's conduct. (Exhibits A and B,  
6 King/Vanderbilt Declarations, and Exhibit 11 to Vanderbilt's Declaration).

7 After the July 17, 2022 meeting, the division between Colucci (and the other independent  
8 directors) and the valid board spiraled downward. On June 20, 2022, Chairman Vanderbilt contacted  
9 Vinco Ventures independent counsel, Lucosky and Brookman, and requested the Audit Committee to  
10 "launch an immediate internal investigation into irregular transactions between Vinco Ventures. and  
11 John Colucci and the companies he represents or with which he is affiliated." (Exhibit B). On behalf  
12 of the independent directors, Goldstein responded that "[t]he independent board will take this under  
13 advisement and will deal with this in due course." But Goldstein stated that the improprieties did "not  
14 change the fact that [King] was terminated and [Colucci] has been elected as interim CEO." (Exhibit  
15 A). Indeed, Colucci cast the deciding vote to secure his position as CEO. (Exhibit A and D King/Noble  
16 Declarations).

17 Detailing Colucci's improper take-over, Chairman Vanderbilt demanded that Colucci  
18 immediately "step down as an Independent Director for lack of proper disclosure of third-party  
19 transactions and information on his Questionnaire that has made the Company in non-compliance with  
20 Nasdaq" disclosure requirements.

21 Farnsworth tried to undo the damage by issuing a press release on July 24, 2022 affirming  
22 Vinco Ventures SEC counsel's determination that the July 21, 2022 meeting was "not valid" and that  
23 because of Colucci's non-disclosure of Colucci's related party transactions, he failed to "meet the  
24 requirements to be an independent director of the Board" thus invalidating actions taken at the meeting.

25 Mr. Eric Noble joined the Company on May 26, 2022. Mr. Nobles was responsible for securing  
26 all information and property and increasing Vinco Ventures security posture and risk to the Company.  
27 In addition, Mr. Noble conducts due diligence for the CEO Lisa King and Company Advisor Ted  
28 Farnsworth for tech-related matters. One of those assignments in June 2022 was to conduct due

1 diligence on the vendor, Ai-Pros, and their founder George Yang to determine if they could genuinely  
2 build artificial intelligence products as advertised or whether George Yang was a con man. In Mr.  
3 Nobles previous role as a contractor in the US intelligence community, he managed contractors  
4 building advanced analytical and Artificial Intelligence platforms to enhance operational intelligence  
5 gathering. Mr. Noble is familiar with various forms of AI and project management of engineering  
6 teams to build AI platforms.

7 Mr. Noble discovered on July 27, 2022, that Vinco Ventures was not only experiencing theft  
8 of trade secrets and IP, but also that Vinco Ventures, a public Company, was experiencing illicit  
9 collusion of IP theft within the Company directly by independent board member Colucci, which  
10 threatened Vinco Ventures and shareholder value. (Exhibit D, Noble Declaration).

11 Following this discovery, Noble compared all the business conversations he had with George  
12 Yang of Ai-Pros from June 21 to July 16, 2022, and discovered that many meetings included John  
13 Colucci.

14 On July 19, 2022, Vinco Ventures CFO Phil Jones and two independent board members, John  
15 Colucci and Elliot Goldstein, exclusively and separately pushed to pay an invoice to AI-Pros, that both  
16 the CEO Ms. King and Mr. Noble disapproved because AI-Pros delivered nothing to date. Noble found  
17 that behavior from all three individuals very concerning since they knew AI-Pros had failed to provide  
18 anything to Vinco Ventures. Furthermore, all independent board members - Mike Distasio, Elliot  
19 Goldstein, and Jon Colucci - and CFO Phil Jones, along with Counsel Lucosky and Brookman, were  
20 added to the email chain by John Colucci pushing to pay AI Pros. (Exhibit D, Noble Declaration).

21 In a retaliatory move for Mr. Noble disapproving payments to AI-Pros, on July 24, Noble  
22 received a letter from CFO Phil Jones stating that all independent board members - Mike Distasio,  
23 Elliot Goldstein and John Colucci - voted to terminate him without cause in an invalid board meeting.  
24 (Exhibit D, Noble Declaration).

25 Mr. Noble has found that the intent of all ---independent board members Mike Distasio, Elliot  
26 Goldstein, and John Colucci to want to continue paying George Yang and AI-Pros, who is stealing  
27 from the Company, questionable and an extreme risk to the Company. He has found evidence of trade  
28 theft by AI-Pros with a direct possible link to John Colucci and combined with the push by Vinco



Ventures CFO Phil Jones and Independent Board members Mike Distasio and Elliot Goldstein to quickly pay the AI-Pros as intent to fund that fraud.

On July 26, 2022, the CEO of Mind Tank, Harrison Cooley, contacted Mr. Noble to inform him that a former vendor of Vinco Ventures, George Yang of AI-Pros, is building a replica of both Mind Tank's and Adrizer's entire business model. Harrison Colley showed the proof of the IP theft by showing live online views of websites with Mind Tank IP built on Ai-Pros staging servers and job postings overseas in the Philippines, advertising for engineers and software developers with skills to produce precisely what Mind Tank and Adrizer have, and asking for resumes to be sent to a John and Liza (at liza1o@ai-pros.com and john1e@ai-pros.com). Mr. Noble believes that AI-Pros is stealing IP and using trade secrets for their gain. (Exhibit D, Noble Declaration).

Colucci asserts in his Declaration and Emergency Motion that Noble and King were obstructing SEC filings by refusing to provide SEC codes. This statement is patently false. On July 21, 2022, upon request, then CEO King provided the SEC codes to co-CEOs Farnsworth, Colucci and legal counsel. On July 25, 2022, Mr. Noble emailed Vinco Venture's CFO, Phil Jones, agreeing to work with Jones to complete SEC filings. Jones, however, never responded. (Exhibit D, Noble Declaration). Mr. Colucci without proper authority has commenced this action in the name of the Company he is destroying. He has manipulated the Court into granting the TRO that should be set aside.

## II.

### **LEGAL STANDARD**

#### **A. PRELIMINARY INJUNCTION**

A preliminary injunction "is extraordinary relief" and the factors met to obtain this relief must be "articulated in specific terms". Dep't of Conservation & Natural Res. v. Foley, 121 Nev. 77, 80, 109 P.3d 760, 762, (2005). A party can only receive a preliminary injunction "when the movant shows a likelihood of success on the merits and a reasonable probability that the nonmovant's conduct will cause irreparable harm if allowed to continue." Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). The party seeking a preliminary injunction must show "by the complaint or Declaration that the commission or continuance of some act, during

the litigation, would produce great or irreparable injury to the plaintiff.” Dixon v. Thatcher, 103 Nev. 414, 415-416, 742 P.2d 1029, 1030, (1987). Finally, the Court may also weigh “the public interest and the relative hardships of the parties in deciding whether to grant a preliminary injunction.” Clark County Sch. Dist. v. Buchanan, 112 Nev. 1146, 1150, 924 P.2d 716, 719, (1996) quoting Ellis v. McDaniel, 95 Nev. 455, 459, 596 P.2d 222, 224-25 (1979).

NRCP 65(c) requires that security be given before a temporary restraining order and/or preliminary injunction can issue. The sum of the security is left to the discretion of the court and is for the payment of such costs and damages as may be incurred or suffered by any party found to be wrongfully restrained or enjoined. *Id.*

### **1. Mr. Colucci Is Unlikely To Succeed On The Merits**

Mr. Colucci cannot establish a likelihood of success on the merits because (a) the purported terminations of Mr. Farnsworth and Ms. King were invalid, and (b) Mr. Farnsworth and Ms. King at all times acted in furtherance of their fiduciary duties to the Company.

#### **a. This Court Will Likely Find Mr. Colucci’s Actions in Purporting to Terminate Mr. Farnsworth and Ms. King To Be Invalid**

Mr. Colucci will be unable to establish the threshold issue surrounding his claims—that his deciding vote to terminate Mr. Farnsworth and Ms. King from their roles at the July 24, 2022 Board meeting was proper and effective, such that Mr. Farnsworth and Ms. King are no longer affiliated with, and cannot control, the Company. The evidence will instead demonstrate that such a vote was not effective, and that numerous violations vitiated any purported Board action resulting from that meeting.

First, in violation of Section 5.5 of the Company’s bylaws, Mr. Colucci refused to allow the Chair of the Board to preside over the meeting. (Exhibit A and B, King/Vanderbilt Declaration and at Bylaws at § 5.5 attached as Exhibit 2 to Exhibit A). Indeed, even by his own admission, Mr. Colucci repeatedly muted the Chair and refused to allow him to speak. (“At some point, Mr. Vanderbilt and Ms. King had their microphones intermittently muted by John Colucci. . . .”) In fact, in dramatic fashion, Mr. Colucci physically muted the Chair at all critical points during the meeting, purposely

1 preventing the Chair from engaging or inquiring into the interestedness and fitness of the directors  
2 with respect to the matters for which they were voting.

3 Second, for similar reasons, the meeting violated Section 4 of the Company's Corporate  
4 Governance Guidelines, which provides that the "Chairman of the Board shall . . . facilitate  
5 information flow and communication among the Directors" (Exhibit A, King Declaration and Exhibit  
6 3 attached thereto-Corporate Governance Guidelines at § 4). Contrary to Mr. Colucci's representations  
7 to the Court (repeatedly misrepresenting the conduct of the meeting and claiming to have "discussed"  
8 each action item), the Board was unable to discuss or deliberate any of the proposed action items.  
9 (Exhibit A, King Declaration) In fact, every time Ms. King or the Chair attempted to engage the issues,  
10 they were either muted or shouted over, with Mr. Colucci simply steamrolling toward a self-interested  
11 vote. (Id.)

12 Taken together, Mr. Colucci's violations of these Company rules had their intended impact—  
13 to prevent the directors from deliberating or questioning whether Mr. Colucci was an appropriate  
14 candidate to lead the Company, and whether Mr. Colucci could appropriately vote on such candidacy.  
15 Had such deliberation occurred, the directors would have taken up the issues of, among other things,  
16 whether Mr. Colucci's alleged misrepresentations with respect to SEC disclosures, and refusal to  
17 cooperate with independent counsel's investigation into his independent status, were disqualifying.

18 Third, having prevented any deliberation or discussion, Mr. Colucci shouted his way to a so-  
19 called "vote" to give himself exclusive power over the Company, and then himself cast the deciding  
20 vote. As Mr. Colucci correctly notes, the result of his vote (had it been legal) was to become "the  
21 Company's sole Chief Executive Officer.". Colucci also voted to remove the Chair to authorize Mr.  
22 Colucci's and Phil Jones's, the Company's CFO, implementation of a vague "cost reduction plan that  
23 will include . . . a reduction in force, "and to appoint Mr. Colucci and Mr. Jones to serve "as Vinco  
24 Managers" at ZVV Media Partners, LLC (id.). None of these votes would have carried without Mr.  
25 Colucci's deciding, self-interested vote, rendering such actions voidable. See Nev. Rev. Stat. § 78.140  
26 (validating transactions involving self-interested directors only where, relevant here, "the directors or  
27 members of the committee, other than any . . . interested directors or members of the committee,  
28 approve or ratify the . . . transaction in good faith," or the "transaction is fair as to the corporation at

the time it is authorized or approved”). And, given the actions of Mr. Goldstein and Mr. DiStasio in terminating Gibson Dunn, as well as the whistleblower allegations against them, there is a substantial question over whether they were self-interested in elevating Mr. Colucci as well.

**b. This Court Will Likely Find that Ms. King, Mr. Farnsworth, and Mr. Vanderbilt at All Times Acted in Furtherance of Their Fiduciary Duties**

Moreover, even apart from the invalidity of the July 24, 2022 Board meeting, Mr. Colucci has in any event neglected to establish a likelihood of success on the merits because Mr. Colucci cannot demonstrate a breach of fiduciary duty. Mr. Colucci was under investigation for previously misrepresenting his independence to the SEC by Gibson Dunn (Exhibit A and B, King/Vanderbilt Declarations )and he is further being investigated in connection with suspected theft of trade secrets and potential fraud on the Company (Exhibits A, B, C and D, King/Vanderbilt, Farnsworth and Noble Declarations). These circumstances apparently motivated Mr. Colucci to attempt to seize control of the Company and would likewise motivate Mr. Colucci to attempt to consolidate his position through issuing inaccurate or misleading SEC filings. Ms. King’s and Mr. Farnsworth’s actions are thus consistent with, and required by, their fiduciary duties to the Company.

**2. The Company Will Not Suffer Any Harm If The Court Sets Aside The Current TRO**

The Court should be aware of the fact that Plaintiff brought the exact same motion for TRO and preliminary injunction in New York. After hearing oral argument, the New York Supreme Court refused to issue a TRO (Exhibit E, Order). Mr. Colucci failed to disclose the hearing and the Court’s order. Mr. Colucci fails to demonstrate irreparable harm, which “must be immediate, specific, non-speculative, and non-conclusory.” Mr. Colucci’s own words evidence that any harm is merely speculative. (“Defendant may well” harm the Company) (emphasis added).) Moreover, many of Mr. Colucci’s allegations—including with respect to a \$33 million payment—are simply contrived. (Exhibit A, King Declaration).

Importantly, the Court would be protecting the interests of the Company and its shareholders by denying Mr. Colucci’s motion. Mr. Farnsworth, Mr. Vanderbilt, and Ms. King are longtime leaders of the Company, and are fighting for the rights of the Company’s shareholders and employees. The Company will continue to suffer significant harm if an independent investigator is not hired to examine

Mr. Colucci's disclosures, and determine whether he has engaged in numerous violations of various corporate governance documents and procedures. Mr. Colucci has intentionally disregarded the Company's own Articles of Incorporation in attempting to forum shop in the New York court. (Exhibit A, King Declaration and Exhibit 4 attached thereto). Under these circumstances, Mr. Farnsworth, Mr. Vanderbilt, and Ms. King respectfully submit that leaving the Company in Mr. Colucci's hands via his current TRO would expose the Company and its shareholders to irreparable harm.

### **3. The Balance Of The Equities Weighs In Favor Of Setting Aside The Current TRO**

The balance of the equities further weighs in favor of setting aside the current TRO and denying Mr. Colucci's motion for a preliminary injunction. Mr. Colucci can only speculate as to any harm that would result should the Court refrain from ordering the requested extraordinary relief. In contrast, Mr. Farnsworth, Mr. Vanderbilt, Ms. King, and Vinco Ventures and its employees would immediately suffer significant financial damage. Moreover, were the Court to grant Plaintiff's Motion, the Company and its shareholders would effectively lose the opportunity to continue the substantial investigations into Mr. Colucci's misconduct and to ensure the integrity of Board's leadership and procedures. Mr. Farnsworth, Mr. Vanderbilt, and Ms. King respectfully believe that the equitable path for all interested parties is to return to the status quo predating the termination of Ms. King and Mr. Farnsworth of July 8, 2022, develop a record on an expedited basis, and proceed to a determination on the merits of the parties' claims.

### **III.**

### **CONCLUSION**

For these reasons, this Court should deny Plaintiff's motion and set aside the current TRO.

DATED this 15<sup>th</sup> day of August, 2022.

KEMP JONES, LLP

PARKER, NELSON & ASSOCIATES, CHTD.

/s/ Nathanael R. Rulis

/s/ Theodore Parker, III

Will Kemp, Esq. (#1205)

THEODORE PARKER, III, ESQ.

Nathanael R. Rulis, Esq. (#11259)

Nevada Bar No. 4716

3800 Howard Hughes Parkway, 17th Floor

2460 Professional Court, Suite 200

Las Vegas, Nevada 89169

Las Vegas, Nevada 89128

*Attorneys for Defendants*

*Attorneys for Defendants*

*Theodore Farnsworth & Erik Noble*

*Lisa King & Roderick Vanderbilt*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 15<sup>th</sup> day of August, 2022, I served a true and correct copy of the  
3 foregoing **DEFENDANTS THEODORE FARNSWORTH, LISA KING, AND RODERICK**  
4 **VANDERBILT'S OPPOSITION TO PLAINTIFF VINCO VENTURES, INC.'S MOTION**  
5 **FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** via the  
6 Eighth Judicial District Court's electronic service system on all parties on the Court's service list.

7  
8 /s/ Staci D. Ibarra  
9 An employee of Parker, Nelson & Associates, Chtd.

# **Exhibit “A”**

1 **DECL**

2 THEODORE PARKER, III, ESQ.

3 Nevada Bar No. 4716

4 **PARKER, NELSON & ASSOCIATES, CHTD.**

5 2460 Professional Court, Suite 200

6 Las Vegas, Nevada 89128

7 Telephone: (702) 868-8000

8 Facsimile: (702) 868-8001

9 Email: [tparker@pnalaw.net](mailto:tparker@pnalaw.net)

10 WILL KEMP, ESQ.

11 Nevada Bar No. 1205

12 NATHANAEL R. RULIS, ESQ.

13 Nevada Bar No. 11259

14 **KEMP JONES, LLP**

15 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor

16 Las Vegas, Nevada 89169

17 Telephone: (702) 385-6000

18 Facsimile: (702) 385-6001

19 Email: [j.lopez@kempjones.com](mailto:j.lopez@kempjones.com)

20 Email: [n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)

21 *Attorneys for Defendants*

22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

24 VINCO VENTURES, INC.,

25 Plaintiff,

26 v.

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

Defendants.

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

**DECLARATION OF LISA KING IN  
SUPPORT OF OPPOSITION TO  
PLAINTIFF'S MOTION FOR A  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

LISA KING, being duly sworn, deposes, and says:

1. I believe I am still validly President of ZVV, a joint venture holding company owned by Zash Global Media and Entertainment ("Zash") and Vinco Ventures, Inc. ("Vinco Ventures" or the "Company") and formed in anticipation of a business combination between the two entities. I



1 previously served first as Chief Executive Officer (“CEO”) of Zash and then as CEO of the Company.  
2 I am a member of the Company’s Board of Directors (the “Board”), and I am fully familiar with the  
3 facts set forth herein.

4           2.       I submit this affidavit in opposition to Plaintiff’s Motion for a Temporary Restraining  
5 Order and Preliminary Injunction in the above-referenced litigation.

6           3.       The Company, as disclosed in its SEC filings, is incorporated in Nevada and is “a  
7 remote-friendly company with several hubs and locations for employees to collaborate” and does  
8 “not maintain a headquarters.”

9           4.       Theodore Farnsworth, Chairman and Co-founder of Zash, is responsible for growing  
10 Vinco Ventures from a company with approximately \$11 million market capital to approximately  
11 \$500 million, all within the past year.

12           5.       I was elected to the Board on October 14, 2021, at which time, I became CEO of the  
13 Company. I served in that capacity until July 2022.

14           6.       Mr. Farnsworth and I are responsible for approximately forty employees working at  
15 the Company in upstate New York, including Rochester. These employees were previously  
16 employed by Zash and its subsidiary, and they migrated to the Company on our direction in  
17 anticipation of the business combination between Zash and the Company.

18           7.       Mr. Colucci was appointed to the Board in June 2022.

19           8.       Prior to being appointed independent director, Mr. Colucci was required to submit a  
20 questionnaire detailing his connections to the Company. The questionnaire clearly notes its purpose  
21 is “to obtain information for use in the Company’s registration statement . . . to be filed with the  
22 Securities and Exchange Commission.”

23           9.       On or about July 16, 2022, the Board retained Gibson, Dunn & Crutcher LLP (“Gibson  
24 Dunn”) as independent counsel to the Board to advise it and facilitate the Board’s adherence to its  
25 bylaws.

1           10. Gibson Dunn quickly confirmed issues related to Mr. Colucci's disclosures and  
2 initiated an investigation into Mr. Colucci's independent status. In violation of Section 10.1(d) of the  
3 Code of Business Conduct and Ethics, Mr. Colucci refused to cooperate in the investigation or rectify  
4 his incomplete disclosure.

5           11. Attached hereto as **Exhibit 1** is a true and correct copy of the Company's Code of  
6 Business Conduct and Ethics. (Despite the use of the Company's predecessor's name on the  
7 document, the Company has adopted the Code of Business Conduct and Ethics as its own.)  
8

9           12. Negotiations regarding the amendment that would delay a \$33 million payment to our  
10 secured lender stalled when neither former counsel, who had been terminated recently, nor Phil Jones,  
11 the Company's Chief Financial Officer, who was on vacation, responded to Palladium Capital or  
12 Hudson Bay's counsel's attempt to finalize the agreement. The Company's inability to finalize the  
13 amendment was not related to its ability to file an 8-K.  
14

15           13. On July 17, 2022, the Board purported to convene a meeting, but rather than use the  
16 secure, public company account that had been provided previously by Mr. Vanderbilt, the Chairman  
17 of the Board, and where Gibson Dunn and I were waiting, Mr. Colucci and the other two directors  
18 met using Zoom. When Mr. Vanderbilt attempted to join the Zoom to request that the others join the  
19 Google meeting, they refused him entry until after they had proceeded to vote to terminate me and to  
20 nominate and appoint Mr. Colucci interim CEO; all of this occurred within ten minutes. Despite  
21 requesting the minutes, I and Mr. Vanderbilt have never received them.  
22

23           14. However, there are purportedly meeting minutes from the "special meeting of the  
24 Board of Directors" on July 17, 2022 in which neither I nor Mr. Vanderbilt were permitted to  
25 participate. I nor Mr. Vanderbilt have ever received a copy of the meeting minutes from July 17,  
26 2022. But, oddly enough, someone with the screenname Ty Olds (@ty\_olds) recently shared a post  
27 on Twitter where screen shots of the July 17, 2022 Board meeting minutes were included. Thus,  
28 someone on Twitter has meeting minutes that have never been sent to me, a Board Member.

1           15.     On July 20, 2022, Elliot Goldstein, one of the Company's independent directors,  
2     emailed Gibson Dunn, on behalf of all three independent directors, including Mr. Colucci, to note,  
3     "we are uncomfortable with your continued involvement and we have serious ethical reservations  
4     regarding your actions thus far."

5           16.     On July 20, 2022, Chairman Vanderbilt contacted Vinco general counsel, Lucosky  
6     and Brookman, and requested the Audit Committee to "launch an immediate internal investigation  
7     into irregular transactions between Vinco Ventures and John Colucci and the companies he represents  
8     or with which he is affiliated."

9           17.     On July 21, 2022, the Board convened another meeting and rescinded my purported  
10    termination, appointed Mr. Colucci as co-CEO along with Mr. Farnsworth and appointed me as  
11    President of ZVV.  
12

13           18.     On behalf of the independent directors, Goldstein responded that "[t]he independent  
14    board will take this under advisement and will deal with this in due course." Goldstein responded  
15    that the improprieties did "not change the fact that [King] was terminated and [Colucci] has been  
16    elected as interim CEO." Colucci himself cast the deciding vote to secure his position as CEO.  
17

18           19.     On Sunday, July 24, 2022, at directors Mr. Distasio and Mr. Goldstein's request, the  
19    Board met again. This time, seconds after the Chair announced the directors in attendance, Mr.  
20    Colucci hijacked the meeting from the Chair in violation of Section 5.5 of the Company's bylaws and  
21    Section 4 of the Company's Corporate Governance Guidelines.  
22

23           20.     Detailing Colucci's improper take-over, Chairman Vanderbilt demanded that Colucci  
24    immediately "step down as an Independent Director for lack of proper disclosure of third-party  
25    transactions and information on his Questionnaire that has made the Company in non-compliance  
26    with Nasdaq" disclosure requirements. Throughout the July 24 Board meeting, Mr. Colucci muted  
27    the Chair and despite his many objections, refused to allow Mr. Vanderbilt to preside over the  
28    meeting. Contrary to Mr. Colucci's representations otherwise, Mr. Colucci also thwarted my attempts

1 to engage in discussion, and instead he continued to push his agenda, which included several  
2 resolutions in which he was self-interested.

3 21. Mr. Noble discovered on July 27, 2022, that Vinco was not only experiencing theft of  
4 trade secrets and IP, but also that Vinco, a public Company, was experiencing illicit collusion of IP  
5 theft within the Company directly by independent board member Colucci, which threatened Vinco  
6 and shareholder value. Following this discovery, Mr. Noble compared all the business conversations  
7 he had with George Yang of Ai-Pros from June 21 to July 16, and discovered that many meetings  
8 included John Colucci.  
9

10 22. On July 19, 2022, Vinco CFO Phil Jones and two independent board members John  
11 Colucci and Elliot Goldstein, exclusively and separately pushed to pay an invoice to AI-Pros, that  
12 both the CEO Lisa King and Noble disapproved because AI-Pros delivered nothing to date. Mr.  
13 Noble found that behavior from all three individuals very concerning since they knew AI-Pros had  
14 failed to provide anything to Vinco. Furthermore, all independent board members - Mike Distasio,  
15 Elliot Goldstein, and Jon Colucci - and CFO Phil Jones, were on the email chain by John Colucci  
16 pushing to pay AI Pros.  
17

18 23. In a retaliatory move for Mr. Noble disapproving payments to AI-Pros, on July 24,  
19 Mr. Noble received a letter from CFO Phil Jones stating that all Independent Board members - Mike  
20 Distasio, Elliot Goldstein and John Colucci - voted to terminate him without cause in an invalid board  
21 meeting.  
22

23 24. Attached hereto as **Exhibit 2** is a true and correct copy of the Company's Bylaws.  
24 (Despite the use of the Company's predecessor's name on the document, the Company has adopted  
25 the Bylaws as its own.)

26 25. Attached hereto as **Exhibit 3** is a true and correct copy of the Company's Corporate  
27 Governance Guidelines.  
28

1           26.     Attached hereto as **Exhibit 4** is a true and correct copy of the Company's Articles of  
2 Incorporation.

3           27.     Attached hereto as **Exhibit 5** is a chart of the market value of the Vinco Ventures,  
4 Inc.'s stock from December 31, 2021 until August 12, 2022. The value began dropping precipitously  
5 after July 26, 2022 following the Mr. Colucci's unauthorized press release referring to a hostile  
6 takeover.

7           28.     Following the entry of this Court's TRO, on Monday, August 8, 2022, Colucci and  
8 Chief Operating Officer Steve Garrow immediately terminated the employment of Chief Human  
9 Resources Officer Steve Haddad without providing any reasoning. That same evening and Tuesday  
10 morning, certain employees were verbally notified they would be terminated and would be receiving  
11 emails. Additionally, termination letters were supposed to be sent to approximately 80% of Vinco's  
12 workforce. This mass termination included firing some individuals that had previously filed  
13 whistleblower complaints against Mr. Colucci and others. Apparently, the only thing that prevented  
14 Mr. Colucci and Mr. Garrow from actually firing 80% of Vinco's workforce was that they previously  
15 got Vinco's bank accounts frozen and, because of their own actions, were unable to make the  
16 necessary legally mandated payouts to the employees they wanted to terminate. Defendants have  
17 learned that Mr. Colucci's insistence on terminating the vast majority of Vinco's employees has  
18 resulted in the Company's HR team being either terminated or resigning.  
19  
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24     ///

25     ///

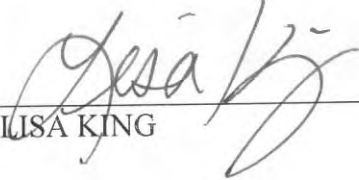
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29. This declaration is offered in good faith and not simply for the purposes of delay.

I declare under penalty of perjury, pursuant to NRS 53.045, that the foregoing is true and correct.

Executed this 18 day of August, 2022 in Las Vegas, Nevada.

  
\_\_\_\_\_  
LISA KING

# **EXHIBIT 1**

# **EXHIBIT 1**

## CODE OF BUSINESS CONDUCT AND ETHICS

### 1. Introduction.

1.1 The Board of Directors of Xspand Products Lab, Inc. (together with its subsidiaries, the “Company”) has adopted this Code of Business Conduct and Ethics (the “Code”) in order to:

- (a) promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest;
- (b) promote full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with, or submits to, the Securities and Exchange Commission (the “SEC”) and in other public communications made by the Company;
- (c) promote compliance with applicable governmental laws, rules and regulations;
- (d) promote the protection of Company assets, including corporate opportunities and confidential information;
- (e) promote fair dealing practices;
- (f) deter wrongdoing; and
- (g) ensure accountability for adherence to the Code.

1.2 All directors, officers and employees are required to be familiar with the Code, comply with its provisions and report any suspected violations as described below in Section 10, Reporting and Enforcement.

### 2. Honest and Ethical Conduct.

2.1 The Company’s policy is to promote high standards of integrity by conducting its affairs honestly and ethically.

2.2 Each director, officer and employee must act with integrity and observe the highest ethical standards of business conduct in his or her dealings with the Company’s customers, suppliers, partners, service providers, competitors, employees and anyone else with whom he or she has contact in the course of performing his or her job.

2.3 The FCPA prohibits giving anything of value, directly or indirectly, to officials of foreign governments or foreign political candidates in order to obtain or retain business. It is strictly prohibited to make payments to government officials of any country. The term government officials is broadly defined under the FCPA and therefore consultation with the Company’s legal counsel is advised prior to making any payments that may be subject to the FCPA. In addition, the U.S. government has a number of laws and regulations regarding



business gratuities which may be accepted by U.S. government personnel. The promise, offer or delivery to an official or employee of the U.S. government of a gift, favor or other gratuity in violation of these rules would not only violate Company policy but could also be a criminal offense. State and local governments, as well as foreign governments, may have similar rules. The Company's legal counsel can provide guidance to you in this area. Similar to the FCPA, the definition of government officials is broadly defined and therefore guidance and approval should be obtained prior to gifts or entertainment being made.

### 3. Conflicts of Interest.

3.1 A conflict of interest occurs when an individual's private interest (or the interest of a member of his or her family) interferes, or even appears to interfere, with the interests of the Company as a whole. A conflict of interest can arise when an employee, officer or director (or a member of his or her family) takes actions or has interests that may make it difficult to perform his or her work for the Company objectively and effectively. Conflicts of interest also arise when an employee, officer or director (or a member of his or her family) receives improper personal benefits as a result of his or her position in the Company.

3.2 Loans by the Company to, or guarantees by the Company of obligations of, employees or their family members are of special concern and could constitute improper personal benefits to the recipients of such loans or guarantees, depending on the facts and circumstances. Loans by the Company to, or guarantees by the Company of obligations of, any director or officer or their family members are expressly prohibited.

3.3 Whether or not a conflict of interest exists or will exist can be unclear. Conflicts of interest should be avoided unless specifically authorized as described in Section 3.4.

3.4 Persons other than directors and officers who have questions about a potential conflict of interest or who become aware of an actual or potential conflict should discuss the matter with, and seek a determination and prior authorization or approval from their supervisor or Philip Anderson, the Company's Chief Financial Officer. A supervisor may not authorize or approve conflict of interest matters or make determinations as to whether a problematic conflict of interest exists without first providing Philip Anderson, the Company's Chief Financial Officer, with a written description of the activity and seeking Philip Anderson, the Company's Chief Financial Officer's written approval. If the supervisor, or Philip Anderson, the Company's Chief Financial Officer, is himself or herself involved in the potential or actual conflict, the matter should instead be discussed directly with Christopher B. Ferguson, the Company's Chief Executive Officer.

Directors and executive officers must seek determinations and prior authorizations or approvals of potential conflicts of interest exclusively from the Audit Committee.

### 4. Compliance.

4.1 Employees, officers and directors should comply, both in letter and spirit, with all applicable laws, rules and regulations in the cities, states and countries in which the Company operates. You will be accountable for adherence to this Code of Business Conduct

and Ethics. Violations of this Code of Business Conduct and Ethics may result in a variety of disciplinary actions, including termination of employment and civil or criminal penalties. Although not all employees, officers and directors are expected to know the details of all applicable laws, rules and regulations, it is important to know enough to determine when to seek advice from appropriate personnel. Questions about compliance should be addressed to the Legal Department.

4.2 No director, officer or employee may purchase or sell any Company securities while in possession of material non-public information regarding the Company, nor may any director, officer or employee purchase or sell another company's securities while in possession of material non-public information regarding that company. It is against Company policies and illegal for any director, officer or employee to use material non-public information regarding the Company or any other company to:

- (a) obtain profit for himself or herself; or
- (b) directly or indirectly "tip" others who might make an investment decision on the basis of that information.
- (c) You are reminded that the Company has a separate and distinct Insider Trading Policy, to which each of our employees, officers, and directors is subject. Please refer to that policy and ensure your compliance with it.

## 5. Disclosure.

5.1 The Company's periodic reports and other documents filed with the SEC, including all financial statements and other financial information, must comply with applicable federal securities laws and SEC rules.

5.2 Each director, officer and employee who contributes in any way to the preparation or verification of the Company's financial statements and other financial information must ensure that the Company's books, records and accounts are accurately maintained. Each director, officer and employee must cooperate fully with the Company's accounting and internal audit departments, as well as the Company's independent public accountants and counsel.

5.3 Each director, officer and employee who is involved in the Company's disclosure process must:

- (a) be familiar with and comply with the Company's disclosure controls and procedures and its internal control over financial reporting; and
- (b) take all necessary steps to ensure that all filings with the SEC and all other public communications about the financial and business condition of the Company provide full, fair, accurate, timely and understandable disclosure.

## 6. Protection and Proper Use of Company Assets.

6.1 All directors, officers and employees should protect the Company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the Company's profitability and are prohibited.

6.2 All Company assets should be used only for legitimate business purposes. Any suspected incident of fraud or theft should be reported for investigation immediately.

6.3 The obligation to protect Company assets includes the Company's proprietary information. Proprietary information includes intellectual property such as trade secrets, patents, trademarks, and copyrights, as well as business and marketing plans, engineering and manufacturing ideas, designs, databases, records and any non-public financial data or reports. Unauthorized use or distribution of this information is prohibited and could also be illegal and result in civil or criminal penalties.

7. Corporate Opportunities. All directors, officers and employees owe a duty to the Company to advance its interests when the opportunity arises. Directors, officers and employees are prohibited from taking for themselves personally (or for the benefit of friends or family members) opportunities that are discovered through the use of Company assets, property, information or position. Directors, officers and employees may not use Company assets, property, information or position for personal gain (including gain of friends or family members). In addition, no director, officer or employee may compete with the Company.

8. Confidentiality. Directors, officers and employees should maintain the confidentiality of information entrusted to them by the Company or by its customers, suppliers or partners, except when disclosure is expressly authorized or is required or permitted by law. Confidential information includes all non-public information (regardless of its source) that might be of use to the Company's competitors or harmful to the Company or its customers, suppliers or partners if disclosed. Employees, officers and directors who have access to confidential information are not permitted to use or share that information for stock trading purposes or for any other purpose except the conduct of our business. All non-public information about the Company should be considered confidential information. If you have any questions about this subject, please consult Philip Anderson, the Company's Chief Financial Officer.

9. Fair Dealing. Each director, officer and employee must deal fairly with the Company's customers, suppliers, partners, service providers, competitors, employees and anyone else with whom he or she has contact in the course of performing his or her job. No director, officer or employee may take unfair advantage of anyone through manipulation, concealment, abuse or privileged information, misrepresentation of facts or any other unfair dealing practice.

10. Reporting and Enforcement.

10.1 Reporting and Investigation of Violations.

(a) Actions prohibited by this Code involving directors or executive officers must be reported to Philip Anderson, the Company's Chief Financial Officer, as well as the Audit Committee.

(b) Actions prohibited by this Code involving anyone other than a director or executive officer must be reported to the reporting person's supervisor or Philip Anderson, the Company's Chief Financial Officer.

(c) After receiving a report of an alleged prohibited action, the Audit Committee, the relevant supervisor or Philip Anderson, the Company's Chief Financial Officer, must promptly take all appropriate actions necessary to investigate.

(d) All directors, officers and employees are expected to cooperate in any internal investigation of misconduct.

#### 10.2 Enforcement.

(a) The Company must ensure prompt and consistent action against violations of this Code.

(b) If, after investigating a report of an alleged prohibited action by a director or executive officer, the Audit Committee determines that a violation of this Code has occurred, the Audit Committee will report such determination to the Board of Directors.

(c) If, after investigating a report of an alleged prohibited action by any other person, the relevant supervisor or Philip Anderson, the Company's Chief Financial Officer, determines that a violation of this Code has occurred, the supervisor or Philip Anderson will report such determination to Christopher B. Ferguson, the Company's Chief Executive Officer.

(d) Upon receipt of a determination that there has been a violation of this Code, the Board of Directors will take such preventative or disciplinary action as it deems appropriate, including, but not limited to, reassignment, demotion, dismissal and, in the event of criminal conduct or other serious violations of the law, notification of appropriate governmental authorities.

#### 10.3 Waivers.

(a) Each of the Board of Directors (in the case of a violation by a director or executive officer) may, in its discretion, waive any violation of this Code.

(b) Any waiver for a director or an executive officer shall be disclosed as required by SEC and Nasdaq rules.

#### 10.4 Prohibition on Retaliation.

The Company does not tolerate acts of retaliation against any director, officer or employee who makes a good faith report of known or suspected acts of misconduct or other violations of this Code.



# **EXHIBIT 2**

# **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<sup>th</sup>) calendar day nor earlier than the close of business on the one hundred twentieth (120<sup>th</sup>) 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<sup>th</sup>) calendar day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) calendar day prior to such annual meeting or the tenth (10<sup>th</sup>) 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:

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(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

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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.

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## **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.

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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**

# **EXHIBIT 3**

## VINCO VENTURES, INC.

### CORPORATE GOVERNANCE GUIDELINES

1. General. The Board of Directors (the “Board”), which is appointed by the shareholders, is the ultimate decision-making body of Vinco Ventures, Inc. and its subsidiaries (the “Company” or “Vinco”), except with respect to those matters reserved to the Management Board and/or the shareholders. The Board is responsible for overseeing and ensuring the Management Board’s objectives, structure and operation of internal risk management and control systems, financial reporting process, compliance with legislation and regulations, business strategies and risks, operations, policies and processes maximize long-term shareholder value in the context of advancing the Company’s mission.

2. Election of Directors. Beginning with the annual meeting of shareholders in 2020, each member of the Board will be elected annually. The number of directors that constitutes the Board (each a “Director”) shall be fixed by the Board, but in no event shall be less than nine Directors. There is no limitation on the number of terms for which a Director may serve on the Board.

3. Succession Planning. The Board plans for succession to the position of Chief Executive Officer as well as certain other senior management positions. To assist the Board, the Chief Executive Officer annually provides the Board with an assessment of senior managers and their potential to succeed him. He also provides the Board with an assessment of persons considered potential successors to certain senior management positions.

4. Board Leadership. The Directors will annually elect a Chairman of the Board. The Chairman of the Board shall preside at all meetings of the shareholders and of the Board as a whole. He shall perform such other duties, and exercise such powers, as from time to time shall be prescribed by the Board. The Chairman of the Board shall preside over executive sessions of the Company’s Independent Directors, facilitate information flow and communication among the Directors, and perform such other duties as may be specified by the Board.

5. Director Independence. It is the policy of the Company that at least a majority of the Directors meet the NASDAQ Stock Exchange (“NASDAQ”) Listing Standard’s “independence” requirements. Annually, the Nominating & Governance Committee of the Board reviews all relevant information, not merely from the standpoint of the Director, but also from that of persons or organizations with which the Director has an affiliation, and makes recommendations to the Board concerning the independence of the Directors. Based on those recommendations, the Board makes an affirmative determination as to the independence of each Director. The Board has established categorical standards to assist in making such determinations. Such standards are set forth in Annex A hereto.

6. Board Size. It is the policy of the Company that the number of Directors exceed a number that can function efficiently as a body. The Nominating & Governance Committee considers and makes recommendations to the Board concerning the appropriate size and needs of the Board. The Nominating & Governance Committee considers candidates to fill new positions created by expansion and vacancies that occur by resignation, by retirement or for any other reason.

7. Selection Criteria. The Nominating & Governance Committee works with the Board to determine the appropriate mix of characteristics, skills and experience for the Board as a whole and for individual Directors. In evaluating the suitability of individuals for Board membership, the Nominating & Governance Committee takes into account many factors. Those include whether the individual meets various independence requirements; the individual's general understanding of the varied disciplines relevant to the success of a large, publicly traded company in today's global business environment, understanding of Vinco's global businesses and markets, professional expertise and educational background; and other factors that promote diversity of views and experience. The Nominating & Governance Committee evaluates each individual in the context of the Board as a whole, with the objective of recruiting and recommending a slate of directors that can best perpetuate Vinco's success and represent shareholder interests through the exercise of sound judgment, using its diversity of experience.

8. Director Service on Other Public Boards. The Board does not believe that it should prohibit Directors from serving on other organizations' boards and committees. The Board expects each Director to ensure that his commitments do not interfere with his duties as a Director of Vinco. Directors consult with the Chairman and the Chair of the Nominating & Governance Committee before accepting the offer of another public company directorship or a request to serve as a member of the audit committee of any other public company. The Nominating & Governance Committee and the Board will take into account the nature and extent of the director's other commitments when determining whether it is appropriate to nominate that individual for re-election. Service on boards and committees of other organizations should be consistent with Vinco's conflict of interest policies. If a member of the Company's Audit Committee serves on more than three public company audit committees, the Board determines whether such simultaneous service impairs the director's ability to serve effectively on Vinco's Audit Committee.

9. Change in Director Occupation. When a Director's principal occupation or business association changes substantially during his or her tenure as a Director, that Director shall review and consult with the Chairman and the Chair of the Nominating & Governance Committee on the potential impact, if any, that the change may have on continued Board service.

10. Director Compensation. The Nominating & Governance Committee annually reviews the compensation of Directors and makes a recommendation to the Board regarding the form and amount of Directors' compensation.

11. Board and Committee Self-Evaluation. The Board, and each Committee, is required to conduct a self-evaluation of its performance at least annually.

12. Director Tenure Directors shall not be renominated following their 75<sup>th</sup> birthday. The Board does not endorse arbitrary term limits on Directors' service, nor does it believe in automatic annual re-nomination of a Director until he reaches the mandatory retirement age. Therefore, the Board self-evaluation process is an important determinant for continuing service.

13. Committees. It is the general policy of the Company that all major decisions be considered by the Board as a whole. As a consequence, the committee structure of the Board is limited to



those committees considered to be basic to, or required for, the operation of a publicly owned company.

Currently these committees are the Audit Committee; Compensation Committee; Nominating & Governance Committee; Health, Safety, Environmental & Operations ("HSE&O") Committee; Finance Committee and Executive Committee. The members and chairs of these committees are recommended to the Board by the Nominating & Governance Committee. The members of the Audit, Compensation and Nominating & Governance Committee shall meet NYSE's independence requirements as well as the additional requirements for committee membership established by NYSE and any other applicable laws, rules and regulations and the applicable committee charter. At least one Audit Committee member shall be an "audit committee financial expert" as defined in the SEC's regulations. Generally, the Board does not favor mandatory rotation of committee assignments or chairs, believing that experience and continuity are more important. However, from time to time, as the Board composition changes, the Nominating & Governance Committee may recommend rotation of committee and committee chair assignments.

14. Director Orientation and Continuing Education. The Company provides an orientation process for new directors, including a review of Vinco background materials, a briefing on key issues facing the Company and meetings with senior management. The Board and its committees receive regular presentations on the Company's strategic and business plans, financial performance, legal and regulatory matters, compliance programs, as well as other matters. Directors are encouraged to take advantage of continuing education opportunities that enhance their ability to fulfill their responsibilities. The Company reimburses directors for reasonable costs incurred in connection with such continuing education.

15. Chief Executive Officer Performance Goals and Annual Evaluation. The Compensation Committee is responsible for setting annual and long-term performance goals for the Chief Executive Officer and for evaluating his or her performance against such goals. The Compensation Committee meets annually with the Chief Executive Officer to receive his or her recommendations concerning such goals. Both the goals and the evaluation are then submitted for consideration by the outside Directors of the Board at a meeting or executive session of that group. The Compensation Committee then meets with the Chief Executive Officer to evaluate his or her performance against such goals.

16. Communication with Stakeholders. The Chief Executive Officer is responsible for establishing effective communications with the Company's stakeholder groups, i.e., shareholders, customers, Company associates, communities, suppliers, creditors, governments and corporate partners. It is the policy of the Company that management speaks for the Company.

17. Meeting Attendance. All Board members are expected to prepare themselves for and to attend all Board meetings and all meetings of the committees on which they serve. If circumstances require, a member of the Board may attend a meeting by conference telephone or other similar communications equipment, which allows such member to participate in the meeting as if he were present. It is understood that, on occasion, a director may be unable to attend a meeting.

18. Information Flow and Distribution of Meeting Materials. To facilitate active and informed discussion at Board and committee meetings, directors receive background materials in advance of meetings. Through these materials and presentations at meetings, the Board and its committees keep abreast of the Company's performance and businesses, plans (including acquisitions, divestitures and capital expenditures), various issues (including regulatory updates), and new developments. In addition to meeting-related materials, directors receive other regular and special reports throughout the year. Proprietary or otherwise sensitive materials may be reserved for distribution at meetings.

19. Board Meetings. At the invitation of the Board, members of senior management recommended by the Chief Executive Officer shall attend Board meetings or portions thereof for the purpose of participating in discussions. Generally, presentations of matters to be considered by the Board are made by the manager responsible for that area of the Company's operations.

20. Director Access to Corporate and Independent Advisors. Board members have free access to all members of management and employees of the Company. In addition, as necessary and appropriate, Board members may consult with independent legal, financial, accounting and other advisors to assist in their duties to the Company and its shareholders.

21. Executive Sessions. Executive sessions or meetings of Directors without management present are held regularly. Additionally, executive sessions including only independent Directors are held at least once a year.

22. Communications with the Board. Shareholders and other interested parties may write to Directors at Corporate Secretary, Vinco Ventures, Inc. 6 North Main Street, Fairport, NY 11450 or at [Governance@vincoventures.com](mailto:Governance@vincoventures.com). The Directors established procedures for handling such communications and directed the Corporate Secretary to act as their agent in processing such communications. The Corporate Secretary forwards communications relating to matters within the Board's purview to the Directors, communications relating to matters within a Board committee's area of responsibility to the Chair of the appropriate committee, and communications relating to ordinary business matters, such as suggestions, inquiries and consumer complaints, to the appropriate Vinco executive. The Corporate Secretary does not forward solicitations, junk mail and obviously frivolous or inappropriate communications, but makes them available to any independent Director who requests them.

23. Periodic Review of Guidelines. The Board has the authority to amend these Guidelines. The Nominating & Governance Committee reviews these guidelines and reports on its review and recommends any changes to the Board.

**Amended and Restated Effective \_\_\_\_\_.**

## ANNEX A

### Categorical Standards of Director Independence

A Director is considered independent if the Board makes an affirmative determination after a review of all relevant information that the Director has no material relationship with the Company or any of its subsidiaries. The Board has established the categorical standards set forth below, which either meet or exceed the independence requirements of the New York Stock Exchange listing standards, to assist it in making such determinations. A Director will not be considered independent if the Director, his wife, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree as defined by **Dutch law**:

- is, or within the last five years has been, an employee or member of the Management Board of the Company or any of its subsidiaries;
- has received, or during any 12-month period within the last three years has received, more than \$120,000 in direct compensation from the Company or its subsidiaries, other than Director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent on continued service);
- receives personal financial compensation from the Company, or a company associated with it, other than the compensation received for the work performed as a Board member and insofar as this is not in keeping with the normal course of business;
- is a current partner or employee of the independent auditors of the Company or any of its subsidiaries;
- was within the last three years (but is no longer) a partner or employee of the independent auditors of the Company or any of its subsidiaries and personally worked on the audit of the Company or any of its subsidiaries within that time;
- is, or within the last three years has been, employed as an executive officer of another company where any of the current executive officers of the Company or any of its subsidiaries serve, or within the last three years have served, on such other company's compensation committee;
- has had an important business relationship with the Company, or a company associated with it, in the year prior to appointment. This includes the case where the Board member, or the firm of which he is a shareholder, partner, associate or advisor, has acted as advisor to the Company and the case where the Board member is a management board member or an employee of any bank with which the company has a lasting and significant relationship;
- has temporarily managed the Company during the previous twelve months where management board members have been absent or unable to discharge their duties; and

- is a current employee of a company that makes payments to, or receives payments from, the Company or its subsidiaries in an amount which, in any single fiscal year for the last three fiscal years, exceeds the greater of \$1 million or 2% of such other company's consolidated gross revenue.

# **EXHIBIT 4**

# **EXHIBIT 4**

ARTICLES OF INCORPORATION

OF

VINCO VENTURES, INC.

*a Nevada corporation*

ARTICLE I

The name of the corporation is Vinco Ventures, Inc.

ARTICLE II

The address of the corporation's office in the State of Nevada is 3773 Howard Hughes Parkway, #500S, Las Vegas, Nevada 89169. The name of its registered agent is InCorp Services, Inc. whose address is 3773 Howard Hughes Parkway, #500S, Las Vegas, Nevada 89169.

ARTICLE III

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be incorporated under the laws of the State of Nevada.

ARTICLE IV

The corporation is authorized to issue two classes of shares of stock to be designated, respectively, "Common Stock," \$0.001 par value per share, and "Preferred Stock," \$0.001 par value per share. The total number of shares that the corporation is authorized to issue is 280,000,000 shares. The number of shares of Common Stock authorized is 250,000,000, and the number of shares of Preferred Stock authorized is 30,000,000.

Once authorized by the board of directors, the Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the board of directors (authority to do so being hereby expressly vested in the board). The board of directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The corporation's board of directors, within the limits and restrictions stated in any resolution or resolutions of the board of directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares in any such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

The authority of the board of directors with respect to each such class or series shall include, without limitation of the foregoing, the right to determine and fix:

(a) the distinctive designation of such class or series and the number of shares to constitute such class or series;

(b) the rate at which dividends on the shares of such class or series shall be declared and paid, or set aside for payment, whether dividends at the rate so determined shall be cumulative or accruing, and whether the shares of such class or series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so, on what terms;

(c) the right or obligation, if any, of the corporation to redeem shares of the particular class or series of Preferred Stock and, if redeemable, the price, terms and manner of such redemption;

(d) the special and relative rights and preferences, if any, and the amount or amounts per share, which the shares of such class or series of Preferred Stock shall be entitled to receive upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation;

(e) the terms and conditions, if any, upon which shares of such class or series shall be convertible into, or exchangeable for, shares of capital stock of any other class or series, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(f) the obligation, if any, of the corporation to retire, redeem or purchase shares of such class or series pursuant to a sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;

(g) voting rights, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock;

(h) limitations, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock; and

(i) such other preferences, powers, qualifications, special or relative rights and privileges thereof as the board of directors of the corporation, acting in accordance with these Amended and Restated Articles of Incorporation, as may be subsequently amended, modified or restated ("**Articles of Incorporation**"), may deem advisable and are not inconsistent with law and the provisions of these Articles of Incorporation.

#### ARTICLE V

The corporation reserves the right to amend, alter, change, or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the shareholders herein are granted subject to this right.

#### ARTICLE VI

The corporation is to have perpetual existence.

#### ARTICLE VII

(a) Third Party Actions. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture trust or other enterprise, against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement (if such settlement is approved in writing in advance by the corporation, which approval shall not be unreasonably withheld) actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

(b) Actions By or In Right of the Corporation. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including reasonable attorneys' fees) and amounts paid in settlement (if such settlement is approved in writing in advance by the corporation, which approval shall not be unreasonably withheld) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in manner such person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. Notwithstanding any other provision of this Article VII, no person shall be indemnified hereunder for any expenses or amounts paid in settlement with respect to any action to recover short-swing profits under Section 16(b) of the Securities Exchange Act of 1934, as amended.

(c) Successful Defense. To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

(d) Determination of Conduct. Any indemnification under subsections (a) and (b) above (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that the indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in subsections (a) and (b) above. Such determination shall be made (i) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, (ii) or if such quorum is not obtainable or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the shareholders. Notwithstanding the foregoing, a director, officer, employee or agent of the Corporation shall be entitled to contest any determination that the director, officer, employee or agent has not met the applicable standard of conduct set forth in subsections (a) and (b) above by petitioning a court of competent jurisdiction.

(e) Indemnity Not Exclusive. The indemnification provided by or granted pursuant to the other sections of this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

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(f) Insurance Indemnification. The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this Article VII.

(g) The Corporation. For purposes of this Article VII, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under and subject to the provisions of this Article VII (including, without limitation the provisions of subsection (d) of this Article VII) with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(h) Employee Benefit Plans. For purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article VII.

(i) Continuation of Indemnification. The indemnification provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(j) Amendments. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the corporation's Articles of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal, or adoption of an inconsistent provision.

## ARTICLE VIII

In the event any shares of Preferred Stock shall be redeemed or converted pursuant to the terms hereof, the shares so converted or redeemed shall not revert to the status of authorized but unissued shares, but instead shall be canceled and shall not be re-issuable by the corporation.

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## ARTICLE IX

Holders of stock of any class or series of the corporation shall not be entitled to cumulate their votes for the election of directors or any other matter submitted to a vote of the shareholders.

(a) Number of Directors. The number of directors which constitutes the whole board of directors of the corporation shall be designated in the bylaws of the corporation.

(b) Election of Directors. Elections of directors need not be by written ballot unless the bylaws of the corporation shall so provide.

(c) Removal of Directors. The affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the then-outstanding voting securities of the corporation, voting together as a single class, shall be required to remove any director of the corporation from such position.

## ARTICLE X

No action shall be taken by the shareholders of the corporation except at an annual or special meeting of the shareholders called in accordance with the bylaws. Action may be taken by the shareholders by written consent. The affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the then-outstanding voting securities of the corporation, voting together as a single class, shall be required for the amendment, repeal or modification of the provisions of Article IX, this Article X, Article XI, Article XII or Article XIII of these Articles of Incorporation or the corporation's bylaws.

## ARTICLE XI

Meetings of shareholders may be held within or without the State of Nevada, as the corporation's bylaws may provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside of the State of Nevada at such place or places as may be designated from time to time by the board of directors or in the bylaws of the corporation.

## ARTICLE XII

(a) Inapplicability of Combinations with Interested Shareholders Statutes. At such time, if any, as the corporation becomes a "resident domestic corporation" (as that term is defined in Nevada Revised Statutes 78.427), the corporation shall not be subject to, or governed by, any of the provisions in Nevada Revised Statutes 78.411 to 78.444, inclusive, as amended from time to time, or any successor statutes.

(b) Inapplicability of Acquisition of Controlling Interest Statutes. In accordance with the provisions of Nevada Revised Statutes 78.378, the provisions of Nevada Revised Statutes 78.378 to 78.3793, inclusive, as amended from time to time, or any successor statutes, relating to acquisitions of controlling interests in the corporation, shall not apply to the corporation or to any acquisition of any shares of the corporation's capital stock.

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### ARTICLE XIII

To the fullest extent permitted by law, and unless the corporation 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 corporation, (b) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any director or officer of the corporation to the corporation or the corporation's shareholders, (c) any action or proceeding asserting a claim against the corporation arising pursuant to any provision of the Nevada Revised Statutes or the corporation'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. This exclusive forum provision shall not be applicable to any action brought under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. Any person or entity purchasing or otherwise acquiring any interest (including beneficial ownership) in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Article XIII.

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IN WITNESS WHEREOF, I have executed this Articles of Incorporation of Vinco Ventures, Inc. as of November 4, 2020.

/s/ Christopher B. Ferguson

Name: Christopher B. Ferguson

Title: Chief Executive Officer and Chairman of the Board of  
Directors

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# EXHIBIT 5

# EXHIBIT 5

Date	Open	High	Low	Close	Adj Close	Volume
12/31/2021	1.714286	1.741497	1.612245	1.619048	1.619048	18646509
1/3/2022	1.661224	1.789116	1.62585	1.768707	1.768707	16308327
1/4/2022	1.761905	1.77551	1.653061	1.755102	1.755102	10330131
1/5/2022	1.734694	1.741497	1.588435	1.598639	1.598639	12468246
1/6/2022	1.621088	1.646259	1.482993	1.585034	1.585034	11595213
1/7/2022	1.581633	1.646259	1.539456	1.571429	1.571429	10101546
1/10/2022	1.55102	1.578231	1.469388	1.571429	1.571429	12608190
1/11/2022	1.571429	1.64966	1.544218	1.591837	1.591837	9263205
1/12/2022	1.666667	2.088435	1.65034	1.959184	1.959184	50043210
1/13/2022	1.979592	2.619048	1.959184	2.401361	2.401361	214219278
1/14/2022	2.319728	2.938776	2.251701	2.768707	2.768707	302804271
1/18/2022	3.238095	3.734694	3.115646	3.530612	3.530612	417834417
1/19/2022	3.455782	3.639456	2.714286	3.081633	3.081633	261056859
1/20/2022	2.843537	3.006803	2.612245	2.673469	2.673469	132833022
1/21/2022	2.469388	2.653061	2.142857	2.170068	2.170068	95403294
1/24/2022	2	2.108844	1.721088	1.993197	1.993197	63799176
1/25/2022	1.945578	2.265306	1.945578	2.047619	2.047619	79371621
1/26/2022	2.387755	2.408163	1.979592	2.095238	2.095238	118914915
1/27/2022	2.081633	2.102041	1.884354	1.945578	1.945578	38331426
1/28/2022	1.904762	2.040816	1.789116	1.986395	1.986395	32441430
1/31/2022	1.972789	2.29932	1.968027	2.238095	2.238095	68700597
2/1/2022	2.244898	2.44898	2.088435	2.380952	2.380952	80595837
2/2/2022	2.346939	2.387755	2.22449	2.29932	2.29932	38110485
2/3/2022	2.170068	2.265306	2.054422	2.07483	2.07483	30104718
2/4/2022	2.095238	2.156463	2.040816	2.156463	2.156463	34958952
2/7/2022	2.189116	2.265306	2.068027	2.07483	2.07483	33367824
2/8/2022	2.080272	2.115646	2.006803	2.047619	2.047619	24766854
2/9/2022	2.066667	2.47619	2.040816	2.442177	2.442177	94125570
2/10/2022	2.278912	2.605442	2.258503	2.29932	2.29932	70657755
2/11/2022	2.312925	2.367347	2.129252	2.197279	2.197279	44186877
2/14/2022	2.122449	2.258503	2.081633	2.115646	2.115646	29751036
2/15/2022	2.183673	2.44898	2.176871	2.401361	2.401361	48731823
2/16/2022	2.578231	2.598639	2.346939	2.442177	2.442177	69608175
2/17/2022	2.336735	2.346939	2.190476	2.217687	2.217687	32608569
2/18/2022	2.219048	2.272109	2.108844	2.163265	2.163265	24519747
2/22/2022	2	2.14966	1.931973	2.013605	2.013605	29039115
2/23/2022	2.07483	2.07483	1.809524	1.829932	1.829932	29871282
2/24/2022	1.544218	1.884354	1.517007	1.863946	1.863946	38552661
2/25/2022	1.891156	1.897959	1.77551	1.795918	1.795918	22778973
2/28/2022	1.741497	1.812925	1.693878	1.741497	1.741497	27708912
3/1/2022	1.707483	1.727891	1.612245	1.646259	1.646259	23759463
3/2/2022	1.659864	1.836735	1.585034	1.755102	1.755102	39178146

3/3/2022	1.741497	1.761905	1.62585	1.639456	1.639456	21475230
3/4/2022	1.632653	1.673469	1.598639	1.605442	1.605442	22526280
3/7/2022	1.591837	1.605442	1.496599	1.496599	1.496599	30044742
3/8/2022	1.435374	1.564626	1.37415	1.482993	1.482993	36447180
3/9/2022	1.537415	1.659864	1.517007	1.564626	1.564626	23358594
3/10/2022	1.564626	1.564626	1.455782	1.52381	1.52381	18266514
3/11/2022	1.571429	1.571429	1.435374	1.455782	1.455782	19090890
3/14/2022	1.414966	1.44898	1.319728	1.387755	1.387755	29195376
3/15/2022	1.360544	1.482993	1.340136	1.455782	1.455782	29688120
3/16/2022	1.482993	1.544218	1.428571	1.52381	1.52381	26842788
3/17/2022	1.503401	1.657143	1.47619	1.605442	1.605442	27491499
3/18/2022	1.585034	1.751701	1.55102	1.687075	1.687075	46600470
3/21/2022	2.064626	2.231293	1.92517	2.088435	2.088435	127190280
3/22/2022	2.068027	2.197279	1.952381	2.088435	2.088435	66097080
3/23/2022	2.061224	2.07483	1.952381	2.020408	2.020408	42123291
3/24/2022	2.204082	2.214286	2.061224	2.102041	2.102041	50623272
3/25/2022	2.054422	2.102041	1.959184	2.006803	2.006803	28157997
3/28/2022	2.020408	2.034014	1.85034	2.020408	2.020408	35377020
3/29/2022	2.040816	2.312925	1.993197	2.29932	2.29932	67374363
3/30/2022	2.258503	2.353741	2.108844	2.122449	2.122449	43451877
3/31/2022	2.108844	2.190476	2.020408	2.176871	2.176871	30671109
4/1/2022	2.040816	2.102041	1.972789	2.054422	2.054422	27039474
4/4/2022	2.054422	2.122449	2.013605	2.081633	2.081633	23840754
4/5/2022	2.07483	2.14966	2.013605	2.034014	2.034014	23556603
4/6/2022	1.972789	2.040816	1.918367	1.965986	1.965986	22781031
4/7/2022	1.945578	1.965986	1.789116	1.85034	1.85034	24429783
4/8/2022	1.829932	1.891156	1.755102	1.884354	1.884354	21585480
4/11/2022	1.829932	2	1.823129	1.92517	1.92517	25136559
4/12/2022	1.945578	1.959184	1.789116	1.843537	1.843537	20718033
4/13/2022	1.809524	1.891156	1.77551	1.836735	1.836735	22461747
4/14/2022	1.836735	1.836735	1.653061	1.659864	1.659864	29219337
4/18/2022	1.707483	1.802721	1.629252	1.707483	1.707483	24281460
4/19/2022	1.687075	1.836735	1.632653	1.809524	1.809524	23618049
4/20/2022	1.789116	1.794558	1.62585	1.632653	1.632653	21361011
4/21/2022	1.646259	1.673469	1.564626	1.591837	1.591837	16624671
4/22/2022	1.564626	1.639456	1.517007	1.530612	1.530612	15687546
4/25/2022	1.510204	1.62585	1.486395	1.612245	1.612245	15204063
4/26/2022	1.55102	1.578231	1.482993	1.52381	1.52381	13801830
4/27/2022	1.496599	1.564626	1.489796	1.557823	1.557823	15574650
4/28/2022	1.564626	1.653061	1.503401	1.619048	1.619048	18779397
4/29/2022	1.598639	1.789116	1.585034	1.687075	1.687075	28576359
5/2/2022	1.755102	1.829932	1.70068	1.816327	1.816327	23597175
5/3/2022	1.789116	1.829932	1.707483	1.748299	1.748299	16620702

5/4/2022	1.761905	1.816327	1.666667	1.809524	1.809524	16992024
5/5/2022	1.748299	1.77551	1.693878	1.748299	1.748299	43793505
5/6/2022	2.272109	2.346939	2.034014	2.238095	2.238095	204763503
5/9/2022	2.156463	2.306122	1.94898	1.972789	1.972789	60297636
5/10/2022	2.020408	2.046259	1.823129	1.870748	1.870748	45500616
5/11/2022	1.829932	1.911565	1.666667	1.687075	1.687075	29485701
5/12/2022	1.632653	1.816327	1.591837	1.789116	1.789116	23533083
5/13/2022	1.891156	1.897959	1.707483	1.768707	1.768707	43900080
5/16/2022	1.789116	1.959184	1.680272	1.85034	1.85034	44877630
5/17/2022	1.85034	1.945578	1.761905	1.945578	1.945578	27318921
5/18/2022	2.033333	2.326531	2	2.07483	2.07483	87009594
5/19/2022	1.77551	1.92449	1.768707	1.891156	1.891156	32056731
5/20/2022	1.911565	1.965986	1.829932	1.965986	1.965986	17515785
5/23/2022	1.918367	2.061224	1.877551	1.993197	1.993197	22790586
5/24/2022	1.952381	2.013605	1.877551	1.979592	1.979592	17453898
5/25/2022	1.955782	1.993878	1.884354	1.918367	1.918367	23350215
5/26/2022	1.646259	1.714286	1.612245	1.612245	1.612245	33611403
5/27/2022	1.605442	1.748299	1.557823	1.666667	1.666667	32175213
5/31/2022	1.639456	1.673469	1.564626	1.564626	1.564626	19137783
6/1/2022	1.564626	1.564626	1.428571	1.462585	1.462585	22362963
6/2/2022	1.44898	1.544218	1.442177	1.47619	1.47619	13249110
6/3/2022	1.482993	1.482993	1.394558	1.401361	1.401361	16152801
6/6/2022	1.442177	1.537415	1.380952	1.44898	1.44898	25079964
6/7/2022	1.414966	1.489796	1.401361	1.428571	1.428571	14416584
6/8/2022	1.401361	1.496599	1.401361	1.442177	1.442177	16831941
6/9/2022	1.442177	1.442177	1.353741	1.353741	1.353741	14654577
6/10/2022	1.326531	1.421769	1.319728	1.401361	1.401361	17935323
6/13/2022	1.319728	1.380952	1.312925	1.346939	1.346939	14115087
6/14/2022	1.353741	1.408163	1.319728	1.333333	1.333333	14611653
6/15/2022	1.333333	1.408163	1.326531	1.408163	1.408163	13618521
6/16/2022	1.367347	1.489796	1.360544	1.414966	1.414966	16050636
6/17/2022	1.414966	1.517007	1.401361	1.47619	1.47619	17500056
6/21/2022	1.544218	1.55102	1.455782	1.462585	1.462585	16756236
6/22/2022	1.394558	1.455782	1.367347	1.421769	1.421769	17170041
6/23/2022	1.537415	1.55102	1.442177	1.510204	1.510204	29432781
6/24/2022	1.530612	1.537415	1.394558	1.394558	1.394558	53215029
6/27/2022	1.455782	1.462585	1.37415	1.394558	1.394558	24465357
6/28/2022	1.401361	1.421769	1.37415	1.408163	1.408163	15842484
6/29/2022	1.380952	1.384354	1.292517	1.340136	1.340136	25429089
6/30/2022	1.56	1.59	1.2	1.38	1.38	32125600
7/1/2022	1.35	1.35	1.26	1.27	1.27	12484400
7/5/2022	1.25	1.255	1.14	1.16	1.16	13067700
7/6/2022	1.15	1.15	1.04	1.06	1.06	16190200



7/7/2022	1.15	1.19	1.08	1.13	1.13	16508500
7/8/2022	1.12	1.17	1.08	1.15	1.15	9383900
7/11/2022	1.14	1.14	1.05	1.06	1.06	8321600
7/12/2022	1.09	1.1	1.05	1.06	1.06	8018500
7/13/2022	0.99	1.05	0.985	1.03	1.03	8287600
7/14/2022	1.02	1.03	1	1.02	1.02	5995200
7/15/2022	1.04	1.07	1.01	1.07	1.07	7197200
7/18/2022	1.07	1.1	1.03	1.03	1.03	7819300
7/19/2022	1.05	1.05	1.01	1.04	1.04	7814600
7/20/2022	1.04	1.09	1.039	1.09	1.09	9604900
7/21/2022	1.08	1.14	1.05	1.13	1.13	9115200
7/22/2022	1.1	1.11	0.98	1	1	15443200
7/25/2022	1	1.01	1	1	1	5465500
7/26/2022	0.84	0.85	0.77	0.792	0.792	34428600
7/27/2022	0.805	0.94	0.761	0.825	0.825	37653900
7/28/2022	0.838	0.838	0.764	0.784	0.784	16634800
7/29/2022	0.78	0.785	0.75	0.76	0.76	15048600
8/1/2022	0.75	0.751	0.693	0.71	0.71	16734800
8/2/2022	0.693	0.73	0.685	0.711	0.711	16250100
8/3/2022	0.7	0.705	0.67	0.69	0.69	17545800
8/4/2022	0.697	0.73	0.69	0.712	0.712	12886300
8/5/2022	0.712	0.712	0.712	0.712	0.712	0
8/8/2022	0.712	0.712	0.712	0.712	0.712	0
8/9/2022	0.712	0.712	0.712	0.712	0.712	0
8/10/2022	0.712	0.712	0.712	0.712	0.712	0
8/11/2022	0.712	0.712	0.712	0.712	0.712	0
8/12/2022	0.712	0.712	0.712	0.712	0.712	0



First unauthorized press release sent referring to hostile takeover

# **Exhibit “B”**

1 **DECL**

THEODORE PARKER, III, ESQ.

2 Nevada Bar No. 4716

**PARKER, NELSON & ASSOCIATES, CHTD.**

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4 Telephone: (702) 868-8000

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5 Email: [tparker@pnalaw.net](mailto:tparker@pnalaw.net)

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Nevada Bar No. 1205

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11 Email: [n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)

12 *Attorneys for Defendants*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 VINCO VENTURES, INC.,

16 Plaintiff,

17 v.

18 THEODORE FARNSWORTH, LISA KING,  
19 RODERICK VANDERBILT, and ERIK  
20 NOBLE,

21 Defendants.

CASE NO.: A-22-856404-B

DEPT. NO.: XVI

**DECLARATION OF RODERICK  
VANDERBILT IN SUPPORT OF  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR A TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION**

22 I, Roderick Vanderbilt, being duly sworn, deposes, and states as follows:

23 1. I am over the age of 18 and my residence is located at 275 North East 18<sup>th</sup> Street,  
24 Apartment PH7, Miami, Florida 33132.

25 2. I submit this affidavit in support of Defendants' Opposition to Plaintiff's Motion for  
26 Temporary Restraining Order and Preliminary Injunction in the above captioned matter.  
27  
28

1           3.       That I was appointed Chairman of the Board of Directors of Vinco Ventures, Inc. in  
2 October of 2021.

3           4.       That I have known Ted Farnsworth over 30 years and have participated in several  
4 business dealings with Mr. Farnsworth.

5           5.       Mr. Farnsworth was responsible for raising the bulk of the funding for Vinco Ventures,  
6 Inc. Mr. Farnsworth increased Vinco Ventures, Inc.'s market capital from approximately \$11 million  
7 to over \$500 million within the past year.

8           6.       From October 2021 until June 10, 2022, Vinco Ventures, Inc.'s value stayed consistent  
9 with its stock value ranging between \$1.00 and \$2.00.

10          7.       John Colucci became a Board Member on June 10, 2022, after Phillip McFillin  
11 resigned.

12          8.       Phillip McFillin resigned as an Independent Director after it became clear that he did  
13 not meet the criteria of an Independent Director. Originally, he was to be vetted by Vinco Ventures,  
14 Inc.'s law firm, Lucosky Brookman LLP.

15          9.       Lucosky Brookman was also utilized for the vetting of John Colucci.

16          10.       Lucosky Brookman's legal services were terminated by Erik Noble, Chief Security  
17 Officer of Vinco Ventures, Inc. on July 14, 2022.

18          11.       Due to the concerns over Lucosky Brookman's vetting of Mr. Phillip McFillin and John  
19 Colucci, I, as Chairman of the Board, selected Gibson Dunn, LLP to act as independent counsel for  
20 the Board and to conduct a thorough vetting of John Colucci.

21          12.       I selected Gibson Dunn, LLP based upon their reputation in the legal field and  
22 specifically as it pertains to public companies and SEC regulations. It is my understanding that Gibson  
23 Dunn, LLP has been in business for 132 years with 20 offices worldwide. Thomas Kim and David  
24 Burns were members of the Gibson Dunn firm.

25          13.       I gave notice to all the Board Members of Gibson Dunn's retention and that the firm's  
26 lawyers would be participating the emergency meeting scheduled for July 17, 2022. (See Exhibit "1".)

27          14.       Thomas Kim of Gibson Dunn determined that there were issues related to Mr.  
28 Colucci's disclosures and initiated an investigation into Mr. Colucci's status as an Independent

1 Director. In violation of section 10.1(d) of the Code of Business Conduct and Ethics, Mr. Colucci  
2 refused to cooperate in the investigation. On July 20, 2022, I received an email from Mr. Thomas Kim  
3 of Gibson Dunn at approximately 3:31 p.m. indicating that he had reached out to the Independent  
4 Directors and had not heard back. (*See Exhibit "2".*)

5 15. On July 17, 2022, as Chairman of the Board, I sent notification to the Board Members  
6 of the meeting which was to take place utilizing the Company's Zoom account. Gibson Dunn was also  
7 prepared to participate in meeting. During the meeting, I became aware of the fact that Mr. Colucci  
8 and two of the other Directors, Mr. Goldstein and Mr. DiStasio, were meeting using a different non-  
9 Company Zoom platform. When I attempted to join the Zoom meeting to request that the others join  
10 the properly scheduled Google Meet meeting, Mr. Colucci and the others refused to allow me to enter  
11 into the Zoom meeting until after they voted to terminate me and voted to terminate Ms. Lisa King as  
12 CEO and to nominate and appoint Mr. Colucci as interim CEO.

13 16. As Chairman of the Board, I am responsible for presiding over the Board Meetings.  
14 Mr. Colucci attempted to usurp control of a properly noticed meeting by scheduling a meeting with  
15 Mr. Goldstein and Mr. DiStasio without the knowledge of the full Board. Mr. Colucci's conduct was  
16 in violation of the Company's Bylaws and any actions taken on July 17, 2022 were invalid.

17 17. I also sent correspondence on July 17, 2022 at 1:53 p.m. to the Board Members  
18 explaining that just because two Directors have the power to call a special meeting of the Board of  
19 Directors does not mean that they are allowed to depart from following the Board's protocol and  
20 procedures, which are intended to protect the security and confidentiality of the deliberations. I  
21 confirmed in that correspondence that when Mike DiStasio, Elliot Goldstein, and John Colucci did not  
22 show up in the Google Meet meeting, that I tried to access the Zoom link that was circulated by Elliot  
23 Goldstein, and was not able to get in. I further confirmed that I, along with Lisa King, Ted Farnsworth,  
24 Erik Noble, and the lawyers from Gibson Dunn, were waiting on the Google Meet platform to conduct  
25 the Board Meeting. Finally, I informed the Directors if they want to hold a special meeting of the  
26 Board to send me notice of the special meeting and Erik would circulate a calendar invite that follows  
27 the Board's protocol and procedures for secured electronic meetings. (*See Exhibit "3".*)

28 ///

1           18.     In violation of the Company's Bylaws, John Colucci, sent an email on July 17, 2022,  
2 at 4:28 p.m., to Erik Noble, Vinco Ventures, Inc.'s Chief Security Officer, indicating that he had been  
3 appointed to the position of interim CEO and that all access to Lisa King's emails and other corporate  
4 materials were terminated immediately. (See Exhibit "4".)

5           19.     On July 17, 2022, I received an email from Thomas Kim of Gibson Dunn. This email,  
6 which is attached hereto as Exhibit "5", spells out certain concerns that Gibson Dunn had regarding  
7 the validity of the meeting conducted by John Colucci, Elliot Goldstein, and Mike DiStasio.  
8 Additionally, Mr. Kim confirmed his discussions with regards to John Colucci's response to the D&O  
9 questionnaire as to its completeness, its accuracy, and whether or not it would satisfy Nasdaq's listing  
10 requirements for Independent Directors. This email confirms that there were potential issues related  
11 to invoices paid to I-Heart Media. We have learned that Mr. Colucci's wife, a representative of I-Heart  
12 Media, invoiced Vinco Ventures, Inc.'s for \$215,000.00. The letter also confirms that Gibson Dunn  
13 intended to obtain the complete invoices for American Media, I-Heart, American Marketing & Mailing  
14 Services, and American Visual and then schedule a call with Mr. Colucci to "run this issue to ground."  
15 (See Exhibit "5".)

16           20.     Despite knowing that he violated Vinco Ventures, Inc.'s Bylaws, John Colucci, on July  
17 17, 2022, sent an email, which is attached hereto as Exhibit "6", to Ms. Lisa King, terminating her as  
18 CEO.

19           21.     As a result of the concerns related to Mr. Colucci, I requested the Audit Committee to  
20 launch an immediate internal investigation into irregular transactions between Vinco Ventures, Inc.  
21 and John Colucci and the companies he owns, represents, or with which he is affiliated. (See Exhibit  
22 "7".)

23           22.     Attached is Exhibit "8" is an email exchange between myself as Thomas Kim of Gibson  
24 Dunn. The emails are dated July 20, 2022 at 2:30 p.m. and 3:31 p.m. The initial email is from me to  
25 Mr. Kim, in which I inform Mr. Thomas of John Colucci's intention to put out a press release that he  
26 is the CEO of Vinco Ventures, Inc. and that Lisa King has been fired. I also informed Mr. Kim of  
27 concerns related to false invoices, personal dealings where Mr. Colucci benefited financially, though  
28 ///

1 HwyData, and whether or not his questionnaire that he had prepared for the Independent Director  
2 position was accurate.

3 23. That in response to my email, Thomas Kim wrote that he had reached out to Lawrence  
4 Elbaum by voicemail and he had not heard back. He also confirmed that he had not heard back from  
5 the Independent Directors regarding their willingness to talk to him and David.

6 24. That approximately after 20 minutes later after receiving that email from Mr. Kim, I  
7 received another email indicating the importance of the Board still acting as a Board and that all of the  
8 Board Members would remain Board Members until the next Annual Shareholders Meeting. Attached  
9 as Exhibit "9" is a copy of Mr. Kim's email. It is important to note that Mr. Kim's email as sent not  
10 only to myself, but also to Mr. Colucci at HwyData, Lisa King, Mike DiStasio, as well Elliot Goldstein.

11 25. Less than an hour later, Elliott Goldstein sent correspondence to Mr. Thomas Kim  
12 stating the following:

13 It is apparent that you represent Rod and perhaps others personally and that  
14 you are not representing the board as a whole. On behalf of myself and the  
15 independent board members, we are uncomfortable with your continued  
involvement and we have serious ethical reservations regarding your actions  
thus far.

16 See Exhibit "10".

17 Elliot Goldstein's email was designed to discourage Gibson Dunn to complete its investigation  
18 and it was successful.

19 26. On July 21, 2022, the day following receipt of Mr. Goldstein's email, F. Joseph Warin  
20 of Gibson Dunn sent correspondence to me withdrawing as counsel to the Board. Attached as Exhibit  
21 "11" is a copy of that email.

22 27. In response, I sent correspondence to Mr. Colucci, as well as all of the other Board  
23 Members on July 23, 2022 at 10:35 p.m. This email is attached as Exhibit "12". Specifically, I  
24 indicated in that email the following:

25 For the record, The Chairman, Rod Vanderbilt as well as Director Lisa King  
26 had never previously worked with the law firm Gibson & Dunn nor met nor  
27 spoken with Mr. Kim prior to his engagement with the Board. And furthermore,  
28 Mr. Vanderbilt and Ms. King were never notified or discussed the matter as a  
Board prior to termination.

1           28.     Within this email, I requested that Mr. John Colucci step down as Independent Director  
2 for lack of proper disclosure of third party related transactions and information on his questionnaire  
3 that has made the Company in noncompliance with Nasdaq, according to Item 3.01 Notice of delisting  
4 or failure to satisfy a continued listing rule or standard.

5           29.     John Colucci has avoided addressing his disclosure statement required to satisfy the  
6 position of Independent Director or maintain that position. Additionally, there are several financial  
7 issues (invoices) that demonstrate that he does not qualify as an Independent Director.

8           30.     On July 21, 2022, the Board convened another meeting and rescinded Ms. King's  
9 purported termination, appointed Mr. Colucci as co-CEO, along with Mr. Farnsworth, and also  
10 appointed Ms. King as President of ZVV Media Partners LLC<sup>1</sup>.

11           31.     On Sunday, July 24, 2022, the Board met. Within seconds after I announced the  
12 Directors in attendance, Mr. Colucci, in violation of the Bylaws, took control of the meeting and would  
13 not allow me, as the Chairman, to preside.<sup>2</sup>

14           32.     Throughout the meeting, Mr. Colucci muted my line, prohibiting me from conducting  
15 the meeting or participating in the meeting. Mr. Colucci also prevented Ms. King from participating  
16 in the meeting. Mr. Colucci took actions without me or Ms. King being able to participate.

17           33.     The events of July 17, July 21, July 24, are summarized in the letter I sent to all Board  
18 Members on July 25, 2022. (*See Exhibit "13".*)

19           34.     On August 5, 2022, at 4:00 p.m., I sent an email to the Directors, which included the  
20 following:

- 21           • A resolution forming a special committee to conduct investigations on  
22           the five employee whistleblower complaints against John Colucci,  
23           Elliott Goldstein, Mike DiStasio, and Phillip Jones;
- 24           • A request for a unanimous written consent for the Board to retain  
25           Krieger Kim & Lewin LLP for the investigation; and
- 26           • A request for a unanimous written consent to work together to unfreeze  
27           bank accounts for the purposes of making payroll and paying bills.

28           ///

<sup>1</sup> ZVV is a joint venture holding company owned by Zash Global Media and Entertainment and Vinco Ventures, Inc. formed in anticipation of a business combination between the two entities.

<sup>2</sup> Mr. Colucci violated section 5.5 of the Company's Bylaws and section 4 of the Company's Corporate Governance Guidelines.



1           35. No Independent Board Member responded to this email, thus impeding the  
2 whistleblower investigation and risking not making payroll.

3           36. At 4:44 p.m., I received notice from John Colucci indicating that a TRO was granted  
4 by a Nevada Judge. I was not informed prior to this time of Mr. Colucci's intentions on behalf of  
5 Vinco Ventures, Inc. to seek legal address in the Nevada court system. Moreover, Mr. Colucci did not  
6 bring an item before the Board for discussion or action authorizing such legal action on behalf of  
7 Vinco Ventures, Inc.

8           37. On Monday, August 8, 2022, I received notice of a Board Meeting to be held on  
9 Wednesday, August 10, 2022; however, based upon the TRO neither myself nor Ms. King could  
10 participate. On Wednesday, August 10, 2022, I could not participate in the Board Meeting in order to  
11 comply with the TRO. Additionally, on August 10, 2022, John Colucci released a statement to the  
12 press regarding Vinco Ventures, Inc.'s Shareholders website.

13           38. I also learned during that week that John Colucci signed a two-year leasing agreement  
14 with AI Pros. AI Pros is a Company that has been paid in excess of \$1 million and is seeking well over  
15 another \$2 million for work that it has not delivered. There is a concern that AI Pros and John Colucci  
16 are somehow working in concert given certain emails and text messages that exist. It is anticipated  
17 that Mr. Colucci's dealings with AI Pros will be the subject of an independent investigation into his  
18 affairs.

19           39. Attached as Exhibit "14" is a Resolution for the Board of Directors Forming a Special  
20 Committee signed by myself and Ms. King looking into whistleblower complaints against Mr.  
21 Colucci, Elliott Goldstein, and Michael DiStasio.

22           40. When the issue of Mr. Colucci's disclosures and Independent Director status arose, he  
23 indicated during a Board Meeting that he would step down as a Director until the investigation was  
24 completed. He has not stepped down and has taken further actions that negate his Independent Director  
25 status. The value of the Vinco Ventures, Inc. stock has declined as a result of the conduct of Mr.  
26 Colucci, Mr. Goldstein, and Mr. DiStasio.

27 ///

28 ///

41. Finally, upon information and belief, Mr. Colucci, Mr. Goldstein, and Mr. DiStasio have approved the termination or intend to terminate approximately 80% of Vinco Ventures, Inc.'s staff.

42. The activities of these three Board Members jeopardize the entire operation of Vinco Ventures, Inc.

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

DATED this 15<sup>th</sup> day of August, 2022

Federer Van der Linde

RODERICK VANDERBILT

# **Exhibit “1”**

**From:** Rod Vanderbilt rodvanderbiltvin@gmail.com

**Subject:** Subject : Emergency Board Meeting 12:00 noon July 17, 2022

**Date:** July 17, 2022 at 10:56 AM

**To:** Giovanni Colucci john@hwydata.com, mike@chair.com, Elliot Goldstein elliot@whitedoveequities.com, Lisa King lking@zash.global, David Burns dburns@gibsondunn.com, Thomas Kim tkim@gibsondunn.com, Erik Noble enoble@zash.global, Ted Farnsworth tedfarnsworth@gmail.com, Rod Vanderbilt rodvanderbiltvin@gmail.com

Dear Vinco Ventures Board Members:

In light of the emergency meeting held today, the Chairman has elected to hire independent counsel on behalf of all Vinco Ventures Board Members. This independent counsel is exclusive for the Board members. You can communicate one on one with the Counsel at any time. They will be on the call today as Corporate independent counsel for the Board of Directors of Vinco Ventures.. Gibson & Dunn have been in business for 132 years with 20 offices worldwide. Thomas Kim and David Burns are the independent council members for Vinco Ventures Board of Directors. [www.gibsondunn.com](http://www.gibsondunn.com)

Under the advice of our independent council for the Board of Directors, of Vinco Ventures. Erik Noble our Chief Security Officer for Vinco Ventures will be sending the Board individually a secured Vinco Ventures Video link on Google Meets. This link is a Vinco Ventures corporate account which indepdent council has advised us to use.

Thomas Kim's link:

<https://www.gibsondunn.com/lawyer/kim-thomas-j/>

David Burn's link:

<https://www.gibsondunn.com/lawyer/burns-david-p/>

Your time and attention are appreciated.

Regards,

Roderick F. Vanderbilt  
Chairman  
Vinco Ventures

RESP074

# **Exhibit “2”**



Erik Noble &lt;enoble@zash.global&gt;

---

**Independent Director John Colucci URGENT**

---

Kim, Thomas J. &lt;TKim@gibsondunn.com&gt;

Wed, Jul 20, 2022 at 3:31 PM

To: Rod Vanderbilt <rodvanderbiltvin@gmail.com>, "Burns, David P." <DBurns@gibsondunn.com>, Erik Noble <enoble@zash.global>, "tedfarnsworth623@gmail.com" <tedfarnsworth623@gmail.com>, Lisa King <lking@zash.global>  
Cc: "Schulhofer, Ellen L." <ESchulhofer@bhfs.com>, "Kovacs, Albert Z." <AKovacs@bhfs.com>

I've reached out to Lawrence Elbaum by voicemail and email, but haven't heard back.

We have not heard back from the independent directors re: their willingness to talk to me and David.

I have not heard back from my email to Lucosky (Adele Hogan) responding to her voicemail last night as well as to Elliot's request to me that we speak to her.

David and I would be available at 5:30 to discuss any open issues.

I have copied our Nevada counsel on this email, as these issues may be coming to a head if the independent directors aren't willing to participate in another board meeting to ratify Sunday's actions.

Thanks, Tom

Thomas J. Kim  
(he/him/his)

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
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Tel +1 202.887.3550 • Fax +1 202.530.9605 • Cell +1 202.420.1282  
TKim@gibsondunn.com • www.gibsondunn.com

**From:** Rod Vanderbilt <rodvanderbiltvin@gmail.com>

**Sent:** Wednesday, July 20, 2022 2:30 PM

**To:** Kim, Thomas J. <TKim@gibsondunn.com>; Burns, David P. <DBurns@gibsondunn.com>; Erik Noble <enoble@zash.global>; tedfarnsworth623@gmail.com; Rod Vanderbilt <rodvanderbiltvin@gmail.com>; Lisa King <lking@zash.global>

**Subject:** Independent Director John Colucci URGENT

**[WARNING: External Email]**

[Quoted text hidden]

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# **Exhibit “3”**

From: Mike Distasio mike@chair.com  
Subject: Re: Today's Board Meeting 12:00pm July 17, 2022  
Date: July 17, 2022 at 3:19 PM  
To: Rod Vanderbilt rodvanderbiltvin@gmail.com  
Cc: Giovanni Colucci john@hwydata.com, Elliot Goldstein elliot@whitedoveequities.cdm, Lisa King lking@zash.global, Lisa King Lking@vincoventures.com

Dear Rod,

We had a duly noticed board meeting with a quorum of directors who took action in the best interests of the shareholders.

Sincerely,

Mike Distasio

On Jul 17, 2022, at 1:53 PM, Rod Vanderbilt <rodvanderbiltvin@gmail.com> wrote:

Board members: Earlier today, as Chair of the Board, I emailed you regarding the engagement of new independent counsel to the Board, Gibson, Dunn & Crutcher LLP, as well as the fact that Erik Noble, Vinco's Chief Security Officer, would be sending you a link to a secured Vinco Ventures Video link on Google Meets for the noon board meeting. I remind you that just because two directors have the power to call a special meeting of the board of directors does not mean that we depart from following Board protocol and procedures reasonably intended to protect the security and confidentiality of our deliberations.

Mike DiStasio accepted Erik Noble's meeting invite.

When Mike, Elliott and John did not show up in the Google Meets room, I tried to access the Zoom link that was circulated by Elliott, but was not able to get in. It was showing "waiting for host." If I was able to get in, I would have informed you to access Vinco's secured video meeting link on Google Meets, which is where Lisa, Ted, Erik and Gibson Dunn were participating.

In any event, there was no board meeting held today, as we did not establish a quorum in the Google Meets secured video meeting.

I don't think it is a productive or good use of our time to argue over whether there was a board meeting held today or not, which is ultimately a question of Nevada law. Neither the U.S. Securities and Exchange Commission, nor a Nevada state court, nor our shareholders will look kindly at a board that is arguing over whether there was a meeting or not.

If two directors want to hold a special meeting of the board, please send me your notice of special meeting, and Erik will circulate a calendar invite that follows Board protocol and procedures for secured electronic meetings. I strongly suggest that the two directors also circulate an agenda for the meeting so that we can have an informed discussion at the meeting.

Thank you.

Regards,

Roderick F Vanderbilt  
Chairman  
Vinco Ventures

RESP078



# **Exhibit “4”**

From: Erik Noble enoble@zash.global  
Subject: Fwd: Permissions  
Date: July 17, 2022 at 4:57 PM  
To: dburns@gibsondunn.com, tkim@gibsondunn.com, Ted Farnsworth tfarnsworth@zash.global, Lisa King lking@zash.global, Rod Vanderbilt rodvanderbiltvin@gmail.com

---

Please see the email below from John Colluci to me.

There is a real problem here. If the board meeting didn't meet the parameters necessary to facilitate such a change, what is going on here?

-Erik

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

From: **Giovanni Colucci** <[john@hwydata.com](mailto:john@hwydata.com)>  
Date: Sun, Jul 17, 2022 at 4:28 PM  
Subject: Permissions  
To: Erik Noble <enoble@zash.global>

Erik,

At a duly noticed board meeting held this afternoon at 12pm where a quorum of the directors were present.

The board voted to terminate Lisa King as CEO from Vinco Ventures and from ZVW immediately.

I was appointed the position of Interim CEO.

Please make sure that all access to Lisa's email and other corporate materials are terminated immediately.

Please terminate any other credentials that may give Lisa access to anything associated to Vinco as whole.

I will be reaching out to you in the near future to discuss our next steps.

Please confirm when this has been completed.

Looking forward to working with you on the next chapter of Vinco Ventures.

Thank you

--

Erik Noble  
Chief Security Officer  
Vinco Ventures  
212-920-7478

RESP080

# **Exhibit “5”**

From: Kim, Thomas J. TKim@gibsondunn.com  
Subject: Update on call with Elliott and John  
Date: July 17, 2022 at 7:14 PM  
To: Lisa King Lking@Vincovenures.com, rodvanderbiltvin@gmail.com, Roderick Vanderbilt rodvanderbilt@icloud.com, tfarnsworth@zash.global  
Cc: Burns, David P. DBurns@gibsondunn.com, Warin, F. Joseph FWarin@gibsondunn.com

Hi:

David and I spoke to Elliott and John for about 40 mins. They understand that we are in the process of engaging Nevada counsel, and they want to know the opinion of NV counsel re: the validity of what happened today as well as what happened at the Friday meeting. Because the legality of today's calls is in question, they understand that the status quo is unchanged by what happened today. So, while we did not discuss 8-K or any public announcement, I very much doubt that they will go ahead with any such filing or announcement because they want to know what Nevada counsel says.

As Rod's email this morning indicated that GD&C is representing all of the board members, John, who did most of the talking, asked us what else we have been discussing, "we" being with Lisa and Rod. I said, in addition to whether the meeting was properly held, we've been discussing whether John's response to the D&O questionnaire was accurate and complete and whether he can satisfy Nasdaq's listing requirements for independent directors. John said that he has been candid with the company, and he is more than ready to be respond to any questions about monies he has received from the company. He also said that I-Heart Media's invoices have not been paid by the company.

I said that we were not ready on the call to ask him questions about monies he has received, but we will try to be in a position to do that by tomorrow.

So, the status quo has been preserved for now. Our goal is for NV counsel to get engaged, and to discuss w/ NV counsel both today's calls as well as the Friday meeting, since they has been raised by Elliott and John. If the company can provide us with complete information about the invoices re: American Media and I-Heart, then we will schedule a call w/ John to run this issue to ground.

Please let us know if you have any questions.

Thanks, Tom

Thomas J. Kim  
(he/him/his)

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306  
Tel +1 202.887.3550 • Fax +1 202.530.9605 • Cell +1 202.420.1282  
[TKim@gibsondunn.com](mailto:TKim@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

RESP082

# **Exhibit “6”**

From: Giovanni Colucci john@hwydata.com  
Subject: Immediate Termination

Date: July 17, 2022 at 12:23 PM

To: Lisa King lking@zash.global

Cc: Rod Vanderbilt rodvanderbiltvin@gmail.com, Mike Distasio mike@chair.com, Elliot (audit) Goldstein Elliot@Whitedoveequities.com

Lisa,

The Board had its dually noticed board meeting at 12 pm July 17th.

A quorum was present and the board Voted to terminate you immediately for cause.

Please cease all communications and actions on behalf of Vinco Ventures and ZVV.

Thank you

John Colucci

RESP084

# **Exhibit “7”**

July 20, 2022

Lucosky Brookman  
Joseph Lucosky  
Adele Hogan  
Board of Directors Vinco Ventures  
Mike DiStasio- Audit Committee  
Elliott Goldstein – Audit Committee

RE: Irregular Transactions- Immediate Internal Investigation John Colucci

---

Dear All:

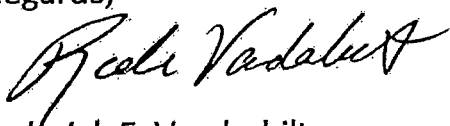
As Chairman of the Board of Vinco Ventures I'm requesting the Audit Committee launch a immediate internal investigation into irregular transactions between Vinco Ventures and John Colucci and the companies he owns/represents or with which he is affiliated.

The evidence that has come to light today require me to put everyone on notice. This situation is of dyer consequences to our shareholders. His actions put us all in jeopardy and we have a fidiciary responsibility to resolve this situation.

As members of this Board, we have a fidiciary responsibility to investigate this matter expeditiously. Your silence will have legal ramifications and will be considered adverse inference.

We need to resolve this issue by the time we are convened again with attorneys.

Regards,



Roderick F. Vanderbilt  
Chairman, Vinco Ventures

RESP086



# **Exhibit “8”**

**From:** Kim, Thomas J. TKim@gibsondunn.com  
**Subject:** RE: Independent Director John Colucci URGENT  
**Date:** July 20, 2022 at 3:31 PM  
**To:** Rod Vanderbilt rodvanderbiltvin@gmail.com, Burns, David P. DBurns@gibsondunn.com, Erik Noble enoble@zash.global, tedfarnsworth623@gmail.com, Lisa King lking@zash.global  
**Cc:** Schulhofer, Ellen L. ESchulhofer@bhfs.com, Kovacs, Albert Z. AKovacs@bhfs.com

I've reached out to Lawrence Elbaum by voicemail and email, but haven't heard back. We have not heard back from the independent directors re: their willingness to talk to me and David.

I have not heard back from my email to Lucosky (Adele Hogan) responding to her voicemail last night as well as to Elliot's request to me that we speak to her.

David and I would be available at 5:30 to discuss any open issues.

I have copied our Nevada counsel on this email, as these issues may be coming to a head if the independent directors aren't willing to participate in another board meeting to ratify Sunday's actions.

Thanks, Tom  
Thomas J. Kim  
(he/him/his)  
**GIBSON DUNN**

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[TKim@gibsondunn.com](mailto:TKim@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

**From:** Rod Vanderbilt <rodvanderbiltvin@gmail.com>  
**Sent:** Wednesday, July 20, 2022 2:30 PM  
**To:** Kim, Thomas J. <TKim@gibsondunn.com>; Burns, David P. <DBurns@gibsondunn.com>; Erik Noble <enoble@zash.global>; tedfarnsworth623@gmail.com; Rod Vanderbilt <rodvanderbiltvin@gmail.com>; Lisa King <lking@zash.global>  
**Subject:** Independent Director John Colucci URGENT

[WARNING: External Email]

Tom and David:

John Colucci is putting out a press release after market today that he is CEO of Vinco Ventures and Lisa King is fired. This is an urgent matter. We need to put everyone on notice asap.

As Chairman of the Board of Venco Ventures I would like to request a immediate letter go out to the Board of Directors of Vinco Ventures and the Lucosky Brookman, (Joseph Lucosky, Adele Hogan) to put them on notice that effective immediately the Independent Director, John Colucci is being internally investigated for embezzlement from Vinco Ventures as well looking to proceed with law enforcement and federal agencies. With all the evidence in hand that you have copies of that he deliberately created false invoices (\*you have copies) with Accuity and his personal company, HwyData. We wired the \$100,000 when he manipulated and lied to our accounting department to make sure the wire went to his personal company HwyData instead Accuity. He manipulated our accounting department by stating on the false invoice a full "pass through "to Acuity of the money meaning Acuity would receive all the money.

RESP088

As you know, he signed the Questionnaire for a Independent Director stating that he "made" \$100,000 from Acuity which is a false statement in itself because he stole the money from Vinco Ventures instead of paying Acuity.

Immediate concern for myself as Chairman of Vinco Ventures is protecting the Company and shareholders. We have fudiciary responsibility.

Outside council believes we need a letter prepared at Gibson & Dunn from your white collar division to put everyone on notice immediately. On notice for wire fraud, criminal activity, misrepresentations.

Need a urgent response.

Regards,

Roderick Vanderbilt  
Chairman  
Vinco Ventures

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RESP089

# Exhibit “9”

From: Kim, Thomas J. TKim@gibsondunn.com  
Subject: Board meeting/press release  
Date: July 20, 2022 at 3:56 PM  
To: Rod Vanderbilt rodvanderbiltvin@gmail.com, john@hwydata.com, Lisa King lking@zash.global, mike@chair.com, Elliot Goldstein elliot@whitedoveequities.com  
Cc: tfarnsworth@zash.global, Schulhofer, Ellen L. ESchulhofer@bhfs.com, Kovacs, Albert Z. AKovacs@bhfs.com, Burns, David P. DBurns@gibsondunn.com

---

PRIVILEGED AND CONFIDENTIAL

Board: We understand that John may be issuing a press release after the market closes announcing that he has been elected CEO by the Board. As we have been discussing with you, based on feedback from Nevada counsel, who are copied here (Ellen Schulhofer and Albert Kovacs), we believe the better course is for the Board to meet as soon as possible to ratify the action purportedly taken on Sunday. Good board process is critical to obtaining the protections of the business judgment rule, and we think it is advisable and in your interest to meet again, with everyone present, to vote on this important governance issue. We recommend deferring the issuance of the press release until after this meeting.

Remember that all of you will still be members of the Board after this meeting and until the next annual shareholder meeting, and it is important that you be able to act deliberatively and collectively as a Board going forward even after this issue is resolved.

Please let me know if you have any questions.

Thanks, Tom

Thomas J. Kim  
(he/him/his)

GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306  
Tel +1 202.887.3550 • Fax +1 202.530.9605 • Cell +1 202.420.1282  
[TKim@gibsondunn.com](mailto:TKim@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

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RESP091

# **Exhibit “10”**

From: Kim, Thomas J. TKim@gibsondunn.com  
Subject: FW: Conflict  
Date: July 21, 2022 at 1:01 PM  
To: Lisa King lking@zash.global



Thomas J. Kim

(he/him/his)

GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306  
Tel +1 202.887.3550 • Fax +1 202.530.9605 • Cell +1 202.420.1282  
[TKim@gibsondunn.com](mailto:TKim@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

**From:** Elliot Goldstein <elliot@whitedoveequities.com>  
**Sent:** Wednesday, July 20, 2022 4:29 PM  
**To:** Kim, Thomas J. <TKim@gibsondunn.com>; Burns, David P. <DBurns@gibsondunn.com>  
**Cc:** Mike Distasio <mike@chair.com>; Giovanni Colucci <john@hwydata.com>  
**Subject:** Conflict

[WARNING: External Email]

Gentlemen,

It is apparent that you represent Rod and perhaps others personally and that you are not representing the board as a whole. On behalf of myself and the independent board members, we are uncomfortable with your continued involvement and we have serious ethical reservations regarding your actions thus far.

Elliot Goldstein, Partner  
White Dove Equities  
908.216.1254  
[Elliot@Whitedoveequities.com](mailto:Elliot@Whitedoveequities.com)

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RESP093

# **Exhibit “11”**



From: Kim, Thomas J. TKim@gibsondunn.com  
Subject: FW: Gibson's Role  
Date: July 21, 2022 at 12:59 PM  
To: Lisa King lking@zash.global

Thomas J. Kim

(he/him/his)

GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306  
Tel +1 202.887.3550 • Fax +1 202.530.9605 • Cell +1 202.420.1282  
[TKim@gibsondunn.com](mailto:TKim@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

**From:** Warin, F. Joseph <FWarin@gibsondunn.com>  
**Sent:** Thursday, July 21, 2022 10:57 AM  
**To:** Vanderbilt Rod <rodvanderbiltvin@gmail.com>; Farnsworth Theodore <tedfarnsworth623@gmail.com>; Noble Erik <enoble@zash.global>  
**Cc:** Kim, Thomas J. <TKim@gibsondunn.com>; Burns, David P. <DBurns@gibsondunn.com>  
**Subject:** Gibson's Role

Dear Rod, Ted and Eric,

We appreciate that the circumstances of tge last week have been a chaotic fire drill but the discordance among the directors and officers coupled with allegations of ethical misconduct by our firm compel us to withdraw from our representation board.

We wish you a smoother path forward. Best, Joe

F. Joseph Warin PC

GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306  
Tel +1 202.887.3609 • Mobile +1 202.213.3597  
[FWarin@gibsondunn.com](mailto:FWarin@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com) • <http://www.gibsondunn.com/lawyers/fwarin>

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Please see our website at <https://www.gibsondunn.com/> for information regarding the firm and/or our privacy policy.

RESP095

# **Exhibit “12”**

From: Rod Vanderbilt rodvanderbiltvin@gmail.com  
Subject: CONFIDENTIAL Giovanni (John) Colucci Independent Director step down from Board immediately  
Date: July 23, 2022 at 10:35 PM  
To: Giovanni Colucci john@hwydata.com, Elliot Goldstein elliot@whitedoveequities.com, mike@chair.com, Lisa King lking@zash.global, Rod Vanderbilt rodvanderbiltvin@gmail.com, Phillip Jones pjones@vincoventures.com, Steve Garrow sgarrow@zash.global

Dear Board of Directors:

As Chairman of the Board of Vinco Ventures, effective immediately, I'm requesting John Colucci to step down as Independent Director for lack of proper disclosure of third party related transactions and information on his Questionnaire that has made the Company in non-compliance with Nasdaq, according to Item 3.01 Notice of delisting or failure to satisfy a continued listing rule or standard. This has put the Company and shareholders at great risk. In particular, the lack of disclosure of direct or indirect benefits and professional relationships from these companies, American Marketing & Mailing Services, American Visual, and Iheart Radio with Griselda Colluci (John's wife). These entities and relationships to these entities were omitted from his Questionnaire.

The Chairman of the Board of Vinco Ventures, Rod Vanderbilt retained independent counsel Gibson & Dunn for the whole board to get a fresh perspective. Thomas Kim; one the premier SEC attorneys in the country who served as chief counsel and associate director of the division of corporate finance, one year as counsel to Chairman of the SEC, and as a specialist in the field of disclosure and regulatory matters, reviewed the Questionnaires for the independent directors.

When Mr. Kim reached out to John independently to review his disclosure omissions, John neglected to meaningfully respond stating he was too busy.

Mr. Kim specifically requested a brief meeting over a phone call with John one on one to discuss his lack of disclosure. John refused to comply and therefore a negative inference was determined by the independent counsel. As a result of the negative result, Independent Director Elliott Goldstein, on behalf of the independent directors John Colucci and Mike DiStasio, terminated independent counsel via email accusing Gibson & Dunn and Thomas Kim of ethical conflicts.

For the record, The Chairman, Rod Vanderbilt as well as Director Lisa King had never previously worked with the law firm Gibson & Dunn nor met nor spoken with Mr. Kim prior to his engagement with the Board. And furthermore, Mr. Vanderbilt and Ms. King were never notified or discussed the matter as a Board prior to termination

The subject of Mr. Kim's work was a reviewing and questioning whether John met the qualifications to be independent director. Stated another way, Independent Director John Colucci, who was under review by Gibson & Dunn, voted to fire the independent when the result of his own review was unfavorable.

We as the Board of Directors for Vinco Ventures shareholders must act on this immediately for the benefit of shareholders.

Regards,

Roderick F. Vanderbilt  
Chairman of the Board  
Vinco Ventures

RESP097

# **Exhibit “13”**



July 25, 2022

Board of Directors  
VincO Ventures, Inc.

Dear Members of the Board:

The undersigned write in regard to yesterday's purported meeting of the Board of Directors (the "Board" and "July 24 meeting," respectively) of VincO Ventures, Inc. (the "Company"). The business purportedly conducted at yesterday's meeting is not valid. We write to put you on notice that any attempt to take action based on any resolutions purportedly passed yesterday puts the Company and its shareholders at risk, and consequently opens each of you who supports it at risk of personal liability for breaching your fiduciary duties to the Company and its shareholders.

In the interest of time, we will only briefly summarize the key events of the last week.

1. On July 17, 2022, Mr. Colucci, Mr. DiStasio, and Mr. Goldstein attempted to convene a Board meeting without the attendance of Mr. Vanderbilt or Ms. King and purported to terminate Mr. Farnsworth as CEO and appoint Mr. Colucci as CEO without any discussion or consideration of the issues. In response to valid complaints about the inappropriate conduct of that meeting, the Board convened a proper meeting on July 21, 2022, and in what we believed to be an orderly resolution of any outstanding disagreements on the Board, agreed to appoint Mr. Colucci as interim Co-CEO to serve with Mr. Farnsworth as Co-CEO. The Board agreed in the same meeting to appoint Ms. King as President of ZVV Media Partners LLC and continue as founder and CEO of MagnifiU. The Company subsequently filed an 8-K on July 22, 2022, disclosing that action.
2. This past weekend, Mr. Colucci, Mr. DiStasio, and Mr. Goldstein properly noticed another emergency meeting of the Board, which took place yesterday, July 24, 2022. At yesterday's meeting, Mr. Colucci, Mr. DiStasio and Mr. Goldstein attempted to re-conduct the inappropriate July 17 meeting in derogation of the actions disclosed in the July 22, 2022 8-K. Notwithstanding the fact that Mr. Vanderbilt and Ms. King were in attendance at yesterday's meeting, Mr. Colucci did not allow Mr. Vanderbilt to chair the meeting, as is required by the Corporate Governance Guidelines of the Company, and in fact muted Mr. Vanderbilt several times when he attempted to speak. There was no meaningful discussion regarding the proposed resolutions, and the purported votes were not taken properly. The invalid actions include, but are not limited to, the following: (i) to remove Mr. Farnsworth as Co-CEO, Ms. King as President, Mr. Noble as Chief Security Officer, and Mr. Vanderbilt from any employment with the Company and as Chairman of the Board; (ii) to appoint Mr. Colucci as interim President; (iii) to ratify the decision made by the Board on July 17, 2022 to appoint Mr. Colucci as interim CEO and President; (iv) to approve the Company's entry into the Board's Agreements and

Indemnification Agreements; (v) to postpone the Special Meeting of Company's Stockholders from July 26, 2022 to on or about August 23, 2022; (vi) to implement the Company's, including affiliates, cost-reduction plan that will include a reduction in force with Mr. Colucci and Mr. Jones to implement the plan; (vii) to appoint Mr. Colucci and Mr. Jones to serve as Vinco Managers at ZVV Media Partners, LLC; and (viii) to authorize Mr. Colucci and Mr. Jones to coordinate and make all necessary regulatory filings and disclosures required in connection with the foregoing resolutions.

3. The firm of Gibson, Dunn & Crutcher LLP, which had originally been retained by the Board, raised serious and significant concerns regarding the ability of Mr. Colucci to serve as an independent director as required by NASDAQ, given questions arising out of lack of disclosures and compensation he and his wife may have received from the Company. Mr. Colucci has refused to cooperate with any inquiry into the nature of that compensation and his independence, and therefore, we have no choice but to draw a negative inference about Mr. Colucci's independence and insist that he be recused from all future Board votes until he cooperates with the Company's inquiry regarding his independence, and that such independence can be confirmed.
4. The Company is terminating the firm of Lucosky Brookman LLP as counsel to the Company, effective immediately. We put all Directors on notice that due to the conflicted nature of Lucosky Brookman's representation, Lucosky Brookman may not represent the interests of Mr. Colucci, Mr. DiStasio, and Mr. Goldstein concerning any issues involving the Company, or that are in any way adverse to the Company.
5. Due to Mr. Colucci's inappropriate conduct given the July 17 and July 24 Board meetings, and his unwillingness to work with the rest of the team to lead the Company in an orderly manner for the benefit of all shareholders, the Company has no choice but to place Mr. Colucci on administrative leave as Co-CEO, effective immediately.
6. We caution the Directors not to attempt to issue any press releases, announcements, or SEC filings in the name of the Company, especially on the basis of any purported Board actions taken yesterday, as we would regard those as breaches of your fiduciary duty.
7. We remain willing to engage in a productive and meaningful discussion about the future of the Company, but we will not allow major decisions to be made in a manner that violate the Company's own procedures and ultimately hurt shareholders.
8. We reserve all rights.

Sincerely,

Rod Vanderbilt, Chairman  
Ted Farnsworth, Co-CEO  
Lisa King, Director

Copy:  
Kenneth E. Lee

Seth L. Levine  
Chad P. Albert  
Levine Lee LLP

## **Exhibit 14**



# **Exhibit “14”**

**Resolutions for the Board of Directors  
Forming a Special Committee**

**August 5, 2022**

**WHEREAS**, the Board of Directors of Vinco Ventures, Inc. (the "Board") has been previously advised that there have been four whistleblower reports concerning various Directors and Officers of the Company, including, but not limited to, complaints against Board members John Colucci, Elliot Goldstein, and Michael DiStasio (the "Whistleblower Complaints"); and

**WHEREAS**, the authorized voting members of the Board not included in such complaints have concluded that it would be advisable and in the best interest of the Company and its shareholders to appoint a special committee to investigate and evaluate the claims and allegations asserted in the Whistleblower Complaints and to make a determination as to how the Company should proceed;

**RESOLVED**, that pursuant to Article IV, Section 4.1 of the Company's Bylaws, the members of the Board not included in such complaints and authorized to vote on this issue hereby create a Special Committee by unanimous written consent;

**RESOLVED**, that the Special Committee shall initially consist of Directors Roderick Vanderbilt and Lisa King;

**RESOLVED**, that the Special Committee shall investigate, review, and analyze the facts, allegations, and circumstances that are subject of the Whistleblower Complaints, as well as any additional facts, allegations, and circumstances that may be at issue in any related inquiry, investigation, or proceeding;

**RESOLVED**, that the Special Committee shall have the sole and exclusive authority to consider and determine whether the prosecution of the claims asserted in the Whistleblower Complaints or any other claims related to the facts, allegations, and circumstances of the Whistleblower Complaints is in the best interests of the Company and its shareholders, and what action the Company should take with respect thereto, including what action the Company should take with respect to the Whistleblower Complaints and any related inquiry, investigation, or proceeding;

**RESOLVED**, that the Special Committee is hereby authorized and directed to continue in existence until such time as the Special Committee determines it has completed its work as set forth herein;

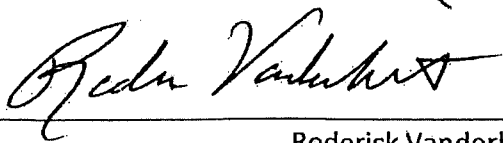
**RESOLVED**, that the Special Committee may retain such outside counsel and other advisors, at the Company's expense, as the Special Committee may deem necessary or appropriate to perform its duties hereunder;

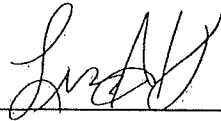
**RESOLVED**, that the Special Committee shall have full authority to contact, obtain information from, consult with, and direct the Corporation's officers and employees in connection with any matters within the Special Committee's charge as set forth in the foregoing resolution;

**RESOLVED**, that the directors, officers, employees, public accountants, and advisors of the Company are, and each individually is, hereby authorized and directed to assist the Special Committee and to provide it with any and all documents and other information that the Special Committee deems necessary to carry out the duties set forth in the foregoing resolution;

**RESOLVED**, that Officers of the Company, other than those included in the Whistleblower Complaints, are authorized to take all such actions and to perform any and all acts (including execution, filing, and delivery of any and all instruments and documents) that they deem necessary and appropriate to effectuate the purpose and intent of the foregoing resolution; and

**RESOLVED**, that all actions heretofore taken by any Officer employee, agent, or Director of the Company, other than those included in the Whistleblower Complaints, in connection with the foregoing be, and hereby are, ratified and approved in all respects.

  
\_\_\_\_\_  
Roderick Vanderbilt  
Director

  
\_\_\_\_\_  
Lisa King  
Director

**Action by the Board of Directors**

**August 5, 2022**

The members of the board of directors of Vinco Ventures, Inc. (the "Board") take the following Board actions by unanimous, written consent. Pursuant to Section 3.10 of Vinco Ventures, Inc.'s (the "Company") bylaws, this memorialization of the Board's consent will be filed with the minutes of the Board's proceedings.

**WHEREAS**, five whistleblower complaints have been lodged alleging misconduct on behalf of certain members of the Board and Phil Jones;

**WHEREAS**, Mr. Vanderbilt and Ms. King, as the only Board members not included in such complaints, have engaged Krieger Kim & Lewin LLP to conduct a good-faith, independent investigation into such allegations (the "Investigation");

**WHEREAS**, various disputes among the Board and within the Company have caused certain of the Company's accounts to be inaccessible absent sufficient consents; and

**WHEREAS**, notwithstanding the various disputes among the Board and within the Company, and without prejudice to any position each of the signatories hereto wishes to take in connection with such disputes, all members of the Board concur that, consistent with their fiduciary duties to the Company and its shareholders, the Investigation should move forward;

**RESOLVED**, the Board unanimously authorizes payment in the amount of \$100,000 as a retainer to Krieger Kim & Lewin LLP to conduct the Investigation;

**RESOLVED**, the Board unanimously authorizes Erik Schmolck in their duly acknowledged capacity as Vinco Controller to conduct business with any financial institution on behalf of the Company for the purpose of securing and wiring such \$100,000 retainer; and

**RESOLVED**, a copy of this unanimous authorization shall be provided as necessary to any financial institution as authorization on behalf of the Company to wire the amount of \$100,000 to Krieger Kim & Lewin LLP's client trust account, in accordance with the below wire instructions, following signatures.

---

Roderick Vanderbilt  
Director

---

Lisa King  
Director

---

John Colucci  
Director

---

Michael DiStasio  
Director

---

Elliot Goldstein  
Director

**Action by the Board of Directors of Vinco Ventures, Inc.**

**August 5, 2022**

The members of the board of directors of Vinco Ventures, Inc. (the "Board") take the following Board actions by unanimous, written consent. Pursuant to Section 3.10 of Vinco Ventures, Inc.'s (the "Company") bylaws, this memorialization of the Board's consent will be filed with the minutes of the Board's proceedings.

**WHEREAS**, various disputes among the Board and within the Company have, caused certain of the Company's accounts to be inaccessible absent sufficient consents, even for the purposes of timely paying payroll and other expenses in the ordinary course; and

**WHEREAS**, notwithstanding the various disputes among the Board and within the Company, and without prejudice to any position each of the signatories hereto wishes to take in connection with such disputes, all members of the Board concur that, consistent with their fiduciary duties to the Company and its shareholders, certain actions must be taken to ensure that the Company is able to timely pay payroll obligations and otherwise operate in the ordinary course of business pending resolution of the Company's internal disputes;

**RESOLVED**, the Board unanimously authorizes Erik Schmolk in their duly acknowledged capacity as Vinco Controller to conduct business with any financial institution on behalf of the Company for the purpose of obtaining and disbursing Company funds;

**RESOLVED**, a copy of this unanimous authorization shall be provided as necessary to any financial institution as authorization for Erik Schmolk to conduct business on behalf of the Company, and to facilitate the obtaining and disbursing of Company funds;

**RESOLVED**, until further notice, Erik Schmolk shall obtain and disburse funds only to meet Company obligations incurred in the ordinary course of business, including, but not limited to, the Company's payroll obligations; and

**RESOLVED**, any obtainment or disbursement by Erik Schmolk of Company funds for purposes outside the ordinary course of business shall be made only pursuant to further unanimous consent of the Board.

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Roderick Vanderbilt  
Director

---

Lisa King  
Director

---

John Colucci

Director

---

Michael DiStasio  
Director

---

Elliot Goldstein  
Director

# **Exhibit “C”**



Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
n.rulis@kempjones.com  
Madison P. Zornes-Vela, Esq. (#13626)  
m.zornes-vela@kempjones.com  
**KEMP JONES, LLP**  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
T: (702) 385-6000  
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THEODORE PARKER, III, ESQ.  
Nevada Bar No. 4716  
**PARKER, NELSON & ASSOCIATES, CHTD.**  
2460 Professional Court, Suite 200  
Las Vegas, Nevada 89128  
Telephone: (702) 868-8000  
Facsimile: (702) 868-8001  
Email: [tparker@pnlaw.net](mailto:tparker@pnlaw.net)

*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

**DECLARATION OF THEODORE  
FARNSWORTH**

THEODORE FARNSWORTH, deposes and states:

1. I am the Co-founder and Chairman of ZASH Global Media ("Zash"). I am fully familiar with the facts set forth herein.

2. I submit this declaration in opposition to Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction in the above-referenced litigation.

1           3.       In late 2020, I negotiated a merger deal between Vinco Ventures, Inc. (“Vinco  
2 Ventures” or the “Company”) and Zash.

3           4.       On January 20, 2021, Vinco Ventures and its newly formed wholly owned  
4 subsidiary, Vinco Acquisition Corporation (the “Merger Sub”), entered into an Agreement to  
5 Complete a Plan of Merger (the “Merger Agreement”) with Zash.

6           5.       Attached hereto as **Exhibit A-1** is a true and correct copy of the January 21,  
7 2021 Form 8-K filed with the United States Securities and Exchange Commission (“SEC”) by  
8 Vinco Ventures, announcing the Merger Agreement. Included therewith is “Exhibit 10.1”  
9 which is a true and correct copy of the Merger Agreement.

10          6.       As part of the announced merger, it was specifically stated that “The certificate  
11 of incorporation of VINCO will be amended and restated at and as of the Effective Time, in  
12 substantial conformance with the certificate of incorporation of the Company immediately prior  
13 to the Closing, and the name VINCO will be changed to “ZASH Global Media and  
14 Entertainment Corporation.” See **Ex. A-1**.

15          7.       On March 30, 2021, the Company, Merger Sub and Zash entered into a First  
16 Amendment to Agreement to Complete a Plan of Merger (the “First Amendment”), which  
17 amended the Merger Agreement to extended the closing date of the merger.

18          8.       Attached hereto as **Exhibit A-2** is a true and correct copy of the April 9, 2021  
19 Form 8-K filed with the SEC by Vinco Ventures. Included therewith is “Exhibit 10.1” which is  
20 a true and correct copy of the First Amendment.

21          9.       On May 28, 2021, the Company, Merger Sub and Zash entered into a Second  
22 Amendment to Agreement to Complete a Plan of Merger (the “Second Amendment”), to define  
23 certain milestones with dates to be completed to consummate the closing of the Lomotif Private  
24 Limited (“Lomotif”) acquisition and the Zash merger.

25          10.       Attached hereto as **Exhibit A-3** is a true and correct copy of the May 28, 2021  
26 Form 8-K filed with the SEC by Vinco Ventures. Included therewith is “Exhibit 10.1” which is  
27 a true and correct copy of the Second Amendment.

28

11. As part of the merger transaction, Zash and Vinco Ventures formed a joint venture holding company, ZVV Media Partners LLC (“ZVV”), in anticipation of a business combination between the two entities.

12. Following the announcement of the Merger Agreement, I as Chairman and co-founder of Zash, began attempting to obtain investors and raise money on behalf of the proposed merged entity.

13. Due to the announcement of the Zash and Vinco Ventures merger and my fund-raising efforts, I am responsible for growing Vinco Ventures from a company with less than \$20 million market capital to well over \$800 million at times, all within the past year-and-a-half.

14. After the Merger Agreement was entered, by early 2022, Vinco was a digital holding company that could be best broken down into two parts:

- a. First, there was its wholly-owned Cryptyde unit, which consisted primarily of its non-fungible token (“NFT”) business, plus other holdings in the crypto-mining and metaverse spaces.
- b. Second, were the investments it held through ZVV, its 50/50 joint venture with Zash. These include an 80% stake in Lomotif,<sup>1</sup> plus full ownership of AdRizer.<sup>2</sup>

15. On behalf of Vinco and the ZVV joint venture, I was responsible for negotiating and completing the purchase of the 80% ownership stake in Lomotif, which closed in July of 2021, and the purchase of AdRizer, which was completed in February of 2022.

16. Immediately following the closing of the Lomotif deal, I was able to raise over \$100 million in cash for Vinco Ventures.

17. As part of the merger transaction, both Vinco Ventures and Zash shared the same management team. This included Lisa King and Roderick Vanderbilt, who were elected to the Vinco Ventures Board of Directors by the shareholders at a meeting on October 14, 2021. Also at that time, Lisa King became CEO of Vinco Ventures.

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<sup>1</sup> Lomotif is a video sharing site, similar to TikTok.

<sup>2</sup> AdRizer is a digital advertising platform, which the company plans to use to monetize Lomotif.

1           18.     Ms. King and I are responsible for approximately forty employees working at the  
2 Company in upstate New York. These employees were previously employed by Zash and its  
3 subsidiary, and they migrated to the Company in anticipation of the business combination  
4 between Zash and the Company.

5           19.     In his Declaration, John Colucci materially misrepresents a Consent Agreement I  
6 entered into with the FTC, then, in paragraph 12, falsely accuses me of failing to disclose that to  
7 the shareholders of Vinco Ventures. This just serves as a demonstration of Colucci's lack of  
8 knowledge on the management of Vinco Ventures. These issues were fully disclosed in the  
9 Vinco Ventures Form 10-K, filed with the SEC on April 15, 2022. The relevant portions of the  
10 April 15, 2022 10-K are attached hereto as **Exhibit A-4**.

11           20.     Mr. Colucci was not part of the Vinco Ventures leadership until he was  
12 appointed to the Board of Directors on June 10, 2022.

13           21.     Negotiations regarding the amendment that would delay a \$33 million payment  
14 to our secured lender stalled when neither former counsel, who had been terminated recently,  
15 nor Phil Jones, the Company's Chief Financial Officer, who was on vacation, responded to  
16 Palladium Capital or Hudson Bay's counsel's attempt to finalize the agreement. The Company's  
17 inability to finalize the amendment was not related to its ability to file an 8-K.

18           22.     Recognizing that the invalid actions are unenforceable, at least until this Court  
19 issued its Ex Parte TRO, I continued to protect the interests of the Company and its  
20 shareholders, in part and upon the advice of counsel, by safeguarding the Company's SEC  
21 credentials in order to prevent a false filing based on Mr. Colucci's illegal actions.

22           23.     Consistent with our fiduciary duties, I refuse to allow a rogue director, currently  
23 under investigation for materially misrepresenting his connections to the Company and in  
24 connection with a suspected sale of Company trade secrets, to commandeer the Company.

25           24.     Since the Court signed an Ex Parte TRO in this matter, I have been informed that  
26 Plaintiff has taken a multitude of actions to destroy the Company – and its good will and value –  
27 that I have worked tirelessly to build over the last two years. Among the steps Plaintiff has  
28 taken are the following:

- 1 a. Attempted to terminate the employment of individuals that previously filed
- 2 whistleblower complaints against Mr. Colucci, potentially in violation of the
- 3 Sarbanes-Oxley Act;
- 4 b. Terminated the employment of our Chief Human Resource Officer and
- 5 attempted to terminate nearly 80% of employees of Vinco Ventures;
- 6 c. Conducted two Board of Directors meetings without the Chairman of the Board,
- 7 Rod Vanderbilt, or Director Lisa King;
- 8 d. Approved paying himself an annual salary of \$250,000.00; and
- 9 e. Put out two false and potentially libelous press releases claiming that I – who has
- 10 been involved in leading Vinco since early 2021 and raised hundreds of millions
- 11 of dollars for the Company – am attempting a “hostile takeover”.
- 12 25. After John Colucci put out a press release about this case on August 10, 2022, I
- 13 was contacted by a former employer of Mr. Colucci’s who informed me of the following:
- 14 a. That as recently as late-2018 or 2019, Mr. Colucci was employed as a
- 15 telemarketer;
- 16 b. Mr. Colucci had neither the experience nor expertise to be running a company
- 17 like Vinco Ventures; and
- 18 c. John Colucci’s representations to Vinco Ventures—which were included in a
- 19 June 10, 2022 SEC 8-K filing and again in an August 15, 2022 SEC 8-K (signed
- 20 by Mr. Colucci)—were false as Mr. Colucci was never the President of
- 21 American Marketing & Mailing Services, Inc.
- 22
- 23
- 24 ///
- 25 ///
- 26 ///
- 27
- 28

26. The person that is attempting a hostile takeover is John Colucci, who has only been involved in the leadership of Vinco for only about 9 weeks.

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

DATED this 15<sup>th</sup> day of August, 2022

August, 2022



---

Theodore Farnsworth

**KEMP JONES, LLP**  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

# **Exhibit A-1**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 21, 2021 (January 20, 2021)



**VINCO VENTURES, INC.**

(f/k/a Edison Nation, Inc.)

(Exact Name of Registrant as Specified in Charter)

**Nevada**

(State or other jurisdiction  
of incorporation)

**001-38448**

(Commission  
File Number)

**82-2199200**

(IRS Employer  
Identification No.)

**1 West Broad Street, Suite 1004  
Bethlehem, Pennsylvania**

(Address of principal executive offices)

**18018**

(Zip Code)

**(866) 536-0943**

(Registrant's Telephone Number, Including Area Code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	BBIG	Nasdaq

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☒

**Item 1.01. Entry into a Material Definitive Agreement.**

On January 20, 2021, Vinco Ventures, Inc. ("Vinco") and its newly formed wholly owned subsidiary, Vinco Acquisition Corporation (the "Merger Sub"), entered into an Agreement to Complete a Plan of Merger (the "Agreement") with ZASH Global Media and Entertainment Corporation (the "Company") (each a "Party" and collectively the "Parties").

The Agreement contemplates a reverse triangular merger of Merger Sub with and into the Company in a transaction intended to qualify as a tax-free reorganization under Sections 368(a)(1)(A) and 368(a)(2)(E) of the Code. Under the terms of the Agreement, the Company's holders of common stock, par value \$0.001, shall receive shares of Common Stock of VINCO in exchange for all issued and outstanding Company shares of Common Stock. The Company will then become an indirect wholly-owned subsidiary

RESP118



of VINCO. VINCO will engage a third-party valuation firm to perform a valuation of the Company and to issue a Transaction Fairness Opinion. The valuation report is expected by February 11, 2021 and will set the resulting post-closing ownership ratio. Upon completion of the closing, the Company will be the controlling entity. On or before February 11, 2021, a definitive plan of merger, proxy vote and Form S-1 shall be filed with the SEC to register shares of common stock of VINCO to be issued in the transaction.

The certificate of incorporation of VINCO will be amended and restated at and as of the Effective Time, in substantial conformance with the certificate of incorporation of the Company immediately prior to the Closing, and the name VINCO will be changed to "ZASH Global Media and Entertainment Corporation." The bylaws of VINCO will be amended and restated at and as of the Closing to become the equivalent of the bylaws of the Company immediately prior to the Closing. At the Closing, certain officers and directors of VINCO and the Merger Sub immediately prior to the Effective Time shall resign and the officers and directors of the Company immediately prior to the Closing will be appointed as officers and directors of VINCO and the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified; provided, however that VINCO shall have the right to appoint two (2) person to serve as a member of the Board of Directors of the Surviving Corporation and the Company shall have the right to appoint three (3) persons to serve as members of the Board of Directors of the Surviving Company.

The Closing of the transaction will occur on or about March 31, 2021, but no later than the first business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transaction, other than conditions with respect to actions the respective Parties will take at the Closing itself, or such other time as the Parties may mutually determine.

#### Item 8.01. Other Events

On January 20, 2021, the Company's Board of Directors elected to form a new wholly owned subsidiary, Vinco Acquisition Corporation, for the purpose of entering into the Agreement to Complete a Plan of Merger.

#### Forward-Looking Statements and Limitation on Representations

This Current Report on Form 8-K includes forward-looking statements relating to matters that are not historical facts. Forward-looking statements may be identified by the use of words such as "expect," "intend," "believe," "will," "should," "would" or comparable terminology or by discussions of strategy. While the Company believes its assumptions and expectations underlying forward-looking statements are reasonable, there can be no assurance that actual results will not be materially different. Risks and uncertainties that could cause materially different results include, among others, the Company's ability to consummate the transaction described above. The Company assumes no duty to update any forward-looking statements other than as required by applicable law.

The Agreement and other disclosures included in this Current Report on Form 8-K are intended to provide shareholders and investors with information regarding the terms of the Agreement, and not to provide shareholders and investors with any other factual information regarding the Company or its subsidiaries or their respective business. You should not rely on the representations and warranties in the Agreement or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures. Other than as disclosed in this Current Report on Form 8-K, as of the date of this Current Report on Form 8-K, the Company is not aware of any material facts that are required to be disclosed under the federal securities laws that would contradict the representations and warranties in the Agreement. The Company will provide additional disclosure in its public reports to the extent that it is aware of the existence of any material facts that are required to be disclosed under federal securities laws and that might otherwise contradict the representations and warranties contained in the Agreement and will update such disclosure as required by federal securities laws. Accordingly, the Agreement should not be read alone, but should instead be read in conjunction with the other information regarding the Company and its subsidiaries that has been, is or will be contained in, or incorporated by reference into, the Forms 10-K, Forms 10-Q, Forms 8-K, proxy statements, registration statements and other documents that the Company files with the SEC.

#### Item 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits.

Exhibit No.	Description
10.1	<u>Agreement to Complete a Plan of Merger between Vinco Ventures, Inc., Vinco Acquisition Corporation and ZASH Global Media and Entertainment Corporation dated January 20, 2021</u>

#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: January 21, 2021

#### VINCO VENTURES, INC.

By: /s/ Christopher B. Ferguson  
Name: Christopher B. Ferguson  
Title: Chief Executive Officer

## AGREEMENT TO COMPLETE A PLAN OF MERGER

This Agreement to Complete a Plan of Merger (the “Agreement”) is entered into as of January 20, 2021, by and among Vinco Ventures, Inc., a Nevada corporation (“VINCO”), Vinco Acquisition Corporation, a Nevada corporation and a newly created wholly-owned Subsidiary of Vinco (the “Merger Sub”), and ZASH Global Media and Entertainment Corporation (“Zash”), a Delaware corporation (the “Company”) (each a “Party” and collectively the “Parties”).

### RECITALS

A. VINCO is a public company ([www.vincoventures.com](http://www.vincoventures.com)) engaged in mergers and acquisitions focused on the digital media and consumer products markets.

B. The Company is a private company engaged in the business of production and distribution of media content. A description of the assets and operations of the Company are set forth in [Exhibit A](#).

C. Subject to the terms and conditions hereof, this Agreement contemplates a reverse triangular merger of Merger Sub with and into Company in a [transaction intended to qualify as a tax-free reorganization under Sections 368(a)(1)(A) and 368(a)(2)(E) of the Code.

D. At the Closing, all holders (the “Company Stockholders”) of shares of common stock, par value \$0.001 of the Company (the “Company Shares”) will receive shares of common stock, \$0.001 par value of VINCO (“VINCO Shares”) in exchange for all of their Company Shares, and the Company will become an indirect wholly-owned Subsidiary of VINCO.

NOW, THEREFORE, in consideration of the premises and the representations, warranties and covenants contained herein, the Parties agree as follows.

### 1. Basic Transaction.

A. Merger. Subject to the terms and conditions of the definitive Agreement, Merger Sub will merge with and into Company (the “Merger”). Pursuant to the Merger and upon Closing (as such terms is defined herein), the Company Shares shall be converted into VINCO Shares at the rate set forth herein Sections 1.E.(5) hereunder. Company shall be the corporation surviving the Merger (after the Closing, the “Surviving Corporation”), and the separate corporate existence of the Merger Sub shall cease thereafter the Closing.

B. Documents. Each will promptly prepare, execute and deliver to the others the various certificates, instruments, and documents referred to herein by February 4, 2021.

C. Closing. The closing of the Merger will take on or about March 31, 2021, but no later than the first business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transaction, other than conditions with respect to actions the respective Parties will take at the Closing itself, or such other time as the Parties may mutually determine (the “Closing”).

D. Merger Certificate. At the Closing of the Merger, VINCO will file with the Secretary of State of the State of Nevada a Certificate of Merger between Company and Merger Sub. (the “Merger Certificate”).

#### E. Effect of Merger.

(1) General. The Merger will become effective upon filing of the Merger Certificate with the Secretary of State of the State of Nevada (the “Effective Time”). The Merger will have the effect set forth in the NRS (as defined below). The Surviving Corporation may, at any time after the Closing, take any action, including executing or delivering any document, in the name and on behalf of either Company or the Merger Sub in order to carry out and effectuate the transactions contemplated by this Agreement.

(2) Certificate of Incorporation. The certificate of incorporation of VINCO will be amended and restated at and as of the Effective Time to the form attached hereto as [Exhibit B](#), in substantial conformance with the certificate of incorporation of Company immediately prior to the Closing, and the name of VINCO will be changed to “ZASH Global Media and Entertainment Corporation”

(3) Bylaws. The bylaws of VINCO will be amended and restated at and as of the Closing to become the equivalent of the bylaws of Company immediately prior to the Closing.

(4) Directors and Officers. At the Closing, certain officers and directors of VINCO and the Merger Sub immediately prior to the Effective Time shall resign and the officers and directors of Company immediately prior to the Closing will be appointed as officers and directors of VINCO and Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified; provided, however that VINCO shall have the right to appoint two (2) person to serve as a member of the Board of Directors of the Surviving Corporation and the Company shall have the right to appoint three (3) persons to serve as members of the Board of Directors of the Surviving Company.

(5) Pre-Merger Valuation. VINCO will engage a third-party valuation firm to perform a valuation of the Company and to issue a Transaction Fairness Opinion. The valuation report is expected by February 11, 2021 and will set the resulting post-closing ownership ratio. Upon completion of closing, Zash will be the controlling entity.

(a) Cancellation of VINCO Shares and Conversion of Company Shares. In accordance with the Pre-Merger Valuation set forth in Section 1.E.(5) immediately prior to the Closing, [a certain number of VINCO Shares shall be canceled such that immediately prior to the Effective Time there shall be a total of a certain number of VINCO Shares outstanding.

(b) Conversion of Company Stock. At and as of the Effective Time, (a) each issued and outstanding Company Share (other than any Dissenting Shares) will, by virtue of the Merger and without any further action on behalf of VINCO, the Merger Sub, the Company, or any Company Stockholder, automatically be converted into that number of newly issued VINCO Shares based on the Transaction fairness opinion referenced above, which newly issued VINCO Shares shall be validly issued, fully paid and non-assessable; (b) each Dissenting Share will be converted into the right to receive payment from Surviving Corporation with respect thereto in accordance with the provisions of the NRS; and (c) all unissued and treasury Company Shares will be cancelled. Prior to Closing hereof, VINCO shall effect an amendment to its certificate of incorporation to reflect the required increase in its authorized shares so that the subject transaction may be effected and a sufficient total authorized capital stock of VINCO is available to satisfy the terms and conditions stated in this Section 1.E.(5).

(c) Share Certificates.

(i) Following the Closing, upon surrender of an original stock certificate representing Company Shares, VINCO will cause to be issued a stock certificate for VINCO Shares to which such Person is entitled, bearing any necessary or appropriate restrictive legend. VINCO will not pay any dividend or make any distribution on Company Shares or VINCO Shares with a record date at or after the Closing until the record holder surrenders for exchange his, her, or its certificates that represented Company Shares or pre-Merger VINCO Shares.

(ii) If any certificate evidencing Shares shall have been lost, stolen or destroyed, upon the making of an affidavit in form acceptable to VINCO's Transfer Agent of that fact by the Person claiming the certificate to be lost, stolen or destroyed and an indemnity bond in such amount as the Transfer Agent may direct, as collateral security against any claim that may be made with respect to the certificate, VINCO will cause to be issued in exchange for the lost, stolen or destroyed certificate the applicable number of VINCO Shares.

(f) Conversion of Warrants. All warrants to purchase Company Shares issued and outstanding at the Closing will, by virtue of the Merger and without any action on the part of VINCO, Company or the holders of the warrants, be converted into and will become warrants to purchase on the same terms that number of VINCO Shares that would have been received by the holders of such warrants had such warrants been exercised prior to the Merger, provided, however, that this provision shall not reduce in any manner the number of VINCO Shares to be received by holders of Company Stock pursuant to Section 5(b) above.

(g) Conversion of Options. All options to purchase Company Shares outstanding at the Closing will, by virtue of the Merger and without any action on the part of VINCO, Company or the holders of the options, be assumed by VINCO, and will become options to purchase on the same terms that number of VINCO Shares that would have been received by the holders of such options had such options been exercised prior to the Merger, provided, however, that this provision shall not reduce in any manner the number of VINCO Shares to be received by holders of Company Stock pursuant to Section 5(b) above.

(h) Option Plan. At or prior to the Closing, VINCO will adopt a stock option plan.

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(i) Cancellations; Transfers. As of the Closing of the Merger, the Company Shares and warrants and options to purchase same (collectively, the "Company Securities") will be deemed canceled and will cease to exist, and each holder of a Company Security will cease to have any rights with respect thereto, other than those expressly set forth in this Section 1.E.(5). After the Closing, transfers of Company Shares outstanding prior to the Closing will not be made on the stock transfer books of Surviving Corporation. Notwithstanding anything to the contrary herein, none of the Surviving Corporation or any Party shall be liable to any Person for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

**2. Conditions to Obligations to Close.**

A. Conditions to VINCO's Obligation. The obligation of each of VINCO and the Merger Sub to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction, among other things, of the following conditions, time being of the essence for all dates set forth herein;

(1) Due Diligence Access and Investigation. During the period from the date of this Agreement to the earlier of the termination of this Agreement and the Closing Date (the "Pre-Closing Period"), the Company and its Subsidiaries shall provide and VINCO shall be entitled, through its officers, employees and representatives (including, without limitation, its legal advisors and accountants), to make such investigation of the properties, businesses and operations of the Company and its Subsidiaries and such examination of the books, records and financial condition of the Company and its Subsidiaries as it reasonably requests and to make extracts and copies of such books and records. No investigation by the VINCO prior to or after the date of this Agreement shall diminish or obviate any of the representations, warranties, covenants or agreements of the Company and its Subsidiaries contained in this Agreement or any related documents. In order that VINCO may have full opportunity to make such physical, business, accounting and legal review, examination or investigation as it may reasonably request of the affairs of the Company and its Subsidiaries, the Company shall cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of the Company and its Subsidiaries to cooperate fully with such representatives in connection with such review and examination.

(2) On or before February 4, 2021 neither Party has terminated this Agreement in accordance with the due diligence provision set forth in Section 2.A.(1).

(3) On or before February 4, 2021, all ancillary documents to this Agreement shall be mutually agreed upon by the Parties and made part of this Agreement.

(4) VINCO will engage a third-party valuation firm to perform a valuation of the Company and to provide a transaction fairness opinion acceptable to VINCO by February 11, 2021.

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(5) On or before February 11, 2021, a definitive plan of merger, proxy vote and Form S-1 shall be filed with the SEC to register shares of common stock of VINCO.

(6) The completion of the Merger shall include a best efforts capital investment of One Hundred and Fifty Million Dollars US (\$150,000,000) to Three Hundred Million Dollars US (\$300,000,000) on the date of closing.

(7) The satisfactory completion of an audit of the Company and its Subsidiaries;

(8) The closing shall occur on or about March 31, 2021.

(9) The representations and warranties of Company and its Subsidiaries set forth in Section 4 will be true and correct in all material respects as if made at and as of the Closing, except to the extent that such representations and warranties are qualified by the term "material," or contain terms such as "Adverse Effect" or "Adverse Change," in which case such representations and warranties as so written, including the term "material" or "Material," will be true and correct in all respects at and as of the Closing;

(10) Company and its Subsidiaries will have performed and complied with all of its covenants hereunder in all material respects through the Closing, except to the extent that such covenants are qualified by the term "material," or contain terms such as "Adverse Effect" or "Adverse Change," in which case Company and its Subsidiaries will have performed and complied with all of such covenants as so written, including the term "material" or "Material," in all respects through the Closing;

(11) There will not be any judgment, order, decree or injunction in effect that would (a) prevent consummation of any of the transactions contemplated by this Agreement, (b) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, (c) adversely affect the right of VINCO to own the capital stock of the Surviving Corporation and to control the Surviving Corporation and its Subsidiaries, or (d) adversely affect the right of any of Surviving Corporation and its Subsidiaries to own its assets and to operate its business;

(12) Company and its Subsidiaries will not have engaged in any practice, taken any action, or entered into any transaction outside the Ordinary Course of

Business which results in a Material Adverse Effect;

(13) The Merger will have been duly approved by the requisite number of Company Stockholders;

(14) Company and its Subsidiaries will have delivered to VINCO a certificate to the effect that each of the conditions specified in Sections 2.A.(1)-(5) is satisfied in all respects; and

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(15) Company and its Subsidiaries will have delivered to VINCO an executed counterpart of the Merger Certificate. VINCO and the Merger Sub may waive any condition specified in this Section 2.A if it or they execute a writing so stating at or prior to the Closing.

B. Conditions to Company's Obligation. The obligation of Company to consummate the transactions to be performed by it in connection with the Closing is subject, among other things, to satisfaction of the following conditions:

(1) Due Diligence Access and Investigation. During the period from the date of this Agreement to the earlier of the termination of this Agreement and the Closing Date (the "Pre-Closing Period"), the VINCO shall provide and the Company shall be entitled, through its officers, employees and representatives (including, without limitation, its legal advisors and accountants), to make such investigation of the properties, businesses and operations of the VINCO and such examination of the books, records and financial condition of VINCO as it reasonably requests and to make extracts and copies of such books and records. No investigation by the Company prior to or after the date of this Agreement shall diminish or obviate any of the representations, warranties, covenants or agreements of the VINCO contained in this Agreement or any related documents. In order that the Company may have full opportunity to make such physical, business, accounting and legal review, examination or investigation as it may reasonably request of the affairs of the VINCO, VINCO shall cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of VINCO to cooperate fully with such representatives in connection with such review and examination.

(2) The representations and warranties of VINCO and the Merger Sub set forth in Section 5 will be true and correct in all material respects at and as of the Closing, except to the extent that such representations and warranties are qualified by the term "material," or contain terms such as "Adverse Effect" or "Adverse Change," in which case such representations and warranties as so written, including the term "material" or "Material," will be true and correct in all respects at and as of the Closing;

(3) Each of VINCO and the Merger Sub will have performed and complied with all of its covenants hereunder in all material respects through the Closing, except to the extent that such covenants are qualified by the term "material," or contain terms such as "Adverse Effect" or "Adverse Change," in which case VINCO and, in the case of the Closing of the Merger, the Merger Sub will have performed and complied with all of such covenants as so written, including the term "material" or "Material," in all respects through the Closing;

(4) There will not be any judgment, order, decree or injunction in effect that would (a) prevent consummation of any of the transactions contemplated by this Agreement, or (b) cause any of the transactions contemplated by this Agreement to be rescinded following consummation;

(5) VINCO and its Subsidiaries will not have engaged in any practice, taken any action, or entered into any transaction outside the Ordinary Course of Business which results in a Material Adverse Effect;

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(6) The Merger will have been duly approved by the requisite number of VINCO Stockholders;

(7) VINCO will have delivered to Company a certificate to the effect that each of the conditions specified in Sections 2.B.(1)-(5) is satisfied in all respects;

(8) VINCO will have delivered to Company an executed counterpart of the Merger Certificate;

(9) VINCO will have delivered to Company the resignations, effective as of the Closing, of each director and officer of VINCO and its Subsidiaries. Company may waive any condition specified in this Section 2.B if it executes a writing so stating at or prior to the Closing.

### **3. Covenants.**

Pre-closing Covenants. The Parties agree as follows with respect to the period from and after the execution of this Agreement until the Closing or termination of this Agreement:

A. General. Each of the Parties will use its best efforts to prepare, execute and deliver all documents, take all actions and do all things necessary, advisable in order to consummate and make effective the transactions contemplated by this Agreement in accordance with prescribed dates, including the satisfaction, but not waiver, of all of the Closing conditions set forth in Section 2.

B. Notices. Company will give any notices (and will cause each of its Subsidiaries to give any notices) to third parties and will use its best efforts to obtain (and will cause each of its Subsidiaries to use its best efforts to obtain) any necessary third-party consents.

C. SEC and State Filings. Each of the Parties will, and will cause each of its Subsidiaries to, give any notices to, make any filings with, and use its best efforts to obtain any authorizations, consents, and approvals of Governmental Authorities in connection with the matters referred to herein.

D. Further Cooperation. The filing Party in each instance will use its best efforts to respond to the comments of the SEC or any state Governmental Authorities on any filings and will make any further filings, including amendments and supplements, in connection therewith that may be necessary, and advisable. VINCO will provide Company and its Subsidiaries, and Company will provide VINCO, with whatever information and assistance in connection with the foregoing filings the filing Party may request.

E. Notice of Developments. Each Party will give prompt written notice to the others of any material adverse development causing a breach of any of its own representations and warranties in this Agreement. No disclosure by any Party pursuant to this Section 3.E, however, will be deemed to amend or supplement the Company Disclosure Schedule or the VINCO Disclosure Schedule or to prevent or cure any misrepresentation, breach of warranty, or breach of covenant.

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### **4. Company's Representations and Warranties.**

The Company and its Subsidiaries' represent and warrant to VINCO that the statements contained in this Section 4 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing, as though made then and as though the Closing were substituted for the date of this Agreement throughout this Section 4, except as set forth in the Company SEC Reports or the disclosure schedule provided by the Company to VINCO (the "Company Disclosure Schedule")

RESP102

corresponding to the Section of this Agreement, to which any of the following representations and warranties specifically relate, or as disclosed in another section of the Company Disclosure Schedule, if it is reasonably apparent on the face of the disclosure that it is applicable to another Section of this Agreement, or in the Company SEC Reports:

A. Organization, Qualification, and Corporate Power. Each of Company and its Subsidiaries is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. Each of Company and its Subsidiaries is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required. Company and each of its Subsidiaries has full corporate power and authority to carry on the business in which it is engaged and to own and use the properties owned and used by it.

B. Capitalization. The entire authorized capital stock of Company consists solely of \_\_\_\_\_ shares of common stock, of which \_\_\_\_\_ shares are issued and outstanding and \_\_\_\_\_ shares of preferred stock, of which \_\_\_\_\_ are issued and outstanding. All of the issued and outstanding Company Shares have been duly authorized and are validly issued, fully paid, non-assessable and free of preemptive rights, and were issued in compliance with all applicable state and federal securities laws. There are no: (1) other outstanding or authorized shares, options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments of any kind that could require Company to issue, sell, or otherwise cause to become outstanding any of its capital stock; (2) equity securities, debt securities or instruments convertible into or exchangeable for shares of such stock; or (3) outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to Company or any of its Subsidiaries.

C. Authorization of Transaction. Company has all requisite power and authority, including full corporate power and authority, and the unanimous consent of the Board of Directors to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Company and the consummation by Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action by Company and, except as set forth herein, no other corporate proceedings on the part of Company and no shareholder vote or consent are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Company. This Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby to which Company is a party constitutes the valid and legally binding obligations of Company, enforceable against Company in accordance with their respective terms.

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D. Non-Contravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby by the Company or its Subsidiaries, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Company or any of its Subsidiaries is subject or any provision of the charter or bylaws of Company or any of its Subsidiaries, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Company or any of its Subsidiaries is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien upon any of its assets). Other than in connection with the provisions of the NRS, the Exchange Act, the Securities Act, and state securities laws, neither Company nor any of its Subsidiaries needs to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

E. Filings with SEC. None of the Company filings made with the SEC ("Company Public Reports"), as of their respective dates, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

F. Financial Statements. The Company has filed its annual report on Form 10-K for the fiscal year ended 2019 ("Year End") and quarterly report for the period ended September 30, 2020 ("Quarter End"). The financial statements included in or incorporated by reference into these Company Public Reports (including the related notes and schedules) have been prepared in accordance with GAAP throughout the periods covered thereby, present fairly the financial condition of Company and its Subsidiaries as of the indicated dates and the results of operations of Company and its Subsidiaries for the indicated periods and are correct and complete in all respects, and are consistent with the books and records of Company and its Subsidiaries; provided, however, that the interim statements are subject to normal year-end adjustments.

G. Events Subsequent to Year End. Since Year End and Quarter End, there has not been any material Adverse Change.

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H. Compliance with Laws. To its Knowledge, (a) Company and each of its Subsidiaries has all requisite licenses, permits and certificates, including environmental, health and safety permits, from federal, state and local authorities necessary to conduct its business and own and operate its assets including, without limitation all necessary approvals, licenses, except where the failure to have such permits would not reasonably be expected to have an Adverse Effect; (b) neither the Company nor any of its Subsidiaries is in violation of any law, regulation or ordinance (including, without limitation, laws, regulations or ordinances relating to building, zoning, environmental, disposal of hazardous waste, land use or similar matters) relating to its properties, the enforcement of which would have an Adverse Effect; and (c) the businesses of Company and its each of its Subsidiaries as currently conducted, and to the Knowledge of the current officers and directors of Company since inception, has not been operated in violation, and as of the Closing is not in violation, in any material respect, of any federal, state, local or foreign laws, regulations or orders, the enforcement of which would have an Adverse Effect on the Company and its Subsidiaries taken as a whole. Neither Company nor any of its Subsidiaries has received written notice or any other communication from any federal, state or local governmental or regulatory authority or otherwise of any such violation or noncompliance.

I. Brokers' Fees. Neither Company nor any of its Subsidiaries has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement, with the exception of Broker Agreements on the Buy/Sell side already executed by Zash Global Media and Entertainment.

J. Tax Treatment. Company operates at least one significant historic business line or owns at least a significant portion of its historic business assets, in each case within the meaning of Treas. Reg. §1.368-1(d). Neither Company nor, to the Knowledge of Company, any of its Affiliates has taken or agreed to take action that would prevent the Merger from constituting a tax-free reorganization under Sections 368(a)(1)(A) and 368(a)(2)(E) of the Code.

## **5. VINCO's Representations and Warranties.**

Each of VINCO and Merger Sub represents and warrants to Company that the statements contained in this Section 5 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing as though made then and as though the Closing were substituted for the date of this Agreement throughout this Section 5, except as set forth in the VINCO SEC Reports or the disclosure schedule provided by VINCO to the Company (the "VINCO Disclosure Schedule") corresponding to the Section of this Agreement, to which any of the following representations and warranties specifically relate, or as disclosed in another section of the VINCO Disclosure Schedule, if it is reasonably apparent on the face of the disclosure that it is applicable to another Section of this Agreement, or in the VINCO SEC Reports:

A. Organization, Qualification, and Corporate Power. Each of VINCO and its Subsidiaries is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. Each of VINCO and its Subsidiaries is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required. VINCO and its Subsidiaries have full corporate power and authority to carry on the business in which it is engaged and to own and use the properties owned and used by it.

B. Capitalization. The entire authorized capital stock of VINCO consists solely of 250,000,000 shares of common stock, of which 15,729,403 shares are issued and outstanding, and 30,000,000 shares of preferred stock, of which 764,618 are issued or outstanding. All of the issued and outstanding VINCO Shares have been duly authorized and are validly issued, fully paid, non-assessable and free of preemptive rights, and were issued in compliance with all applicable state and federal securities laws. There are no: (1) other outstanding or authorized shares, options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments of any kind that could require VINCO to issue, sell, or otherwise cause to become outstanding any of its capital stock.; (2) equity securities, debt securities or instruments convertible into or exchangeable for shares of such stock; or (3) outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to VINCO.

C. Authorization of Transaction. VINCO has all requisite power and authority, including full corporate power and authority, to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby subject to shareholder approval. The execution and delivery of this Agreement by VINCO hereby has been duly and validly authorized by all necessary corporate action by VINCO and, subject to corporate proceedings on the part of VINCO and shareholder vote and approval as necessary to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by VINCO. This Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby to which VINCO is a party constitutes the valid and legally binding obligations of VINCO, enforceable against VINCO in accordance with their respective terms.

D. Non-Contravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which VINCO or any of its Subsidiaries is subject or any provision of the charter or bylaws of VINCO or any of its Subsidiaries, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which VINCO or any of its Subsidiaries is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien upon any of its assets). Other than in connection with the provisions of the NRS, the Exchange Act, the Securities Act, and state securities laws, neither VINCO nor any of its Subsidiaries needs to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

E. Filings with SEC. VINCO has timely made all filings with the SEC that it has been required to make under the Securities Act and the Exchange Act (collectively the "VINCO Public Reports") and, to the Knowledge of the current officers and directors of VINCO, has been current in its filings since VINCO Public Reports were first required to be filed. Each of the VINCO Public Reports has complied with the Securities Act and the Exchange Act in all material respects. None of the VINCO Public Reports contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Other than provided in the VINCO Disclosure Schedule, neither VINCO nor any of its officers or directors has received any correspondence from the SEC regarding any of its filings and/or the VINCO Public Reports.

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F. Financial Statements. VINCO has filed its annual report on Form 10-K for the fiscal year ended December 31, 2019 ("Year End") and its quarterly report on Form 10-Q for the period ended on ended September 30, 2020 ("Quarter End"). The financial statements included in or incorporated by reference into these VINCO Public Reports (including the related notes and schedules) have been prepared in accordance with GAAP throughout the periods covered thereby, present fairly the financial condition of VINCO and its Subsidiaries as of the indicated dates and the results of operations of VINCO and its Subsidiaries for the indicated periods and are correct and complete in all respects, and are consistent with the books and records of VINCO and its Subsidiaries; provided, however, that the interim statements are subject to normal year-end adjustments.

G. Events Subsequent to Year End. Since Year End and Quarter End, there has not been any Adverse Change.

H. Compliance with Laws. To its Knowledge, (a) VINCO has all requisite licenses, permits and certificates, including environmental, health and safety permits, from federal, state and local authorities necessary to conduct its business and own and operate its assets including, without limitation all necessary approvals, licenses, except where the failure to have such permits would not reasonably be expected to have an Adverse Effect; (b) VINCO is not in violation of any law, regulation or ordinance (including, without limitation, laws, regulations or ordinances relating to building, zoning, environmental, disposal of hazardous waste, land use or similar matters) relating to its properties, the enforcement of which would have an Adverse Effect; and (c) the business of VINCO as conducted since \_\_\_\_\_, and to the Knowledge of the current officers and directors of VINCO since inception, has not violated, and as of the Closing does not violate any federal, state, local or foreign laws, regulations or orders, the enforcement of which would have an Adverse Effect. VINCO has not had notice or communication from any federal, state or local governmental or regulatory authority or otherwise of any such violation or noncompliance. Neither VINCO nor any of its officers and/or directors has never been the subject of an SEC inquiry or investigation from its Division of Enforcement.

I. Brokers' Fees. Neither VINCO nor any of its Subsidiaries has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

J. Tax Treatment. Neither VINCO or Merger Sub nor, to the Knowledge of VINCO, any of their Affiliates has taken or agreed to take action that would prevent the Merger from constituting a tax-free reorganization under Sections 368(a)(1)(A) and 368(a)(2)(E) of the Code.

K. No Liabilities. As of the Closing, neither VINCO nor any of its Subsidiaries will have any undisclosed liability of any kind, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due, by virtue of contract, statute, regulation, law, equity, or otherwise.

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L. Nasdaq Trading. VINCO Shares trade and are currently quoted on Nasdaq stock exchange (Stock Symbol "BBIG"). VINCO meets all issuer and equity security requirements to permit a Nasdaq member to quote the VINCO Shares on the Nasdaq exchange, and, to VINCO'S Knowledge, shall be entitled to continue to be so quoted following the Merger.

M. Stockholder Claims. There are no existing claims against VINCO by any current or former stockholder of VINCO, and to VINCO'S Knowledge, no facts or circumstances reasonably likely to result in any such claims.

N. Operations of Merger Sub. Merger Sub is a direct, wholly owned subsidiary of VINCO, was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement.

O. Powers of Attorney and Suretyships. VINCO does not have (i) any general powers of attorney outstanding, whether as grantor or grantee thereof, or (ii) except as reflected in its financial statements, any obligation or liability, whether actual, accrued, accruing, contingent or otherwise, as guarantor, surety, co-signer, endorser, co-maker, indemnitor, or otherwise in respect of the obligation of any person, corporation, partnership, joint venture, association, organization or other entity, except as endorser or maker of checks or letters of credit, respectively, endorsed or made in the ordinary course of business.

P. Tax Matters.

RESP124

(1) Within the times and in the manner prescribed by law, VINCO has filed all federal, state and local Tax Returns, and all Tax Returns for other governing bodies having jurisdiction to levy Taxes upon it, that it was required to file (including Tax Returns for any Affiliated Group of which VINCO was a member).

(2) VINCO has withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(3) No examinations of the federal, state or local Tax Returns of VINCO are currently in progress nor threatened and no deficiencies have been asserted or to its Knowledge assessed against VINCO as a result of any audit by the Internal Revenue Service or any state or local Tax authority and no such deficiency has been proposed or threatened.

(4) There are no pending or threatened audits, assessments or other actions relating to any liability in respect of Taxes of VINCO by any Tax authority nor are there any matters under discussion with any Tax authority with respect to Taxes of VINCO.

Q. Books and Records. The general ledger and books of account of VINCO, all minute books of VINCO, all federal, state and local income, franchise, property and other Tax Returns filed by VINCO, all reports and filings with the SEC by VINCO, all of which have been made available to VINCO, are in all material respects complete and correct and have been maintained in accordance with proper business practice and judgment and in accordance with all applicable procedures required by laws and regulations.

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R. Contracts and Commitments. There are no contracts, agreements or understandings, whether written or oral, to which VINCO is a party or by which VINCO or any of its property may be bound in any manner as of the Closing Date.

## **6. Termination of Merger Transaction.**

A. Termination. Any of the Parties may terminate this Agreement only as follows:

(1) VINCO may terminate this Agreement by giving written notice to Company at any time prior to the Closing in the event:

- (a) of an Uncured Breach by Company;
- (b) VINCO is not reasonably satisfied with the results of its due diligence regarding Company;
- (c) the conditions have not been satisfied by the times prescribed in Section 2;
- (d) Vinco shall be reasonably satisfied with the Audit of the Company and its Subsidiaries;
- (e) the Closing shall not have been consummated on or about March 31, 2021; or

(f) the board of directors or special committee of VINCO determines in good faith that the failure to terminate this Agreement would constitute a breach of the fiduciary duties of the VINCO board of directors or special committee to the VINCO stockholders under applicable law.

(2) Company may terminate this Agreement by giving written notice to VINCO and Merger Sub at any time prior to the Closing in the event:

- (a) of an Uncured Breach by VINCO or the Merger Sub;
- (b) Company is not reasonably satisfied with the results of its due diligence regarding VINCO;
- (c) the Closing shall not have been consummated on or about March 31, 2021; or

(d) the board of directors or special committee of Company determines in good faith that the failure to terminate this Agreement would constitute a breach of the fiduciary duties of the Company board of directors or special committee to the Company stockholders under applicable law.

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(3) Either Party may terminate this Agreement if a Governmental Authority of competent jurisdiction shall have issued an order or taken any other action, in each case which has become final and non-appealable, and which permanently restrains, enjoins or otherwise prohibits the Closing.

B. Effect of Termination. If this Agreement is terminated pursuant to Section 6.A, the Parties shall have no further obligation of any kind; provided, however, that if the Agreement is terminated by Company, Company shall pay to VINCO or to those who provided services to VINCO an amount equal to the reasonable out-of-pocket costs and expenses related to this Agreement and the transactions contemplated hereby.

## **7. Definitions.**

“**Adverse Effect**” or “**Adverse Change**” means any effect or change that would be, or could reasonably be expected to be, materially adverse to the business, assets, financial condition, operating results, operations, or business prospects of Company or VINCO, as appropriate, or to the ability of Company or VINCO, as appropriate, to consummate timely the transactions contemplated by this Agreement, regardless of whether or not such adverse effect or change can be or has been cured at any time or whether VINCO or Company, as appropriate, has knowledge of such effect or change on the date hereof, including any adverse change, event, development, or effect arising from or relating to: (a) general business or economic conditions, including such conditions related to the business of Company or VINCO, as appropriate, (b) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, (c) financial, banking, or securities markets, including any general suspension of trading in, or limitation on prices for, securities on any national exchange or trading market, (d) changes in GAAP, (e) changes in laws, rules, regulations, orders, or other binding directives issued by any governmental entity, and (f) the taking of any action contemplated by this Agreement and the other agreements contemplated hereby.

“**Affiliate**” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act.

“**Affiliated Group**” means any affiliated group within the meaning of Code §1504(a) or any similar group defined under a similar provision of state, local or foreign law.

“**Code**” means the Internal Revenue Code of 1986, as amended, or any succeeding law.

**“Company SEC Reports”** means each report, schedule, registration statement, definitive proxy statement and other document required to be filed by the Company and its predecessors and officers and directors under the Exchange Act or the Securities Act as such documents have been amended since the time of their filing.

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**“Confidential Information”** means material non-public information concerning the business and affairs of Company and its Subsidiaries, that is confidential or proprietary in nature, relating to (a) Company’s proprietary technology, including any patent applications, trade secrets, methods, data, processes, formulas, instrumentation, techniques, know-how, procedures, enhancements or improvements, or (b) Company’s products or services, systems, finances, methods of operation, strategy, business plans, prospective or existing contracts or other business arrangements, that Company uses reasonable efforts to identify as Confidential Information when provided. Confidential Information does not include information that is or becomes: (i) part of the public domain through no act or omission of the receiving Party, (ii) developed independently by the receiving Party, or (iii) lawfully provided to the receiving Party by a third party not subject to an obligation of confidentiality or otherwise prohibited from transmitting the information.

**“VINCO SEC Reports”** means each report, schedule, registration statement, definitive proxy statement and other document required to be filed by VINCO and its predecessors and officers and directors under the Exchange Act or the Securities Act as such documents have been amended since the time of their filing.

**“Dissenting Share”** means any Company Share held of record by any stockholder who has exercised applicable appraisal rights under the NRS.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

**“GAAP”** means United States generally accepted accounting principles as in effect from time to time, consistently applied.

**“Governmental Authority”** means any national, state, municipal, local or foreign government, any instrumentality, subdivision, court, administrative agency or commission or other authority thereof, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority.

**“Knowledge”** means actual knowledge after reasonable investigation.

**“NRS”** means Nevada Revised Statutes encompassing the General Corporation Law of the State of Nevada, as amended.

**“Ordinary Course of Business”** means the ordinary course of business consistent with past custom and practice, including with respect to nature, quantity and frequency.

**“Nasdaq”** means the Nasdaq stock exchange for trading of securities administered by the NASD.

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**“Person”** means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a governmental entity (or any department, agency, or political subdivision thereof).

**“SEC”** means the Securities and Exchange Commission.

**“Securities Act”** means the Securities Act of 1933, as amended, and the regulations promulgated thereunder.

**“Stockholder Approval”** means the effective affirmative vote of the holders of a majority of the Company Shares or VINCO Shares, as the case may be, in favor of this Agreement and the Merger.

**“Subsidiary”** means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (b) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons will be allocated a majority of such business entity’s gains or losses or will be or control any managing director or general partner of such business entity (other than a corporation). The term “Subsidiary” will include all Subsidiaries of such Subsidiary.

**“Tax” or “Taxes”** means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

**“Tax Return”** means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**“Uncured Breach”** means an unexcused breach of any material representation, warranty or covenant contained in this Agreement, in any material respect, following written notice reasonably specifying the breach and the demanded manner of cure, if and when the breach has continued without cure for a period often (10) days after the notice of breach.

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## **8. General.**

A. Press Releases and Public Announcements. No Party will issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other Parties; provided, however, that any Party may make any public disclosure as may be required by applicable law or any listing or trading agreement concerning its publicly traded securities (in which case the disclosing Party will use its best efforts to advise the other Party prior to making the disclosure).

B. No Third-Party Beneficiaries. This Agreement will not confer any rights or remedies upon any Person other than the Parties and their predecessors and permitted assigns.



C. Succession and Assignment. This Agreement will be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties.

D. Headings. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

E. Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder will be deemed duly given (i) when delivered personally to the recipient, (ii) one (1) business day after being sent to the recipient by reputable overnight courier service, (iii) one (1) business day after being sent to the recipient by facsimile transmission or electronic mail, or (iv) four (4) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to VINCO or Merger Sub:

Vinco Ventures, Inc.  
1 West Broad Street  
Suite 1004  
Bethlehem, PA 18018

If to Company:

ZASH Global Media and  
Entertainment Corporation  
24 Aspen Park Blvd  
East Syracuse, NJ 13057

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

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F. Governing Law. This Agreement will be governed by and construed in accordance with the domestic laws of the State of Nevada without giving effect to any choice or conflict of law provision or rule (whether of the State of Nevada or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Nevada.

G. Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement, shall be resolved by final and binding arbitration in accordance with the commercial rules of the American Arbitration Association. The prevailing party shall be awarded its arbitrator, expert and attorney fees, costs and expenses. Any interim or final award of the arbitrator may be entered in any court of competent jurisdiction.

H. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

I. Attorneys and Expenses. All Parties have been represented by their own separate counsel in connection with this Agreement and the transactions contemplated hereby.

J. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires. The word "including" will mean including without limitation. Time is of the essence of each provision of this Agreement.

K. Incorporation of Exhibits. The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

N. Counterparts. This Agreement may be executed in one or more counterparts, including by means of facsimile, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

O. Entire Agreement. This Agreement, including the attached Exhibits and documents referred to herein, constitutes the entire agreement among the Parties, and supersedes all prior or contemporaneous understandings or agreements, whether written or oral. Neither party has relied upon any promise, representation or undertaking not expressly set forth herein. To the extent that there is any conflict between any provision in this Agreement and any provision in any other agreement to which the Parties are also parties, the provision of this Agreement shall govern.

[SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

VINCO VENTURES, INC.

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By: Christopher Ferguson, CEO

Date:

VINCO ACQUISITION CORP, INC.

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By: Christopher Ferguson, CEO

Date:

RESP127

ZASH GLOBAL MEDIA AND ENTERTAINMENT CORPORATION

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

Date:

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#### **EXHIBIT A**

Zash Global Media and Entertainment Corporation is an evolved network of synergetic companies working together to disrupt the media and entertainment industry as we know it today.

Large and varied, the media and entertainment industry is constantly under pressure to innovate. As a \$703 billion market in the US, representing one-third of the global market, consumer trends indicate further growth, with both Deloitte and Price Waterhouse Coopers expecting significant growth over the next five years. The industry will be targeting new technologies and their potential impact on development, but more important, both established giants and savvy emerging entries will need the ability to pivot quickly — and those less entrenched will hold a strong advantage here.

The COVID-19 pandemic has amplified and accelerated changes in consumer behavior. The industry has had to fast-track change that might not have been attained for many years. As a result, the media and entertainment world has become more user-centric than ever. It's personal — and the ability to leverage technology to deliver personalized content will separate the winners from the losers. A technically superior social media perspective will serve to tie our companies together and the use of AI will enable us to personalize user content with real-time ads shown to the right buyer at the right time.

Zash Global Media and Entertainment Corporation's corporate personality walks an unusual path. Our team is managed by a group of smart, if not somewhat brazen, consummate disrupters who have been to the rodeo before. They have an exceptional ability to pivot because their knowledge and experience is steadfast and unyielding.

Assets to include but not limited to:

- State of the Art Film Studio
- Fortress Media
- American Syndicated Media
- Faith X
- MagnifiU

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#### **EXHIBIT B**

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF VINCO VENTURES, INC.

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# **Exhibit A-2**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934

Date of Report (Date of earliest event reported): April 9, 2021 (March 30, 2021)

**VINCO VENTURES, INC.**

(Exact name of Registrant as specified in its charter)

Nevada  
(State or other jurisdiction  
of incorporation)

001-38448  
(Commission  
File Number)

82-2199200  
(IRS Employer  
Identification No.)

1 West Broad Street, Suite 1004  
Bethlehem, Pennsylvania  
(Address of principal executive offices, including zip code)

(866) 900-0992  
(Registrant's telephone number, including area code)

Check the appropriate box below if the 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions:

- ☐ Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	BBIG	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company ☒ [X]

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☒ [X]

**Item 1.01 Entry Into A Material Definitive Agreement**

As previously disclosed on a Current Report on Form 8-K filed with the Securities and Exchange Commission on January 20, 2021, Vinco Ventures, Inc. (the "Company"), entered into an Agreement to Complete a Plan of Merger (the "Merger Agreement"), by and among the Company, Vinco Acquisition Corporation ("Merger Sub") and wholly owned subsidiary of the Company, and ZASH Global Media and Entertainment Corporation, a Delaware corporation ("ZASH").

On March 30, 2021, the Company, Merger Sub and ZASH entered into that certain First Amendment to Agreement to Complete a Plan of Merger (the "Amendment"), which amends the Merger Agreement to extend the closing date of the merger to on or about May 28, 2021.

Other than as expressly modified by the Amendment, the Merger Agreement, which was filed as Exhibit 10.1 to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on January 21, 2021, remains in full force and effect. The foregoing description of the Amendment does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Amendment, which is attached as Exhibit 10.1 hereto and incorporated herein by reference.

**Item 2.02 Results of Operations and Financial Condition.**

On April 9, 2021, the Company issued a press release announcing the financial and operating results of the Company for the year ended December 31, 2020. The text of the press release is furnished as Exhibit 99.1 and incorporated herein by reference.

**Item 7.01 Regulation FD Disclosure.**

The information set forth in Item 2.02 of this Current Report on Form 8-K is incorporated by reference into this Item 7.01.

Cautionary Note Regarding Forward-Looking Statements

RESP130

This Current Report on Form 8-K includes information that may constitute forward-looking statements. These forward-looking statements are based on the Company's current beliefs, assumptions and expectations regarding future events, which in turn are based on information currently available to the Company. By their nature, forward-looking statements address matters that are subject to risks and uncertainties. Forward looking statements include, without limitation, statements relating to projected industry growth rates, the Company's current growth rates and the Company's present and future cash flow position. A variety of factors could cause actual events and results, as well as the Company's expectations, to differ materially from those expressed in or contemplated by the forward-looking statements. Risk factors affecting the Company are discussed in detail in the Company's filings with the Securities and Exchange Commission. The Company undertakes no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise, except to the extent required by applicable securities laws.

The information in Item 2.02 and Item 7.01 to this Current Report on Form 8-K, including Exhibit 99.1, is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as expressly set forth by specific reference in such filing.

The Press Release can also be found on our website at <https://investors.vincoventures.com/press-releases>.

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#### Item 8.01 Other Events.

On March 30, 2021, the Company issued a press release announcing that on April 12, 2021, at 4:30 pm (Eastern Time), it will be holding an earnings phone call open to the public at which Mr. Christopher B. Ferguson, the Company's Chief Executive Officer, along with Mr. Brett Vroman, the Company's Chief Financial Officer, will be discussing the financial and operating results of the Company for the year ended December 31, 2020.

A copy of the press release is filed hereto as Exhibit 99.2 and is incorporated herein by reference.

#### Item 9.01 Financial Statements and Exhibits.

##### (d) Exhibits

Exhibit No.	Description of Exhibit
10.1	<u>First Amendment to Agreement to Complete a Plan of Merger, dated March 30, 2021, by and among Vinco Ventures, Inc., Vinco Acquisition Corporation and ZASH Global Media and Entertainment Corporation</u>
99.1	<u>Press Release dated April 9, 2021</u>
99.2	<u>Press Release dated March 30, 2021</u>

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#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

##### VINCO VENTURES, INC.

Date: April 9, 2021

By: /s/ Christopher B. Ferguson  
Name: Christopher B. Ferguson  
Title: Chief Executive Officer

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**FIRST AMENDMENT  
TO  
AGREEMENT TO COMPLETE A PLAN OF MERGER**

THIS FIRST AMENDMENT TO AGREEMENT TO COMPLETE A PLAN OF MERGER (this "**Amendment**") is made as of March 30, 2021 by and among Vinco Ventures, Inc., a Nevada corporation ("**VINCO**"), Vinco Acquisition Corporation, a Nevada corporation ("**MERGER SUB**") and wholly owned subsidiary of VINCO, and ZASH Global Media and Entertainment Corporation, a Delaware corporation ("**ZASH**").

**WHEREAS**, on January 20, 2021, the parties hereto entered into that certain Agreement to Complete a Plan of Merger (the "**Agreement**");

**WHEREAS**, the parties hereto wish to amend the Agreement as more particularly set forth below.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Defined Terms.** Capitalized terms used herein and not otherwise defined herein have the meanings ascribed to such terms in the Agreement.

2. **Amendment to Section 1.C. of the Agreement** Section 1.C. of the Agreement shall be deleted in its entirety and replaced with the following:

C. **Closing.** The Closing of the Merger will take place on or about May 28, 2021, but no later than the first business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transaction, other than conditions with respect to actions the respective Parties will take at the Closing itself, or such other time as the Parties may mutually determine (the "Closing").

3. **Amendment to Section 6.A.(1)(e) of the Agreement** Section 6.A.(1)(e) of the Agreement shall be deleted in its entirety and replaced with the following:

(e) the Closing shall not have been consummated on or about May 28, 2021; or

4. **Amendment to Section 6.A.(2)(c) of the Agreement** Section 6.A.(2)(c) of the Agreement shall be deleted in its entirety and replaced with the following:

(c) the Closing shall not have been consummated on or about May 28, 2021; or

5. **Survival.** To the extent not expressly amended hereby, the parties hereto acknowledge and agree that the Agreement remains unchanged and in full force and effect in its entirety, which such terms are hereby ratified and confirmed.

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6. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada without regard to its rules of conflict of laws.

7. **Effect of Amendment.** This Amendment will be deemed effective as of the date first written above. Whenever the Agreement is referred to in the Agreement or in any other agreements, documents and instruments, such reference shall be deemed to be to the Agreement as amended by this Amendment.

8. **Counterparts; Facsimile.** This Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Remainder of Page Intentionally Left Blank]

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**IN WITNESS WHEREOF**, ZASH, VINCO and MERGER SUB caused this Amendment to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

**VINCO VENTURES, INC.**

By: /s/ Christopher Ferguson  
Name: Christopher Ferguson  
Title: CEO

**VINCO ACQUISITION CORPORATION**

By: /s/ Christopher Ferguson  
Name: Christopher Ferguson  
Title: CEO

**ZASH GLOBAL MEDIA AND ENTERTAINMENT CORPORATION**

By: /s/ Theodore Farnsworth  
Name: Theodore Farnsworth  
Title: CEO

[Amendment No. 1 to Merger Agreement]

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**RESP132**



## Vinco Ventures, Inc. Reports Financial Results for the Year Ended December 31, 2020

Bethlehem, P.A., April 9, 2021 (GLOBE NEWSWIRE) – Vinco Ventures (f/k/a Edison Nation, Inc.) (NASDAQ:BBIG), a digital media merger and acquisitions company, today announced results for the year ended December 31, 2020, operated until November 12, 2020 as Edison Nation, a multifaceted ecosystem that fosters innovation and drives IP, media and consumer products

### Company Highlights

- Revenue increased 26.01% for the twelve months ended December 31, 2020 versus the twelve months ended December 31, 2019.
- Company enters into Agreement to Complete a Plan of Merger with ZASH Global Media and Entertainment Corporation
- Company completes sale of Subsidiary, SRM Entertainment Ltd
- Company commences trading under new ticker “BBIG” and launches the “Be Big” corporate strategy: Buy, Innovate and Grow focused on digital media mergers and acquisitions.
- Company closes on a Purchase and Sale Agreement to acquire all outstanding membership units of TBD Safety, LLC; whose assets included 911 Help Now product and patents.
- Company purchases Honey Badger Media, LLC (a Nevada entity), a full-service content monetization company, which was launched through transactions with Honey Badger Media, LLC.
- Company introduces new Chief Strategy Officer Brian McFadden, who will concentrate on the new “Be Big” strategy and will lead the charge on targeting acquisitions that ensure long term growth.

### Twelve Months End December 31, 2020 Financial Summary

#### Revenue

- Revenue for the twelve months ended December 31, 2020 increased to \$15.8 million as compared to \$12.5 million for the twelve months ended December 31, 2019, a 26.01% increase.
- Gross Profit for the twelve months ended December 31, 2020 decreased to \$4.37 million as compared to \$4.99 million for the twelve months ended December 31, 2019, a 12.28% decrease.
- Gross Margin for the twelve months ended December 31, 2020 decreased to 27.74% as compared to 39.85% for the twelve months ended December 31, 2019, a 12.11% decrease.

#### Net Loss

- Net loss for the twelve months ended December 31, 2020 was \$5.07 million, or (\$0.37) per basic and diluted share, compared to a net loss of \$14.19 million, or (\$2.36) per basic and diluted share for the twelve months ended December 31, 2019.

#### Adjusted EBITDA

- Adjusted EBITDA, a non-GAAP measure, totaled a negative \$0.292 million for the twelve months ended December 31, 2020, compared to a negative \$11.599 million for the twelve months ended December 31, 2019.

See below, under the heading “Use of Non-GAAP Financial Information,” for a discussion of Adjusted EBITDA and a reconciliation of such measure to the most comparable measure calculated under U.S. generally accepted accounting principles (“GAAP”).

For the years ended December 31, 2020 and 2019, EBITDA and Adjusted EBITDA consisted of the following:

	For the Years Ended December 31,	
	2020	2019
Net (loss) income from continuing operations	\$ (5,065,186)	\$ (14,198,980)
Net (loss) income from discontinued operations	(642,632)	
Interest expense, net	3,378,131	1,298,168
Income tax expense (benefit)	30,137	(19,547)
Depreciation and amortization	1,381,366	1,321,186
<b>EBITDA</b>	(918,184)	(11,599,173)
Stock-based compensation	3,241,764	2,299,915
Impairment	-	4,443,000
Restructuring and severance costs	765,867	446,114
Transaction and acquisition costs	258,639	447,908
Other non-recurring costs	107,469	1,520,777
Gain on divestiture	(6,153,674)	-
<b>Adjusted EBITDA</b>	<b>\$ (2,698,119)</b>	<b>\$ (2,441,459)</b>

“Increasing revenues during 2020’s pandemic crisis demonstrates the ability of the Company to adapt and scale quickly in a new environment. Leveraging that knowledge and momentum, we are continuing forward into 2021 excited for our pending merger with ZASH Global Media and Entertainment. With some great opportunities on the horizon, we remain focused on the digital media mergers and acquisitions market and will continue to BE BIG” said CEO Christopher Ferguson.

## Twelve Months 2020 Earnings Conference Call

The Company is pleased to announce that it will hold its December 31, 2020 Year End Earnings Conference Call on Monday, April 12, 2021 at 4:30 pm Eastern Time, which will be presented by Mr. Christopher Ferguson - Chief Executive Officer, and Mr. Brett Vroman – Chief Financial Officer.

### The conference call can be accessed through the following numbers:

1-877-407-0782 (U.S. participants)  
1-201-689-8567 (International participants)

To access the live webcast presentation, visit:

<https://www.webcaster4.com/Webcast/Page/2479/40618>

A webcast replay will be available until April 12, 2022.

## About Vinco Ventures, Inc.

Vinco Ventures, Inc. (BBIG) is a consumer products and digital marketing company which aims to advance both product and people brand recognition through its digital marketing and technology platform while reshaping how those are monetized and marketed. Vinco’s B.I.G. (Buy. Innovate. Grow.) strategy seeks out acquisition opportunities that allow for the generation of digital traffic geared towards growth and profitability. For more information, please view our [investor presentation](#) or visit [Investors.vincoventures.com](http://Investors.vincoventures.com).

## Use of Non-GAAP Financial Information

EBITDA and Adjusted EBITDA is a financial measure that is not calculated in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”). Management believes that because Adjusted EBITDA excludes (i) certain non-cash expenses (such as depreciation, amortization and stock-based compensation) and (ii) expenses that are not reflective of the Company’s core operating results over time (such as restructuring costs, litigation or dispute settlement charges or gains, and transaction-related costs), this measure provides investors with additional useful information to measure the Company’s financial performance, particularly with respect to changes in performance from period to period. Edison Nation management uses EBITDA and Adjusted EBITDA (a) as a measure of operating performance; (b) for planning and forecasting in future periods; and (c) in communications with the Company’s Board of Directors concerning the Company’s financial performance. The Company’s presentation of EBITDA and Adjusted EBITDA are not necessarily comparable to other similarly titled captions of other companies due to different methods of calculation and should not be used by investors as a substitute or alternative to net income or any measure of financial performance calculated and presented in accordance with U.S. GAAP. Instead, management believes EBITDA and Adjusted EBITDA should be used to supplement the Company’s financial measures derived in accordance with U.S. GAAP to provide a more complete understanding of the trends affecting the business.

## Forward-Looking Statements

*This press release contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, included in this press release regarding strategy, future operations and plans, including assumptions underlying such statements, are forward-looking statements, and should not be relied upon as representing the Company’s views as of any subsequent date. Such forward-looking statements are based on information available to the Company as of the date of this release and involve a number of risks and uncertainties, some beyond the Company’s control, that could cause actual results to differ materially from those anticipated by these forward-looking statements, including consumer, regulatory and other factors affecting demand for the Company’s products, any difficulty in marketing the Company’s products in global markets, competition in the market for consumer products and inability to raise capital to fund operations and service the Company’s debt. Additional information that could lead to material changes in the Company’s performance is contained in its filings with the SEC. The Company is under no obligation to, and expressly disclaims any responsibility to, update or alter forward-looking statements contained in this release, whether as a result of new information, future events or otherwise.*

## Vinco Ventures, Inc. and Subsidiaries CONSOLIDATED BALANCE SHEETS (Unaudited)

	December 31, 2020	December 31, 2019
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 249,356	\$ 234,234
Accounts receivable, net	1,603,127	1,304,783
Inventory	1,687,462	1,242,486
Prepaid expenses and other current assets	784,238	885,766
Income tax receivable	-	-
Short-term investments	1,018,000	-
Current assets of discontinued operation	-	1,288,096
Total current assets	5,342,183	4,955,365
Property and equipment, net	1,010,801	875,919
Right of use assets, net	153,034	732,100
Intangible assets, net	15,538,337	11,598,063
Goodwill	5,983,852	5,392,123
Non-current assets of discontinued operation	-	56,049
Total assets	\$ 28,028,207	\$ 23,609,619
<b>Liabilities and stockholders’ equity</b>		
Current liabilities:		
Accounts payable	\$ 4,105,794	\$ 6,015,595
Accrued expenses and other current liabilities	2,101,610	1,485,062
Deferred revenues	152,040	159,591
Current portion of operating leases liabilities	96,777	272,215
Income tax payable	27,643	22,919



Line of credit, net of debt issuance costs of \$15,573 and \$15,573, respectively	1,500,953	456,995
Current portion of convertible notes payable	577,260	-
Current portion of notes payable, net of debt issuance costs of \$212,848 and \$212,848, respectively	1,301,212	1,365,675
Current portion of notes payable – related parties	1,389,923	1,686,352
Due to related party	32,452	17,253
Current liabilities of discontinued operation	-	1,491,662
Total current liabilities	11,285,663	12,973,319
Operating leases liabilities – net of current portion	58,713	482,212
Convertible notes payable – related parties, net of current portion, net of debt discount of \$366,666 and \$366,666, respectively	1,161,495	1,061,495
Notes payable, net of current portion	595,879	42,492
Notes payable – related parties, net of current portion	1,403,756	1,595,669
Non-current liabilities of discontinued operation	-	-
Total liabilities	\$ 14,505,506	\$ 16,155,187
Commitments and Contingencies (Note 15)		
<b>Stockholders' equity</b>		
Preferred stock, \$0.001 par value, 30,000,000 shares authorized as of December 31, 2020 and December 31, 2019, respectively	\$ -	\$ -
Series B Preferred Stock, \$0.001 par value, 1,000,000 shares authorized; 764,618 and 0 shares issued and outstanding as of December 31, 2020 and 2019, respectively	765	-
Common stock, \$0.001 par value, 250,000,000 shares authorized 14,471,403 and 8,015,756 shares issued and outstanding as of December 31, 2020 and 2019, respectively	14,471	8,016
Additional paid-in-capital	39,050,260	26,259,575
Accumulated deficit	(23,648,898)	(18,495,461)
Total stockholders' equity attributable to Vinco Ventures, Inc.	15,416,598	7,772,130
Noncontrolling interests	(1,893,897)	(317,698)
Total stockholders' equity	13,522,701	7,454,432
Total liabilities and stockholders' equity	\$ 28,028,207	\$ 23,609,619

**Vinco Ventures, Inc. and Subsidiaries**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited)

	Years Ended December 31,	
	2020	2019
<b>Revenues, net</b>	\$ 15,781,319	\$ 12,523,432
Cost of revenues	11,403,474	7,523,669
<b>Gross profit</b>	4,377,845	4,990,763
<b>Operating expenses:</b>		
Selling, general and administrative	12,280,192	14,085,195
Gain on change in fair value of earnout liability	-	(520,000)
Impairment of goodwill	-	4,443,000
Total operating expenses	12,280,192	18,008,195
Operating loss	(7,902,347)	(13,017,432)
<b>Other (expense) income:</b>		
Rental income	102,815	102,815
Interest expense	(3,378,131)	(1,299,153)
Change in fair value of short-term investments	(22,000)	-
Gain on divestiture	6,153,674	-
Other income	-	3,054
Total other income (expense)	2,856,358	(1,193,284)
Loss before income taxes	(5,045,989)	(14,210,716)
Income tax (benefit) expense	(19,197)	(22,373)
<b>Net loss</b>	(5,065,186)	(14,188,343)
<b>Net (loss) income attributable to noncontrolling interests</b>	(554,382)	(1,269,274)
<b>Net loss attributable to Vinco Ventures, Inc.</b>	(4,510,804)	(12,919,069)
<b>Net loss from discontinued operations</b>	(629,692)	(7,811)
<b>Provision for income taxes for discontinued operations</b>	12,940	2,826
<b>Net loss attributable to Vinco Ventures, Inc.</b>	\$ (5,153,436)	\$ (12,929,706)
Net loss per share - basic and diluted	\$ (0.37)	\$ (2.36)
Weighted average number of common shares outstanding – basic and diluted	14,058,101	6,026,049

**Vinco Ventures, Inc. and Subsidiaries**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited)

RES-135  
Years Ended December 31,

	2020	2019
<b>Cash Flows from Continuing Operations</b>		
<b>Cash Flow from Operating Activities</b>		
Net loss attributable to Vinco Ventures, Inc.	\$ (4,510,804)	\$ (12919,069)
Net loss attributable to noncontrolling interests	(554,382)	(1,269,274)
Net loss	(5,065,186)	(14,188,343)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,353,822	1,284,251
Amortization of debt issuance costs	2,357,879	944,437
Stock-based compensation	3,241,554	2,299,915
Change in fair value of earnout	-	(520,000)
Change in fair value of short-term investment	22,000	-
Impairment of goodwill	-	4,443,000)
Deferred tax liability	-	(341)
Amortization of right of use asset	579,066	295,106
Gain on divestiture of Cloud B	(4,911,761)	-
Gain on divestiture of SRM	(1,241,914)	-
Changes in assets and liabilities:		
Accounts receivable	(2,019,009)	(73,437)
Inventory	47,817	(397,673)
Prepaid expenses and other current assets	868,168	(720,240)
Accounts payable	2,055,055	1,356,873
Accrued expenses and other current liabilities	155,815	511,842
Operating lease liabilities	(598,937)	(272,779)
Due to/from related party	1,167,846	395,300
<b>Net cash provided by (used in) operating activities from continuing operations</b>	<b>(1,987,785)</b>	<b>(4,641,748)</b>
<b>Cash Flows from Investing Activities</b>		
Purchases of property and equipment	(276,478)	(151,502)
Acquisitions, net of cash	180,489	-
Purchase of licensing agreement	(1,552,500)	-
<b>Net cash used in investing activities from continuing operations</b>	<b>(1,648,489)</b>	<b>(151,502)</b>
<b>Cash Flows from Financing Activities</b>		
Net borrowings under line of credit	1,028,385	-
Borrowings under convertible notes payable	2,067,123	1,111,111
Borrowings under notes payable	1,944,479	2,482,500
Borrowings under notes payable – related parties	250,000	-
Repayments under line of credit	-	(90,382)
Repayments under notes payable	(1,042,946)	(1,231,744)
Repayments under notes payable – related parties	(119,509)	(182,170)
Fees paid for financing costs	(157,055)	(581,496)
Net proceeds from issuance of common stock – net of offering costs of \$310,697	-	2,048,562
Net proceeds from issuance of common stock – warrants	250,000	-
Distributions	(296,425)	-
<b>Net cash provided by financing activities from continuing operations</b>	<b>3,924,052</b>	<b>3,556,381</b>
<b>Cash Flow from Discontinued Operations</b>		
<b>Net cash used in operating activities from discontinued operations</b>	<b>(178,485)</b>	<b>(394,707)</b>
<b>Net cash used in investing activities from discontinued operations</b>	<b>-</b>	<b>(8,436)</b>
<b>Net cash used in financing activities from discontinued operations</b>	<b>-</b>	<b>-</b>
<b>Net cash used from discontinued operations</b>	<b>(178,485)</b>	<b>(403,143)</b>
<b>Net increase (decrease) in cash and cash equivalents from continuing operations</b>	<b>15,122</b>	<b>(1,236,869)</b>
<b>Net increase (decrease) in cash and cash equivalents from discontinued operations</b>	<b>(178,485)</b>	<b>(403,143)</b>
<b>Cash and cash equivalents - beginning of year</b>	<b>234,234</b>	<b>2,052,731</b>
<b>Cash and cash equivalents - end of year</b>	<b>\$ 249,356</b>	<b>\$ 412,719</b>
<b>Supplemental Disclosures of Cash Flow Information</b>		
Cash paid during the period for:		
Interest	\$ 218,038	\$ 260,444
Income taxes	\$ (14,738)	\$ 235,275
Shares issued to note holders	\$ 1,409,396	\$ -
Shares issued for the asset acquisition of Uber Mom	\$ -	\$ 98,613
Shares issued for the divestiture of Cloud B, Inc.	\$ 405,000	\$ -
Conversions under notes payable	\$ 1,524,000	\$ -
Issuance of warrants to note holders	\$ 852,277	\$ -
Change in fair value of earnout	\$ 200,000	\$ (520,000)
Distribution for issuance of shares to noncontrolling interest members of Global Clean Solutions, LLC	\$ 699,000	\$ -
Right of use assets	\$ -	\$ 943,997
Operating lease liabilities	\$ -	\$ 943,997

The financial information contained in this press release is preliminary and is based on the latest estimated unaudited management accounts for the year ended December 31, 2020. Such information is not a comprehensive statement of Vinco Ventures' results for, and as of, the year ended December 31, 2020, and is subject to the completion of management's and audit committee's reviews and other financial closing processes and potential adjustments. Accordingly, Vinco Ventures' actual results as of, and for, the year ended December 31, 2020 may differ materially from the preliminary estimated data presented in this press release

The information contained in this press release has not been, and is not based on information that has been, audited, or reviewed by Vinco Ventures' independent auditor. Investors are cautioned not to place undue reliance on these preliminary estimates.

This preliminary estimated data should not be considered a substitute for the audited financial results for the year ended December 31, 2020, to be filed with the Securities and Exchange Commission (the "SEC") on Form 10-K, which Vinco Ventures expects to occur on or before April 12, 2021.

**Investor Relations:**

Aimee Carroll  
Phone (866) 900-0992  
Email: [Investors@vincoventures.com](mailto:Investors@vincoventures.com)

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March 30, 2021



## **Vinco Ventures to Host Fourth Quarter and Full Year 2020 Conference Call on April 12, 2021 and Provide Update to ZASH Global Media and Entertainment Merger**

Bethlehem, PA, March 30, 2021 (GLOBE NEWSWIRE) — Vinco Ventures, Inc. (Nasdaq: BBIG) (“Vinco”), a mergers and acquisition company focused on the digital media space, today announced it will complete its Form 10-K filing for the fiscal year ended December 31, 2020, on or before April 9, 2021, and host a conference call to discuss its fourth quarter and full year results on April 12, 2021.

### **Vinco 2020 Year-End Conference Call**

**Event Date:** Monday April 12, 2021

**Event Time:** 4:30PM Eastern Standard Time

**Event Duration:** 60 minutes

**The conference call can be accessed through the following numbers:**

1-877-407-0782 (U.S. participants)

1-201-689-8567 (International participants)

To access the live webcast presentation, visit:

<https://www.webcaster4.com/Webcast/Page/2479/40618>

A webcast replay will be available until April 12, 2022.

### **Conference Replay:**

A teleconference replay will be available until April 26, 2021.

1-877-481-4010 (U.S. participants)

1-919-882-2331 (International participants)

Passcode: 40618

### **Vinco and ZASH Global Media and Entertainment Corporation (“ZASH”) Merger Update:**

Vinco’s wholly-owned merger subsidiary, Vinco Acquisition Corporation (“Merger Sub”), and ZASH have extended the period to close their merger until May 28, 2021, in order to provide the parties with additional time to formalize a final definitive agreement and plan of merger and to achieve the parties’ respective closing conditions, including the completion of an audit of Singapore based Lomotif Private Limited, which ZASH intends to acquire concurrently with its merger with Vinco. Vinco, Merger Sub and ZASH formalized this extension pursuant to a First Amendment to the current Agreement to Complete a Plan of Merger, which was executed by the parties and filed with the SEC on March 30, 2021, on Form 8-K.

### **About Vinco Ventures, Inc.**

Vinco Ventures, Inc. (BBIG) is a mergers and acquisition company focused on digital commerce and consumer brands. Vinco’s B.I.G. (Buy. Innovate. Grow.) strategy will seek out acquisition opportunities that are poised for scale and grow said acquisitions through targeted traffic and content campaigns. For more information, please view our [investor presentation](#) or visit [Investors.vincoventures.com](http://Investors.vincoventures.com).

### **Forward-Looking Statements and Disclaimers**

To the extent any statements contained in this press release contains “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995 and the information that are based upon beliefs of, and information currently available to, the company’s management as well as estimates and assumptions made by the company’s management. These statements can be identified by the fact that they do not relate strictly to historic or current facts. When used in this presentation the words “estimate,” “expect,” “intend,” “believe,” “plan,” “anticipate,” “projected” and other words or the negative of these terms and similar expressions as they relate to the company or the company’s management identify forward-looking statements. These forward-looking statements include statements regarding the company’s acquisition and growth strategies, including its anticipated acquisition targets. Such statements reflect the current view of the company with respect to future events and are subject to risks, uncertainties, assumptions and other factors relating to the company’s industry, its operations and results of operations and any businesses that may be acquired by the company. Should one or more of these risks or uncertainties materialize, or the underlying assumptions prove incorrect, actual results may differ significantly from those anticipated, believed, estimated, expected, intended, or planned. Although the company believes that the expectations reflected in the forward-looking statements are reasonable, the company cannot guarantee future results, performance, or achievements. Except as required by applicable law, including the security laws of the United States, the company does not intend to update any of the forward-looking statements to conform these statements to actual results.

### **Investor Relations:**

Aimee Carroll

Phone: 866-900-0992

Email: [Investors@vincoventures.com](mailto:Investors@vincoventures.com)





# **Exhibit A-3**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 28, 2021 (May 28, 2021)

**VINCO VENTURES, INC.**

(f/k/a Edison Nation, Inc.)  
(Exact Name of Registrant as Specified in Charter)

<hr/> <b>Nevada</b> (State or other jurisdiction of incorporation)	<hr/> <b>001-38448</b> (Commission File Number)	<hr/> <b>82-2199200</b> (IRS Employer Identification No.)
<hr/> <b>1 West Broad Street, Suite 1004 Bethlehem, Pennsylvania</b> (Address of principal executive offices)		<hr/> <b>18018</b> (Zip Code)
<hr/> <b>(866) 900-0992</b> (Registrant's Telephone Number, Including Area Code)		

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<hr/> <b>Title of each class</b>	<hr/> <b>Trading Symbol(s)</b>	<hr/> <b>Name of each exchange on which registered</b>
Common Stock, \$0.001 par value per share	BBIG	Nasdaq

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒ [X]

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☒ [X]

**Item 1.01. Entry into a Material Definitive Agreement**

As previously reported by Vinco Ventures, Inc. (the "Company") in its Current Report on Form 8-K filed with the Securities and Exchange Commission on January 21, 2021, the Company, Vinco Acquisition Corporation and ZASH Global Media and Entertainment Corporation ("ZASH")(together, the "Parties") entered into an Agreement to Complete a Plan of Merger (the "Agreement"). On March 30, the Parties entered into that certain First Amendment to the Agreement ("First Amendment") to extend the closing date of the merger to on or about May 28, 2021.

On May 28, 2021, the Parties entered into that certain Second Amendment to the Agreement (the "Second Amendment") to define certain milestones with dates to be completed to consummate the closing of the Lomotif Private Limited ("Lomotif") acquisition and the ZASH merger; (i) the Company and ZASH intend to acquire Lomotif through their joint venture, ZVV Media Partners, LLC (the "Joint Venture"); (ii) the Parties have completed an Amended and Restated Limited Liability Company Agreement for the Joint Venture in preparation for the anticipated acquisition of Lomotif through the Joint Venture; (iii) Gemini Valuation Services will complete and present an independent third-party valuation on ZASH on or before June 11, 2021; (iv) sign the final Agreement and Plan of Merger and Reorganization on or before June 24, 2021; (v) issue a formal proxy to shareholders for the approval of the ZASH merger with the Company on or before July 15, 2021; and (vi) extend the closing date to August 31, 2021, but no later than the first business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transaction.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

RESP141

Exhibit No.	Description
10.1	<u>Second Amendment to Agreement to Complete a Plan of Merger dated May 28, 2021</u>

# SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: May 28, 2021

## VINCO VENTURES, INC.

By: /s/ Christopher B. Ferguson  
Name: Christopher B. Ferguson  
Title: Chief Executive Officer



**SECOND AMENDMENT  
TO  
AGREEMENT TO COMPLETE A PLAN OF MERGER**

THIS SECOND AMENDMENT TO AGREEMENT TO COMPLETE A PLAN OF MERGER (this "**Second Amendment**") is made as of May \_\_, 2021 by and among Vinco Ventures, Inc., a Nevada corporation ("**VINCO**"), Vinco Acquisition Corporation, a Nevada corporation ("**MERGER SUB**") and wholly owned subsidiary of VINCO, and ZASH Global Media and Entertainment Corporation, a Delaware corporation ("**ZASH**").

**WHEREAS**, on January 20, 2021, the parties hereto entered into that certain Agreement to Complete a Plan of Merger (the "**Agreement**");

**WHEREAS**, on March 30, 2021, the parties hereto entered into that certain First Amendment to Agreement to Complete a Plan of Merger (the "**First Amendment**");

**WHEREAS**, the parties hereto wish to further amend the Agreement as more particularly set forth below and intend that this Second Amendment supersede and replace the First Amendment, in its entirety, effective as of the date first set forth above.

**WHEREAS**, the parties have agreed that Lomotif Private Limited will be acquired by the Zash Global Media and Entertainment and Vinco Ventures, Inc. through the Joint Venture entity; ZVV Media Partners, LLC;

**WHEREAS**, the parties have completed an Amended Operating Agreement for ZVV Media Partners, LLC (Joint Venture) in preparation for the anticipated closing of the Lomotif Private Limited Acquisition into the Joint Venture;

**WHEREAS**, as of the date of filing, the parties have hereby agreed to a Deed of Variation and Supplement, upon completion making ZVV Media Partners, LLC the legal party to the signed definitive purchase agreements of Lomotif Private Limited;

**WHEREAS**, Gemini Valuation Services will complete and present an independent third party valuation on ZASH Global Media and Entertainment Corp on or before June 11, 2021;

**WHEREAS**, the parties intend to sign the final Plan of Merger on or before June 24, 2021;

**WHEREAS**, the parties intend to issue a formal proxy to shareholders for the approval of the ZASH Global Media and Entertainment merger with Vinco Ventures, Inc on or before July 15, 2021

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Defined Terms.** Capitalized terms used herein and not otherwise defined herein have the meanings ascribed to such terms in the Agreement.

2. **Amendment to Section 1.C. of the Agreement** Section 1.C. of the Agreement shall be deleted in its entirety and replaced with the following:

**C. Closing.** The Closing of the Merger will take place on or about August 31, 2021, but no later than the first business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transaction, other than conditions with respect to actions the respective Parties will take at the Closing itself, or such other time as the Parties may mutually determine (the "Closing").

3. **Amendment to Section 6.A.(1)(e) of the Agreement** Section 6.A.(1)(e) of the Agreement shall be deleted in its entirety and replaced with the following:

(e) the Closing shall not have been consummated on or about August 31, 2021; or

4. **Amendment to Section 6.A.(2)(c) of the Agreement** Section 6.A.(2)(c) of the Agreement shall be deleted in its entirety and replaced with the following:

(c) the Closing shall not have been consummated on or about August 31, 2021; or

5. **Survival.** To the extent not expressly amended hereby, the parties hereto acknowledge and agree that the Agreement remains unchanged and in full force and effect in its entirety, which such terms are hereby ratified and confirmed.

6. **Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of Nevada without regard to its rules of conflict of laws.

7. **Effect of Amendment.** This Second Amendment will be deemed effective as of the date first written above. Whenever the Agreement is referred to in the Agreement or in any other agreements, documents and instruments, such reference shall be deemed to be to the Agreement as amended by this Second Amendment.

8. **Counterparts; Facsimile.** This Second Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, ZASH, VINCO and MERGER SUB caused this Amendment to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

**VINCO VENTURES, INC.**

By: \_\_\_\_\_  
Name: Christopher Ferguson

**RESP143**

Title: CEO

**VINCO ACQUISITION CORPORATION**

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

Name: Christopher Ferguson

Title: CEO

**ZASH GLOBAL MEDIA AND ENTERTAINMENT CORPORATION**

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

Name: Theodore Farnsworth

Title: CEO

*[Second Amendment to Agreement to Complete a Plan of Merger Agreement]*

---

# **Exhibit A-4**

We are not required by current SEC rules to include, and do not include, an auditor's attestation report regarding our internal controls over financial reporting. Accordingly, our registered public accounting firm has not attested to management's reports on our internal control over financial reporting.

#### ITEM 9B. OTHER INFORMATION

In lieu of filing a Current Report on Form 8-K containing an Item 3.01 disclosure, the Company is making the following disclosure in this Form 10-K. In connection with the Company preparing its Form 10-K for the year ended December 31, 2021, the Company became aware that Phillip McFillin, a current director serving on the Company's Board of Directors (the "Board"), received compensation in excess of \$120,000 for services rendered to the Company prior to being elected to the Board and, therefore, is not and has not been independent.

On April 14, 2022, Mr. McFillin resigned from membership on the Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee. The Company also informed Nasdaq that the Company no longer has a majority independent board and the Audit Committee no longer consists of three independent directors. The Company and the Board have commenced a search for additional independent directors to add to the Board and replace Mr. McFillin on the Audit Committee. The Company intends to regain compliance with the Nasdaq listing requirements as soon as practicable.

#### ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not Applicable.

### PART III

#### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The following table sets forth information about our directors and executive officers.

Name	Age	Position(s)
<b><i>Executive Officers and Directors</i></b>		
Lisa King	53	Chief Executive Officer, President and Director
Philip Jones	53	Chief Financial Officer
Stephen Garrow	59	Chief Operating Officer
Roderick Vanderbilt	56	Chairman
Phillip A. McFillin	54	Director
Michael J. DiStasio (1)(2)(3)(4)	55	Director
Elliot Goldstein (1)(2)(3)(5)(6)	45	Director

- (1) Member of the Audit Committee
- (2) Member of the Compensation Committee
- (3) Member of the Corporate Governance and Nominating Committee
- (4) Chair of Audit Committee
- (5) Chair of the Compensation Committee
- (6) Chair of the Corporate Governance and Nominating Committee

#### Executive Officers and Directors

**Lisa King** has served as our Chief Executive Officer, President, and a member of our board of directors since October 2021. Ms. King has more than 25 years of professional experience as a marketing and branding leader, C-suite executive, and consultant. From January 2021 until October 2021, Ms. King served as the Chief Executive Officer of ZASH, where she, together with ZASH's corporate founders, led the development of ZASH's short- and long-term business strategies. From June 2021 Ms. King has served as one of ZASH's designees to the board of managers of ZVV, and as of December 30, 2021, Ms. King resigned as ZASH's designee to the board of managers of ZVV and was appointed as one of our appointees to the board of managers of ZVV. Ms. King is currently the Chairman, Chief Executive Office and controlling stockholder of Magnifi U Inc., a company that provides a learning experience platform for personal and professional development, which she founded in August 2020, of which ZASH is a minority stockholder. From January 2018 to December 2020, Ms. King served as the President of Daneli Partners, LLC, a leadership development company she co-founded. From June 2014 to January 2018, Ms. King served as the Managing Partner for Chase Design, a design consulting firm for consumer packaged goods companies, where she was in charge of global markets, sales and planning as well as customer business development. From June 2004 to May 2018, she served as the Senior Vice President of Marketing and as Creative Director for Raymour & Flanigan Furniture, an American furniture retail chain. Her other previous positions included serving as the Vice President of Advertising for Galyan's Sports & Outdoor Adventure and as the Director of Advertising for Dick's Sporting Goods. Ms. King is the author of the book, "Just Do You: Authenticity, Leadership and Your Personal Brand." Ms. King received a Bachelor of Science degree in Business Administration from Indiana Wesleyan University in 2003.

**Philip Jones** has served as our Chief Financial Officer since November 2021. Mr. Jones has served as our Chief Financial Officer since November 22, 2021. Since December 30, 2021, Mr. Jones has served as the Chief Financial Officer of ZVV and as one of our appointees to the board of managers of ZVV. Prior to joining the Company, from June 2019 to November 2021, Mr. Jones was Chief Financial Officer of Greenlight Networks, a high-speed internet service provider in Rochester, NY. From June 2005 to May 2019, Mr. Jones held various positions at DSS, Inc. (NYSE American: DSS), as Controller and Principal Accounting Officer from June 2005 to May 2009, and as its Chief Financial Officer from May 2009 to May 2019. In addition, Mr. Jones held financial management positions at Zapata Corporation, a public holding company, and American Fiber Systems, a private telecom company. In addition, Mr. Jones was a CPA at PricewaterhouseCoopers and Arthur Andersen. Mr. Jones holds a bachelor's degree in Economics from SUNY Geneseo (1991) and an MBA from the Rochester Institute of Technology (1994).

**Stephen Garrow** has served as our Chief Operating Officer since October 2021. Mr. Garrow has more than twenty-five years of experience in leading organizations in the securities industry, manufacturing, technology, and the non-profit sector. From March 2021 to October 2021, he served as the President and Chief Business Development Officer of ZASH where he, together with ZASH's corporate founders, led the structuring and building of the various lines of business inside the ZASH ecosystem. Until 2021, Mr. Garrow was CEO of Rushmore Associates, founded in 2009, an independent business advisory firm providing customized financial and business advice to families and professional athletes. From 2014 to 2016, Mr. Garrow was CEO and Founder of LexMar Global, a manufacturer of analyzers to the oil and gas industry. From 2016 to 2019 Mr. Garrow was a Managing Partner of Kayon Partners, a venture firm making early-stage investments in growth companies. From 1995 to 2009, Mr. Garrow was CEO and founder of two institutional broker dealers -Fano Securities and GaveKal Securities – which provided global equity and currency trading for institutional clients. For the past four years he has been board chair of the Vin Baker Bouncing Back Foundation, an organization assisting those with addiction, and has also served on a number of non-profit boards and advisory boards. Among them: Prosperity Candle, creating jobs for women in under-developed countries; the Maryknoll Foundation, overseeing the Mission's investments; and The Amherst College Center for Community Engagement, fostering collaboration to sustain communities. Mr. Garrow served as Special Advisor to Wafra Investments, a Kuwait-based private equity fund from 2005 to 2006. Since 2010, Mr. Garrow has acted as Entrepreneur-in-Residence at the Berkley Entrepreneurship Center at NYU's Stern School of Business where he is an adjunct professor leading seminars in innovation, and Entrepreneurship Through Acquisition. Mr. Garrow graduated from Amherst College with a Bachelor of Arts in English Literature and received his MBA in Finance from the NYU Stern School of Business.

**Roderick Vanderbilt** has served as Chairman of our board of directors since October 2021 and as our Business Development Manager since January 2022. From January 2021 to October 2021, Mr. Vanderbilt served as the Business Development Manager of ZASH. From June 2021 to December 30, 2021, Mr. Vanderbilt served as one of ZASH's appointees to the board of managers of ZVV. Since November 2004, Mr. Vanderbilt has served as the President of OceanMark Properties, Inc., a brokerage firm licensed in the State of Florida structured for multi-faceted real estate transactions including commercial, residential, and government-held properties. From October 2017 to September 2019, he served as Brand Manager of MoviePass, Inc., where he served in brand management and public relations capacities. Additionally, Mr. Vanderbilt served in Revenue Reporting at 20th Century Fox Film Corporation where he reported directly to the President and oversaw the video division from October 1991 to May 1993, Mr. Vanderbilt is also currently the President of Farwest Haiti Mission providing food and medical services as a non-profit organization providing support to the Haitian people, which he co-founded in 2007 with Theodore Farnsworth, the Chairman of ZASH and a member of the board of managers of ZVV. Mr. Vanderbilt received a BS. in Business Administration from Lynn University in December 1989.

**Phillip A. McFillin** has over 25 years of experience representing a diverse group of companies as counsel or business advisor in a range of legal and business matters ranging from complex multidistrict litigation to venture capital transactions. Mr. McFillin has served as our outside general counsel from April 2019 to October 14, 2021 and was elected as a member of our board of directors on October 14, 2021. As counsel, Mr. McFillin has represented the Company in litigation matters and corporate transactions including mergers, acquisitions and private offerings of debt and equity securities. From February 2015 to March 2019, Mr. McFillin served as the in-house general counsel to FTE Networks, Inc. a public telecommunications infrastructure company. From 2013 to 2015, he provided legal and consulting services to a multinational toy manufacturer, a logistics, staffing and recruiting firm, and a private real estate investment fund. Mr. McFillin received a Bachelor of Arts degree from Temple University in May 1990, a Master of Business Administration from the Fox School of Business at Temple University in June 1991 and a Juris Doctor degree from Widener University School of Law in May 1994.

**Michael J. DiStasio** has served as a member of our board of directors since October 2021. Mr. DiStasio is currently the Chief Executive Officer of American Seating Corp., a private labeled furniture products supplier for many of the world's best-known restaurant and hospitality brands, which he founded in 1990. Mr. DiStasio received a Bachelor of Science degree in finance from Northeastern University's Business School in May 1989.

**Elliot Goldstein** has served as a member of our board of directors since October 2021. Mr. Goldstein is a partner at White Dove Equities, a firm focused on investments and advisory services for real estate, public, and private companies, which he founded in November 2020. From 2005 to November 2020, Mr. Goldstein served as the Senior Vice President at Toppan Merrill and Vintage Filings ("Toppan"), a division of PR Newswire, where he led Toppan's business development for companies seeking to become public in the United States and Israel. From 2003 to 2005, Mr. Goldstein was a trader and investment banker with Montauk Financial Group. Mr. Goldstein received a Talmudical Law degree from Beth Medrash Gevoah in 2004.

#### Other Significant Personnel

**Theodore Farnsworth** has served as a member of the board of managers of ZVV since the Company and ZASH entered into the Second Amended and Restated Limited Liability Company Agreement of ZVV on July 22, 2021. ZVV owns 80% of the outstanding equity interests in Lomotif. ZASH and the Company are the sole members of ZVV. Mr. Farnsworth is the controlling stockholder of ZASH. Mr. Farnsworth founded ZASH in January 2021 and has served as ZASH's Chairman since its inception. In his role as a Manager of ZVV and controlling stockholder of ZASH, Mr. Farnsworth has played an important role in Lomotif's business development and growth initiatives, and arranging the Company's acquisition of AdRizer, which was completed in February 2022, to serve the Company's goal of using the Lomotif social media platform to generate advertising revenue. From January 2017 to September 2019, Mr. Farnsworth served as Chairman of the Board and Chief Executive Officer of Helios and Matheson Analytics Inc. ("Helios"), a former Nasdaq listed company, and as a director of MoviePass, Inc. ("MoviePass") from the time Helios acquired a controlling interest in MoviePass in December 2017 until September 2019. Mr. Farnsworth founded Zone Technologies Inc. ("Zone") in November 2016 and served as its Chief Executive Officer from inception. Helios acquired Zone in November 2016. In January 2020, Helios, MoviePass and Zone each filed a voluntary petition for relief under the provisions of Chapter 7 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. in the United States Bankruptcy Court for the Southern District of New York. In October 2021, Mr. Farnsworth entered into an agreement with the U.S. Federal Trade Commission, settling an action titled *In the Matter of MoviePass, Inc. et al.*, which contains a consent order enjoining Mr. Farnsworth from misrepresenting any material fact related to advertising of movie viewing services, the costs and terms of such services, and the protection of personal information of consumers, without an admission or denial by Mr. Farnsworth of the allegations in such action. In May 2021, Mr. Farnsworth entered into an agreement with the district attorneys of several counties in the State of California, settling an action brought by the district attorneys, which contains a consent order enjoining Mr. Farnsworth from engaging in violations of specified California state laws related to false advertising, failure to timely deliver products, changing terms of service, autorenewals, consumer privacy and data management, without an admission or denial by Mr. Farnsworth of the allegations in such action.

#### Family Relationships

There are no family relationships among any of our executive officers or directors.

#### Corporate Governance Overview

We are committed to having sound corporate governance principles, which are essential to running our business efficiently and maintaining our integrity in the marketplace. We understand that corporate governance practices change and evolve over time, and we seek to adopt and use practices that we believe will be of value to our stockholders and will positively aid in the governance of the Company. To that end, we regularly review our corporate governance policies and practices and compare them to the practices of other peer institutions and public companies. We will continue to monitor emerging developments in corporate governance and enhance our policies and procedures when required or when our Board determines that it would benefit our Company and our stockholders.

In this section, we describe the roles and responsibilities of our board of directors and its committees and describe our corporate governance policies, procedures and related documents. The charters of the audit, nominating and corporate governance, and compensation committees of our board of directors, our Corporate Governance Guidelines and Code of Business Conduct and Ethics can be accessed electronically under the "Governance" link on the Investor Relations page of our website at <https://www.vincovenures.com>. (The inclusion of our website address in this section does not include or incorporate by reference the information on our website into this Annual Report.)

## **Board Composition and Leadership Structure**

Five directors comprise our board of directors: Lisa King, Roderick Vanderbilt, Elliot Goldstein, Michael J. DiStasio and Philip A. McFillin.

We believe that the structure of our board of directors and board committees provides strong overall management. Currently, the Chairman of our board of directors and our Chief Executive officer roles are separate. Lisa King serves as our Chief Executive Officer and President and Roderick Vanderbilt serves as Chairman of our board of directors. However, we do not have a policy regarding the separation of the Chief Executive Officer and the Chairman roles, as our board of directors believes that it is in the best interests of the Company and our stockholders to make that determination from time to time based upon the position and direction of the Company and the membership of our board of directors. Our board of directors has determined that our leadership structure is appropriate for the Company and our stockholders as it helps to ensure that the board of directors and management act with a common purpose and provides a single, clear chain of command to execute our strategic initiatives and business plans.

## **Director Independence**

Applicable Nasdaq rules require a majority of a listed company's board of directors to be comprised of independent directors within one (1) year of listing. In addition, Nasdaq rules require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and corporate governance committees be independent, and that audit committee members also satisfy independence criteria set forth in Rule 10A-3 under the Exchange Act. The Nasdaq independence definition includes a series of objective tests, such as that the director is not, and has not been for at least three (3) years, one of our employees, that neither the director nor any of his family members has engaged in various types of business dealings with us and that the director is not associated with the holders of more than five percent (5%) of our common stock. In addition, under applicable Nasdaq rules, a director will only qualify as an "independent director" if, in the opinion of the listed company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Our board of directors has undertaken a review of the independence of each director. Based on information provided by each director concerning his background, employment and affiliations, our board of directors has determined that Messrs. Elliot Goldstein and Michael J. DiStasio are independent and do not have relationships that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the listing standards of Nasdaq. In making such determination, our board of directors considered the relationships that each such non-employee director has with our Company and all other facts and circumstances that our board of directors deemed relevant in determining his independence, including the beneficial ownership of our capital stock by each non-employee director.

## **Board's Role in Risk Oversight and Management**

Our board of directors, as a whole and through its committees, is responsible for the oversight of risk management, while our management is responsible for the day-to-day management of risks faced by us. The board of directors receives regular reports from members of senior management on areas of material risk to the Company, including operational, financial, legal, regulatory, strategic and reputational risks as more fully discussed in the section titled "Risk Factors" appearing elsewhere in this prospectus. In its risk oversight role, our board of directors has the responsibility to satisfy itself that the risk management processes designed and implemented by management are adequate and functioning as designed.

# **Exhibit “D”**



Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
n.rulis@kempjones.com  
Madison P. Zornes-Vela, Esq. (#13626)  
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*Attorneys for Defendants*  
*Theodore Farnsworth & Erik Noble*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

VINCO VENTURES, INC.,

Plaintiff,

vs.

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

Defendants.

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

**DECLARATION OF ERIK NOBLE**

ERIK NOBLE, deposes and states:

1. I am the Chief Security Officer of Vinco Ventures, Inc. (the "Company"), and on July 8, 2022, I became the Chief of Staff of the Company. I have been employed with the Company for two and a half months.

2. I joined the Company after working as a Senior Advisor for cyber, advanced analytics, and artificial intelligence applications in the United States intelligence community, Chief of Staff of NASA, Chief of Staff of NOAA, and a Senior Policy Advisor for cyber and science policy in the White House.

3. With each role in the federal government, I had to maintain my ethics and disclose all actions and finances to keep a top-secret SCI security clearance, which I still uphold.

1           4. I submit this declaration in opposition to Plaintiff's Motion for a Temporary  
2 Restraining Order and Preliminary Injunction in the above-referenced litigation.

3           5. I wish to respond to John Colucci's August 4, 2022 Declaration which I believe  
4 lacks substantial information such that it should not be considered truthful testimony, is an  
abuse of the judicial system, and an attempt hastily to cover up internal Company investigations  
against him.

5           6. Mr. Colucci withheld that, after being an independent board Director for **only six**  
6 **weeks**, he came under investigation by the Board for lack of disclosure and failing to meet the  
requirements to be an independent director of the Board.

7           7. On July 17, 2022, Mr. Colucci was asked to respond to questions by independent  
8 counsel Thomas Kim of Gibson, Dunn & Crutcher LLP. Mr. Kim is one of the premier SEC  
9 attorneys in the country and previously served at the SEC for six years as the Chief Counsel and  
Associate Director of the Division of Corporation Finance, and for one year as Counsel to the  
Chairman. Mr. Kim focuses his practice on SEC disclosure and regulatory matters, including  
10 corporate governance and compliance issues. He also advises boards of directors and  
independent board committees on internal investigations involving disclosure, registration,  
11 corporate governance and auditor independence issues.

12           8. Mr. Colucci omitted that he, along with the other directors Elliot Goldstein and  
13 Mike DiStasio, conspired to terminate the independent counsel investigating Mr. Colucci's  
independence as a board member. To put it simply, John Colucci, who was under review by  
14 Gibson and Dunn, voted to fire the independent counsel when the result of his own review was  
unfavorable.

15           9. Mr. Colucci also failed to disclose in his declaration that he agreed—to all  
16 members of the Board—to step down because of the investigation into his lack of independence  
during a meeting on July 21, 2022. This is confirmed in the recorded meeting minutes of the  
17 July 21, 2022, meeting of the board of Vinco Ventures, Inc. Specifically, I refer to minute  
35:00 and after to the end.

18           10. Mr. Colucci conveniently failed to disclose in his declaration that he is  
19 implicated in five whistleblower complaints by Company employees, filed in July 2022. I am  
20 one of those employees that filed a complaint, naming John Colucci and AI-Pros in relation to  
potential collusion with intent to steal IP and trade secrets from Vinco Ventures.

21           11. I believe, possibly in violation of the Sarbanes Oxley Act, that Mr. Colucci is  
22 filing this Complaint and request for TRO against me in retaliation for filing a whistleblower  
complaint that names him.

23           12. Mr. Colucci omits that he put out an unauthorized press release, on his own  
24 volition as an independent Director of the Board at 8:40 PM EST, to make known the actions of  
the improper and invalid July 24, 2022, Vinco Ventures Board meeting. Furthermore, Mr.  
25 Colucci's press release contains libels and character assassination against me and the other  
officers of the Company.

26           13. Another claim I want to refute is Mr. Colucci's allegation that I made it  
27 impossible for the Company to put out SEC filings. I attempted to work together with the  
Company's CFO, Phil Jones, for filings after I was assigned to hold the codes, and through the  
28 advice of legal counsel. See my email to the Company's CFO, Phil Jones, on July 25, 2022,

1 attached hereto as **Exhibit C-1**. Phil Jones never contacted me to put out an 8K together after I  
2 sent him the attached email.

3 14. On another separate occasion, Lisa King, who had the SEC codes because she  
4 was CEO, promptly gave the codes via email to co-CEOs John Colucci and Ted Farnsworth,  
5 and legal counsel after a July 21, 2022, Vinco Ventures, Inc. Board meeting. See July 21, 2022  
6 email from Lisa King, attached hereto as **Exhibit C-2**.

7 15. Mr. Colucci's accusation that either myself or Ms. King never gave up SEC  
8 codes is demonstrably untrue.

9 16. On August 5, 2022, promptly after being notified of the entry of the TRO in this  
10 matter, I emailed Steve Haddad (Vinco's Head of HR), Steve Garrow (Vinco's COO), and  
11 Board Members John Colucci and Rod Vanderbilt with any and all SEC codes that I knew. See  
12 August 5, 2022 email, attached hereto as **Exhibit C-3**.

13 17. On Friday, August 12, 2022, I was informed by email that "Pursuant to the  
14 Nevada court order, and Rule 15(a)(5) under Regulation S-T, SEC staff will unfreeze the  
15 EDGAR account of Vinco Ventures, Inc. (CIK 0001717556) to permit Mr. Colucci to access  
16 the account going forward." See August 12, 2022 email, attached hereto as **Exhibit C-4**.

17 18. John Colucci has been able to figure out filing with the SEC as he signed and  
18 filed an 8-K with the SEC on the morning of Monday, August 15, 2022. See August 15, 2022  
19 SEC Form 8-K, attached hereto as **Exhibit C-5**. It can also be found on the Vinco Ventures  
20 website at the following link:

21 [https://investors.vincoventures.com/all-sec-filings/content/0001493152-22-](https://investors.vincoventures.com/all-sec-filings/content/0001493152-22-022503/0001493152-22-022503.pdf)  
22 [022503/0001493152-22-022503.pdf](https://investors.vincoventures.com/all-sec-filings/content/0001493152-22-022503/0001493152-22-022503.pdf)

23 19. Also on Monday, August 15, 2022, Colucci and Vinco Ventures issued a press  
24 release announcing a partnership agreement with AI-Pros, which is, in part, what my  
25 previously-filed whistleblower complaint was about. See August 15, 2022 Press Release,  
26 attached hereto as **Exhibit C-6**. A copy can also be found on the Vinco Ventures website at the  
27 following link:

28 [https://d1io3yog0oux5.cloudfront.net/\\_6a59ef81b32d3e3a7d61845ac25bbc0d/vincoventures/news/2022-08-15\\_Vinco\\_Ventures\\_Enters\\_Social\\_Media\\_US\\_Canada\\_121.pdf](https://d1io3yog0oux5.cloudfront.net/_6a59ef81b32d3e3a7d61845ac25bbc0d/vincoventures/news/2022-08-15_Vinco_Ventures_Enters_Social_Media_US_Canada_121.pdf)

20 20. I do not believe that Vinco Ventures has done any substantive investigation into  
21 my whistleblower complaint and, because of the Court's TRO, I have been prevented from  
22 participating in any interviews regarding the complaint.

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

25 DATED this 15<sup>th</sup> day of August, 2022

26   
27 \_\_\_\_\_  
28 Erik Noble

# **Exhibit C-1**

**Fw: Policy for Use of Vinco Ventures, Inc. EDGAR SEC Codes**

Erik Noble &lt;ENoble@Vincovenures.com&gt;

Mon 7/25/2022 2:48 PM

To: Philip Jones &lt;pjones@Vincovenures.com&gt;

 1 attachments (109 KB)

EDGAR Policy &amp; Process for Vinco.pdf;

Hi Phil,

All things aside, I am happy to work with you on items that you want to file. We are using a new printer now.

Please feel free to reach out.

Thank you.

-Erik

---

**From:** Ted Farnsworth <TFarnsworth@Vincovenures.com>**Sent:** Monday, July 25, 2022 1:21 PM**To:** Philip Jones <pjones@Vincovenures.com>; elliot@whitedoveequities.com <elliot@whitedoveequities.com>; Giovanni Colucci <john@hwydata.com>; Mike Distasio <mike@chair.com>; Lisa King <Lking@Vincovenures.com>; Lisa King <Lking@Vincovenures.com>  
**Cc:** Erik Noble <ENoble@Vincovenures.com>; Erik U. Noble <enoble@zash.global>; Seth Levine <slevine@levinelee.com>; Ken Lee <klee@levinelee.com>; Illena Roberts <iroberts@levinelee.com>; Ted Farnsworth <tfarnsworth@zash.global>**Subject:** Policy for Use of Vinco Ventures, Inc. EDGAR SEC Codes

**Privileged and Business Confidential Information, not to be shared with anyone.  
This is non-Public information.**

Monday, July 25, 2022

Dear Vinco Ventures, Inc. Senior Management and Board:

Company counsel has advised senior leadership and management of Vinco Ventures, Inc. ("the Company") on the most secure way to keep unauthorized company filings from appearing in the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) Filer Management system. The Company's Chief Security Officer and Chief of Staff, Erik Noble, should remain as the gatekeeper of the EDGAR keys that provide EDGAR codes required for EDGAR printing, as well as the main point of contact for the EDGAR printer (or EDGAR software printing service if the Company chooses to use this option in the future).

Please reach out to Chief of Staff Erik Noble during the process of necessary regulatory filings and disclosures for final approval of and generation for EDGAR filings.

Thank you.

-Ted

Ted Farnsworth

Co-CEO of Vinco Ventures, Inc.

Copy:

Kenneth E. Lee

RESP155

Seth L. Levine  
Chad P. Albert  
Levine Lee LLP

# **Exhibit C-2**



Erik Noble &lt;enoble@zash.global&gt;

**Re: Vinco Ventures, INC. - Form 8-K\_July 14, 2022 - ETA**

Lisa King &lt;Lking@vincoventures.com&gt;

Thu, Jul 21, 2022 at 3:29 PM

To: David McGuire &lt;david@m2compliance.com&gt;

Cc: Jon Monna <jmonna@lucbro.com>, M2 Operations <filing@m2compliance.com>, Giovanni Colucci <john@hwydata.com>, Joseph Lucosky <jlucosky@lucbro.com>, Adele Hogan <ahogan@lucbro.com>, "elliott@whitedoveequities.com" <elliott@whitedoveequities.com>, "mike@chair.com" <mike@chair.com>, Erik Noble <enoble@zash.global>

g into the [EDGAR Filing website](#) or the [EDGAR OnlineForms/XMI](#) /or CCC by clicking on the "Retrieve/Edit Data" menu item under " website to regenerate all of your codes.

EDGAR Access Codes	
CIK:	[REDACTED]
Password:	[REDACTED]
CCC:	[REDACTED]
PMAC:	[REDACTED]

[Exit Window](#)

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

[Quoted text hidden]

[Quoted text hidden]

**Jon Monna**  
Associate

[LinkedIn](#)

111 Broadway, Suite 807 | New York, New York 10006  
tel 732 395 4400 | direct 732 395 4407 | fax 732 395 4401

[Website](#) | [Email](#) | [Biography](#) | [Year in Review](#)

Confidentiality Notice: This e-mail is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. If you have received this e-mail in error, please notify Lucosky Brookman LLP by return e-mail and destroy the original message and all copies thereof.

RESP158





# **Exhibit C-3**



Erik Noble &lt;enoble@zash.global&gt;

**compliance with TRO**

1 message

Erik Noble &lt;enoble@zash.global&gt;

Sat, Aug 6, 2022 at 5:00 PM

To: Steven Haddad &lt;shaddad@zash.global&gt;, Steve Garrow &lt;sgarrow@zash.global&gt;, Rod Vanderbilt &lt;rodvanderbiltvin@gmail.com&gt;

Cc: Giovanni Colucci &lt;john@hwydata.com&gt;

Steve, Steve, and Rod:

I received a Nevada lawsuit with a Temporary Restraining Order (TRO) from the independent board member, John Colucci, and I am named in it.

In compliance with the TRO:

- I am stepping down as Vinco Ventures Chief Security Officer.
- I am giving user admin rights of the Microsoft exchange server to another Vinco employee. All Admin rights now sit with Ted Farnsworth, co-CEO of Vinco Ventures
- All SEC codes associated with [REDACTED] have always been with Ted Farnsworth, co-CEO of Vinco Ventures, and will remain with Ted Farnsworth.
- The SEC codes I know of are below, however, the SEC froze all codes with [REDACTED] on July 28, 2022, in response to John Colucci's lawsuit in Rodchester, which was withdrawn.
- Codes
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- I will not use enoble@VincoVentures.com email or be conducting business for Vinco Ventures, Inc. in compliance with the TRO.

Thank you for your time and for the experience.

-Erik

# **Exhibit C-4**

From: [EDGAR Access Notice](#)  
To: [jmonna@lucbro.com](mailto:jmonna@lucbro.com); [ahogan@lucbro.com](mailto:ahogan@lucbro.com); [Joseph Lucosky](#); [Giovanni Colucci](#); [mconnot@foxrothschild.com](mailto:mconnot@foxrothschild.com); [Chad Albert](#); [Ken Lee](#); [service@toppanmerrill.com](mailto:service@toppanmerrill.com)  
Cc: [EDGAR Escalations](#)  
Subject: Vinco Ventures, Inc. ( [REDACTED] )  
Date: Friday, August 12, 2022 12:46:32 PM

---

**--EXTERNAL--**

As you know, pursuant to Rule 15(a)(5) under Regulation S-T, 17 CFR 232.15, SEC staff froze access to the EDGAR account of Vinco Ventures, Inc. ( [REDACTED] ) because both Mr. Colucci and Mr. Farnsworth claimed control over the account, and staff was not in a position to determine who rightfully was entitled to access the EDGAR account.

Per Rule 15(a)(5), SEC staff requested one of two methods of proof of resolution of the access dispute, either (1) a court order from a court of competent jurisdiction indicating who was legally authorized to obtain access to the account; or (2) a written acknowledgement signed by both parties indicating the dispute was resolved in favor of a particular party.

Staff has received a copy of the District Court of Clark County, Nevada's August 5, 2022 Ex Parte Order Granting Plaintiff Vinco Ventures, Inc.'s Emergency Motion for Temporary Restraining Order and Preliminary Injunction that, among other things, ordered defendants therein, Mr. Farnsworth, Ms. King, Mr. Vanderbilt, and Mr. Noble, to relinquish control of SEC filing passcodes to Mr. Colucci.

Pursuant to the Nevada court order, and Rule 15(a)(5) under Regulation S-T, SEC staff will unfreeze the EDGAR account of Vinco Ventures, Inc. ( [REDACTED] ) to permit Mr. Colucci to access the account going forward.

Sincerely,  
SEC Staff

# **Exhibit C-5**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 14, 2022

**VINCO VENTURES, INC.**

(Exact name of registrant as specified in charter)

**Nevada**  
(State or other jurisdiction  
of incorporation)

**001-38448**  
(Commission  
File Number)

**82-2199200**  
(IRS Employer  
Identification No.)

**Address Not Applicable<sup>(1)</sup>**  
(Address of principal executive offices)

**Address Not Applicable<sup>(1)</sup>**  
(Zip Code)

**(866) 900-0992**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4© under the Exchange Act (17 CFR 240.13©(c))

Securities registered pursuant to Section 12(b) of the Act:

**Title of each class**  
Common Stock, \$0.001 par value per share

**Trading Symbol(s)**  
BBIG

**Name of each exchange on which registered**  
The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

<sup>(1)</sup> We are a remote-friendly company, with several hubs and locations for employees to collaborate. Accordingly, we do not maintain a headquarters. For purposes of compliance with applicable requirements of the Securities Act of 1933, as amended, and Securities Exchange Act of 1934, as amended, stockholder communications required to be sent to our principal executive offices may be directed to the email address set forth in our proxy materials and/or identified on our investor relations website.

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☒

**Item 1.01. Entry into a Material Definitive Agreement.**

The applicable information set forth in Item 5.02 of this Current Report on Form 8-K (this "Current Report") is incorporated by reference in this Item 1.01.

**Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing**

At a meeting of the Board of Directors (the "Board") of Vinco Ventures, Inc. (the "Company"), held on July 17, 2022, the Board, among other things, (i) terminated Lisa King as the Company's CEO and (ii) appointed John Colucci as the Company's Interim CEO.

Effective as of Mr. Colucci's appointment as Interim CEO on July 17, 2022 (not on July 21, 2022 as discussed below with respect to the Incorrect July 22 Form 8-K filed by Mr. Farnsworth), Mr. Colucci was no longer independent and the Company was no longer in compliance with the Nasdaq Listing Rules (the "Rules"), which require the Company to have a Board comprised of a majority independent directors and the Audit Committee of the Board (the "Audit Committee") to be composed of at least three independent directors. The Company informed Nasdaq that the Company no longer has a majority independent board and that the Audit Committee no longer consists of three independent directors.

On August 8, 2022, the Company received a written notice from the Nasdaq Listing Qualifications Staff indicating that, based on Mr. Colucci no longer being independent, the Company no longer complies with Nasdaq's independent director and audit committee requirements as set forth in the Rules. The Company until September 22, 2022 to submit

RESP165

a plan to regain compliance with the Rules to Nasdaq.

The Company and the Board have commenced a search for additional independent directors to add to the Board and its committees and intends to regain compliance with the Rules as soon as practicable.

On August 4, 2022, Nasdaq halted trading of the Company's common stock. As of August 15, 2022, the Company's SEC account has been unfrozen and filing passcodes have been re-established. The Company plans to submit the information required by Nasdaq after this filing is made to request reinstatement of trading.

---

#### **Item 5.02 Departure of Directors of Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

The applicable information set forth in Item 3.01 of this Current Report is incorporated by reference in this Item 5.02.

At a meeting of the Board held on July 17, 2022, the Board determined, on the recommendation of the Board's independent committees, to terminate Ms. King as the Company's CEO and as a Vinco Manager of ZVV Media Partners, LLC ("ZVV"), and appointed John Colucci, who has over 20 years of marketing and advertising experience, as the Company's Interim CEO and President.

At a meeting of the Board held on July 21, 2022, the Board (i) rescinded Ms. King's termination as CEO to appoint her as the President of ZVV instead, (ii) appointed Mr. Colucci as Interim Co-CEO with operational and financial responsibilities and Mr. Farnsworth as Co-CEO with investor relations and certain business unit responsibilities.

At a meeting of the Board held on July 24, 2022, the Board, among other things, (i) terminated each of Mr. Farnsworth, Ms. King, Mr. Vanderbilt and Mr. Noble, (ii) removed Mr. Vanderbilt as the Chairman of the Board, and (iii) ratified and confirmed the Board's July 17, 2022 appointment of John Colucci as Interim CEO.

**John Colucci**, age 42, has served as a director of the Company since June 10, 2022. Mr. Colucci has over 21 years of experience in senior management, business development, advertising, marketing and strategy development. Mr. Colucci has served as the President of American Marketing & Mailing Services, Inc., a full service advertising agency supplying clients with custom marketing campaigns designed to meet their business goals since April 2022. Mr. Colucci was previously the Vice President at C Solutions Marketing Inc. for eleven years and Vice President of Business Development and Strategy at Biggross.com for eleven years.

#### *Related Party Transactions*

There is no arrangement or understanding between Mr. Colucci and any other persons pursuant to which Mr. Colucci was selected as Interim Co-CEO. There are no family relationships between Mr. Colucci and any director, executive officer or person nominated or chosen by the Company to become a director or executive officer of the Company within the meaning of Item 401(d) of Regulation S-K under the U.S. Securities Act of 1933 ("Regulation S-K"). Since the beginning of the Company's last fiscal year, the Company has not engaged in any transaction in which Mr. Colucci had a direct or indirect material interest within the meaning of Item 404(a) of Regulation S-K.

On August 11, 2022, the Company and Mr. Colucci entered into an employment agreement (the "Employment Agreement"), effective as of July 17, 2022 when Mr. Colucci was appointed by the Board. Pursuant to the Employment Agreement, the Company has agreed to employ Mr. Colucci with the title "Interim CEO" for a period ending on the earlier of the (i) October 17, 2022 or (ii) the date on which the Company secures employment of a successor Chief Executive Officer and President (the "Initial Term"); *provided, however*, that the Initial Term shall automatically renew for successive consecutive three (3) month periods until a successor is found or either party terminates the agreement. Under the Employment Agreement, Mr. Colucci will be paid a salary of \$250,000 per year and will be eligible for bonuses in such amount determined if, and when, approved by the Board. The Employment Agreement includes standard confidentiality, non-solicitation and non-competition obligations of Mr. Colucci and allows Mr. Colucci to continue to operate his private business ventures so long as he is able to perform his role as the Company's Interim CEO adequately and in full compliance with the Company's internal policies, procedures and controls.

The foregoing description of the Employment Agreement is not complete and is qualified in its entirety by reference to the full text of the Form Employment Agreement filed as Exhibit 10.1 hereto and is incorporated herein by reference.

#### **Item 7.01 Regulation FD Disclosure.**

On July 25, 2022, the Company issued a press release describing the reasons for, and timeline of, the Company's recent management changes. This press release is filed as Exhibit 99.1 to this Current Report on Form 8-K (this "Current Report").

On August 8, 2022, the Company issued a press release describing a temporary restraining order the Company was granted against each of Mr. Farnsworth, Ms. King, Mr. Vanderbilt and Mr. Noble on August 5, 2022. This press release is attached as Exhibit 99.2 to this Current Report.

The foregoing is being furnished pursuant to Item 7.01 and will not be deemed to be filed for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise be subject to the liabilities of that section, nor will it be deemed to be incorporated by reference in any filing under the Securities Act.

---

#### **Item 8.01 Other Events.**

The applicable information set forth in Item 3.01 and Item 5.02 of this Current Report is incorporated by reference in this Item 8.01.

#### **Incorrect Disclosures**

On July 14, 2022, Ms. King, without authorization and in disregard of legal advice, filed a Current Report on Form 8-K (the "July 14 Form 8-K") and issued a Press Release (the "July 14 Press Release" and, together with the July 14 Form 8-K, the "July 14 Incorrect Disclosures") that incorrectly stated Ms. King and Mr. Farnsworth were appointed as the Company's Co-CEOs, effective as of July 8, 2022. The Company did not authorize the July 14 Incorrect Disclosures and determined that the Board meeting held on July 8, 2022 was neither properly noticed nor conducted in accordance with the Company's Bylaws and the July. Therefore, any business conducted and decisions made at such meeting were invalid and the information contained in the July 14 Incorrect Disclosures was incorrect.

On July 22, 2022, the Company filed a Current Report on Form 8-K that was signed by Mr. Farnsworth (the "Incorrect July 22 Form 8-K" and, together with the July 14 Incorrect Disclosures, the "Incorrect Disclosures"). The Incorrect July 22 Form 8-K filed by Mr. Farnsworth did not correct the July 14 Incorrect Disclosures and failed to disclose the actions taken by the Board at the July 17, 2022 meeting where, among other things, John Colucci was appointed as Interim CEO.

Since Mr. Colucci was appointed as Interim CEO on July 17, 2022, the Company was under an obligation to file a Current Report on Form 8-K disclosing such event by 5:30 PM on July 21, 2022 (the "Deadline"). At the express direction of the Company's Board of Directors, on July 21, 2022, the Company attempted to file the required Current Report on Form 8-K that corrected the Incorrect Disclosures and disclosed the appointment of Mr. Colucci as Interim CEO. However, the filing of these corrected and required disclosures was directly blocked by Mr. Farnsworth, Ms. King and Mr. Noble prior to the Deadline.

RESP166



On July 22, 2022, Mr. Farnsworth, without the knowledge of the Company's directors and other officers, filed the Incorrect July 22 Form 8-K.

The Company's current officers consist of John Colucci, Interim Chief Executive Officer, Philip Jones, Chief Financial Officer and Stephen Garrow, Chief Operating Officer.

#### **Litigation Against the Farnsworth Group**

On August 3, 2022, the Company filed a lawsuit against each of Ted Farnsworth, Lisa King, Rod Vanderbilt and Erik Noble (collectively, the "Farnsworth Group") in the District Court of Clark County, Nevada (Case No: A-22-856404-B) alleging four causes of action, including: (i) breach of fiduciary duty, (ii) aiding and abetting breach of fiduciary duty, (iii) civil conspiracy and (iv) declaratory and injunctive relief in the event that no other legal remedy is available to the Company (the "Nevada Litigation").

In connection with the Nevada Litigation, on August 4, 2022, the Company filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction (the "Emergency TRO"), whereby the Company requested the Nevada court to enforce an order that would, among other things, require the members of the Farnsworth Group to, among other things, acknowledge their July 24, 2022 terminations.

On August 5, 2022, the District Court Judge granted an Ex Parte Order Granting Plaintiff Vinco Ventures, Inc.'s Emergency Motion for Temporary Restraining Order and Preliminary Injunction (the "NV Court Order") whereby the Company secured the Emergency TRO. Pursuant to NV Court Order, for the duration of the Emergency TRO, the members of the Farnsworth Group are (i) enjoined from holding themselves out internally or externally as employed by the Company or acting on its behalf in any capacity; (ii) enjoined from accessing Company's premises or servers; and (iii) 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.

---

Prior to commencing the Nevada Litigation and obtaining the Emergency TRO against the Farnsworth Group, the Company filed a lawsuit against Mr. Farnsworth and Ms. King in New York State Supreme Court (the "NY Litigation"). The Company was awarded an Order to Show Cause Seeking Temporary in the NY Litigation that set a hearing on the matter for September 27, 2022 (the "NY Court Order"). The Company voluntarily discontinued the NY Lawsuit on August 4, 2022.

The Emergency TRO remains in full force in effect until the conclusion of the hearing scheduled for August 16, 2022 or until otherwise extended by the Nevada court.

The foregoing descriptions of the NV Court Order and the NY Court Order are not complete and are qualified in their entirety by reference to the full text of the NV Court Order and NY Court Order filed as Exhibits 99.3 and 99.4, respectively, hereto and are incorporated herein by reference

#### **Item 9.01. Financial Statements and Exhibits.**

##### **(d) Exhibits:**

10.1	<u>Form of Employment Agreement</u>
99.1	<u>Press release dated July 25, 2022</u>
99.2	<u>Press release dated August 8, 2022</u>
99.3	<u>Ex Parte Order Granting Plaintiff Vinco Ventures, Inc.'s Emergency Motion for Temporary Restraining Order and Preliminary Injunction</u>
99.4	<u>Order to Show Cause Seeking Temporary Restraining Order and Preliminary Injunction</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

---

#### **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: August 15, 2022

**VINCO VENTURES, INC.**

By: /s/ John Colucci  
Name: John Colucci  
Title: Interim Chief Executive Officer

---

## EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (this “Agreement”) is made and entered into as of August 11, 2022 and effective as of July 17, 2022 (the “Effective Date”), by and between Vinco Ventures, Inc. (the “Company”) and John Colucci (“Executive”).

### RECITALS

- A. Executive is knowledgeable with respect to the business of the Company.
- B. Company desires to offer employment to Executive and Executive desires to be employed by Company.
- C. Company and Executive agree to enter into an Employment Agreement providing for the term set forth in Article I below on the terms and conditions herein provided.

In consideration of the mutual promises set forth in this Agreement, the parties hereto agree as follows:

### ARTICLE I

#### Term of Employment

**1.01 Term.** Subject to the provisions of Article V, and upon the terms and subject to the conditions set forth herein, the Company will continue to employ Executive for the period beginning on July 17, 2022 (the “Commencement Date”) and ending on the earlier of the (i) three month period after such date and (ii) the date on which the Company secures employment of a successor Chief Executive Officer and President (the “Initial Term”). The Initial Term shall be automatically renewed for successive consecutive three month periods (each, a “Renewal Term” and the Initial Term and Renewal Term are collectively referred to as the “term of employment”) thereafter unless either party sends written notice to the other party, not less than 15 days before the end of the then-existing term of employment, of such party’s desire to terminate the Agreement at the end of the then-existing term, in which case this Agreement will terminate at the end of the then-existing term. Executive will serve the Company during the term of employment.

### ARTICLE II

#### Duties

**2.01 (a).** During the term of employment, Executive will:

- (i) Promote the interests, within the scope of his duties, of the Company and devote his full working time and efforts to the Company’s business and affairs, except as otherwise permitted by the Board of Directors of the Company (the “Board”);
- (ii) Serve as the Interim Chief Executive Officer and Interim President of the Company; and
- (iii) Perform the duties and services consistent with the title and function of such office, including without limitation, those set forth in the By-Laws of the Company.

**(b).** Notwithstanding anything contained in clause 2.01(a)(i) above to the contrary, nothing contained herein or under law shall be construed as preventing Executive from: (i) investing Executive’s personal assets in such form or manner as will not require any services on the part of Executive in the operation or the affairs of the companies in which such investments are made and in which his participation is solely that of an investor; (ii) engaging (whether or not during normal business hours) in any other professional, civic or philanthropic activities provided that Executive’s engagement does not result in a violation of his covenants under this Section or Article VI hereof; or (iii) accepting appointments to the boards of directors of other companies provided that the executive has provided the Board with advance written notice of such appointments and Executive’s performance of his duties on such boards does not result in a violation of his covenants under this Section or Article VI hereof. Notwithstanding anything to the contrary, the parties acknowledge that Executive is being employed by the Company on an interim basis, has significant business interests outside Executives interim roles with the Company, and Executive indicated he is able to perform both internal Company business and his other businesses adequately and in full compliance with the Company’s internal policies, procedures and controls.

### ARTICLE III

#### Base Compensation

**3.01 Base Salary.** The Company will compensate Executive for the duties performed by him hereunder by payment of a base salary at the rate of Three Hundred Eighty-Five Thousand Dollars (\$250,000) per annum (the “Base”), payable in equal semi-monthly installments, subject to customary withholding taxes and other normal and customary withholding items.

**3.02 Cash Bonus.** In the event the Company’s Board of Directors (the “Board”) determines, in its sole discretion, that Executive has satisfactorily performed his duties as set forth herein, the Company shall pay to the Executive, in addition to the Base, an annual cash bonus equal to an amount as may be determined by the Board in its sole discretion. The Cash Bonus, if any, shall be paid to Executive by December 31<sup>st</sup> of each year during the term of this Agreement.

**3.03 Stock Bonus.** The Executive shall be entitled to equity awards if, and when, approved by the Board in its sole discretion.

### ARTICLE IV

#### Reimbursement and Employment Benefits

**4.01 Health and Other Medical.** Executive waives health and other medical benefits.

**4.02 Vacation.** Executive shall be entitled to two (2) weeks of vacation per year, to be taken in such amounts and at such times as shall be mutually convenient for Executive and the Company. Any time not taken by Executive in one year shall be carried forward to subsequent years. If all such vacation and personal time to which Executive is entitled is not taken by Executive before the termination of this Agreement, Executive shall be entitled to be reimbursed upon termination (for any reason) for such lost time in accordance with the Base then in effect.

**4.03 Reserved.**

4.04 Reimbursable Expenses. The Company shall, in accordance with its standard policies in effect from time to time, reimburse Executive for all reasonable out-of-pocket expenses actually incurred by him in the conduct of the business of the Company including, but not limited to, business class air travel, hotels and rental cars, entertainment and similar executive expenditures, provided that Executive submits all substantiation of such expenses to the Company on a timely basis in accordance with such standard policies.

4.05 Reserved.

4.06 Reserved.

4.07 Directors and Officers Liability Insurance. The Company provide liability insurance coverage protecting Executive and his estate, to the extent permitted by law against suits by fellow employees, shareholders and third parties and criminal and regulatory investigations arising out of any alleged act or omission occurring with the course and scope of Executive's employment with the Company. Such insurance will be in an amount not less than the amount of the Company's current policy.

## ARTICLE V

### Termination

5.01 Automatic. This Agreement shall be automatically terminated upon the first to occur of the following: (a) the Company's successful retention of a replacement Chief Executive Officer; (b) termination pursuant to section 5.02; (c) the Executive's termination pursuant to section 5.03; or (d) the Executive's death.

5.02 By the Company. This Agreement may be terminated by the Company upon written notice to the Executive upon the first to occur of the following:

(a) Disability. Upon the Executive's Disability (as defined herein). The term "Disability" shall mean the Executive cannot physically or mentally perform the essential functions of the position with or without reasonable accommodations.

(b) Cause. Upon the Executive's commission of Cause (as defined herein). The term "Cause" shall mean the following:

- (i) Any willful violation by Executive of any material provision of this Agreement or any other agreement entered into between the Company, or any of its affiliates, and Executive, causing demonstrable and serious injury to the Company, upon written notice of same by the Company describing in detail the breach asserted and stating that it constitutes notice pursuant to this Section 5.02(b)(i), which breach, if capable of being cured, has not been cured within sixty (60) days after such notice or such longer period of time if Executive proceeds with due diligence not later than ten (10) days after such notice to cure such breach; *provided, however*, that no such cure period shall be available in the event that the Board determines, in its sole discretion, that any such breach is not reasonably curable;
- (ii) Embezzlement by Executive of funds or property of the Company;
- (iii) Fraud or willful misconduct on the part of Executive in the performance of his duties as an employee of the Company, or gross negligence on the part of Executive in the performance of his duties as an employee of the Company causing demonstrable and serious injury to the Company, provided that the Company has given written notice of such breach which notice describes in detail the breach asserted and stating that it constitutes notice pursuant to this Section 5.02(b)(iii), and which breach, if capable of being cured, has not been cured within sixty (60) days after such notice or such longer period of time if Executive proceeds with due diligence not later than ten (10) days after such notice to cure such breach; *provided, however*, that no such cure period shall be available in the event that the Board determines, in its sole discretion, that any such breach is not reasonably curable; or
- (iv) Being charged with a felony or a crime of moral turpitude.

Upon a termination for Cause, the Company shall pay Executive his Base through the last day of employment and Executive shall receive no severance under this Agreement.

5.03 By the Executive. This Agreement may be terminated by Executive, and Executive may voluntarily resign, upon written notice to the Company for Good Reason. "Good Reason" means the occurrence of any of the following actions by the Company, or any of its affiliates or subsidiaries:

- (a) a reduction in Executive's Base (but not including any diminution related to a broader compensation reduction that is not limited to any particular employee or executive);
- (b) a requirement that Executive be based anywhere other than Madeira Beach, Florida; or
- (c) a material diminution in Executive's title, duties or responsibilities from those in effect on the date hereof (it being understood that Executive's obligation to report to the Board and the Board's exercise of its final authority over Company on matters shall not give rise to any such claim of diminution).

Notwithstanding anything in this Agreement to the contrary, Executive shall not have the ability to terminate this Agreement for Good Reason unless Executive has: (i) notified the Company in writing describing the event or events that constitute Good Reason; and (ii) the Company fails to cure such event within 30 days after the Company's receipt of such written notice.

5.04 Reserved.

## ARTICLE VI

### Covenants

6.01 Confidentiality. Executive shall treat as confidential and keep secret the affairs of the Company and shall not at any time during the term of employment or for a period of five (5) years thereafter, without the prior written consent of the Company, divulge, furnish, or make known or accessible to, or use for the benefit of, anyone other than the Company and its subsidiaries and affiliates any information of a confidential nature relating in any way to the business of the Company or its subsidiaries or affiliates or their clients and obtained by him in the course of his employment hereunder; *provided, however*, that confidential information of the Company shall not include any information known or available generally to the public (other than as a result of unauthorized disclosure by Executive).

6.02 Records. All records, papers, and documents kept or made by Executive relating to the business of the Company or its subsidiaries or affiliates or their clients shall be and remain the property of the Company.

6.03 Non-Solicitation. Following the termination of Executive's employment hereunder for any reason except for those set forth in section 5.03 in which event this section is inapplicable, Executive shall not for a period of twelve (12) months from such termination, solicit any employee of the Company to leave such employ to enter the employ of Executive or of any person, firm, or Company with which Executive is then associated (except solicitation by general means such as newspapers). During Executive's employment with the Company and for a period of twelve (12) months after termination of Executive's employment at any time and for any reason, except for those set forth in Section 5.03 in which event this section is inapplicable, Executive shall not, directly or indirectly, solicit any person who during any portion of the time of Executive's employment or at the time of termination of Executive's employment with the Company, was a client, customer, policyholder, vendor, consultant or agent of the Company to discontinue business, in whole or in part, with the Company. Executive further agrees that, during such time, if such a client, customer, policyholder, vendor, or consultant or agent contacts Executive about discontinuing business with the Company or moving that business elsewhere, Executive will inform such client, customer, policyholder, vendor, consultant or agent that he or she cannot discuss the matter further without the consent of the Company

6.04. Non-Competition. Executive agrees as follows, except in the event of a termination pursuant to Section 5.03, in which event this section is inapplicable:

(a) Executive agrees that during the term of his employment with the Company, neither he nor any of his Affiliates (Executive's Affiliates is defined as any legal entity in which Executive directly or indirectly owns at least a 50% interest or any entity or person which is under the control of the Executive) will directly or indirectly compete with the Company in any way in any business in which the Company or its Affiliates is engaged in, and that he will not act as an officer, director, employee, consultant, shareholder, lender, or agent of any entity which is engaged in any business of the same nature as, or in competition with the businesses in which the Company is now engaged or in which the Company becomes engaged during the term of employment; provided, however, that this Section shall not prohibit Executive or any of his Affiliates from purchasing or holding an aggregate equity interest of up to 10% in any publicly traded business in competition with the Company, so long as Executive and his Affiliates combined do not purchase or hold an aggregate equity interest of more than 10%. Furthermore, Executive agrees that during the term of employment, he will not accept any board of director seat or officer role or undertake any planning for the organization of any business activity competitive with the Company (without the approval of the Board of Directors) and Executive will not combine or conspire with any other Executives of the Company for the purpose of the organization of any such competitive business activity.

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(b) In order to protect the Company against the unauthorized use or disclosure of any confidential information of the Company presently known or hereinafter obtained by Executive during his employment under this Agreement, Executive agrees that for a period of twelve (12) months following the termination of this Agreement for any reason, neither Executive nor any of his Affiliates, shall, directly or indirectly, for itself or himself or on behalf of any other corporation, person, firm, partnership, association, or any other entity (whether as an individual, agent, servant, employee, employer, officer, director, shareholder, investor, principal, consultant or in any other capacity):

(i) engage or participate in any business, regardless of where situated, which engages in direct market competition with such businesses being conducted by the Company during the term of employment; or

(ii) assist or finance any person or entity in any manner or in any way inconsistent with the intents and purposes of this Agreement.

6.05. Non-Disparagement. Executive agrees that at no time during his employment by the Company or thereafter, shall he make, or cause or assist any other person to make, any statement or other communication to any third party which impugns or attacks, or is otherwise critical of, the reputation, business or character of the Company or any of its respective directors, officers or executives. In addition, the Company agrees that its Board and executives will not disparage the Executive so long as the Executive separates from the Company in good standing and abides by all terms of this agreement and signed non-disclosure and non-compete agreements.

6.06 .Scope and Duration. If at the time of enforcement of any provision of this Agreement, a court shall hold that the duration, scope, or area restriction of any provision hereof is unreasonable under circumstances now or then existing, the parties hereto agree that the maximum duration, scope, or area reasonable under the circumstances shall be substituted by the court for the stated duration, scope, or area.

6.07. Equitable Relief. Executive acknowledges that any breach by him of the provisions of this Article VI of this Agreement shall cause irreparable harm to the Company and that a remedy at law for any breach or attempted breach of Article VI of this Agreement will be inadequate, and agrees that, notwithstanding Article VIII hereof, the Company shall be entitled to exercise all remedies available to it, including specific performance and injunctive and other equitable relief, in the case of any such breach or attempted breach.

6.08. Authorization. The Company represents and warrants that this Agreement has been duly authorized, executed, and delivered on behalf of the Company and that this Agreement represents the legal, valid, and binding obligation of the Company and does not conflict with any other agreement binding on the Company.

## ARTICLE VII

### Assignment

7.01. Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company without relieving the Company of its obligations hereunder. Neither this Agreement nor any rights hereunder shall be assignable by Executive and any such purported assignment by him shall be void.

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## ARTICLE VIII

### Entire Agreement

8.01. Entire Agreement. This Agreement constitutes the entire understanding between the Company and Executive concerning his employment by the Company and supersedes any and all previous agreements between Executive and the Company or any of its affiliates or subsidiaries concerning such employment. Each party hereto shall pay its own costs and expenses (including legal fees) except as otherwise expressly provided herein incurred in connection with the preparation, negotiation, and execution of this Agreement. This Agreement may not be changed orally, but only in a written instrument signed by both parties hereto.

## ARTICLE IX

### Applicable Law. Miscellaneous

9.01. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. All actions brought to interpret or enforce this Agreement shall be brought in courts located in Rochester, New York.

9.02. Mutual Indemnification. In addition to all other rights and benefits under this Agreement, each party agrees to reimburse the other for, and indemnify and hold

RESP170

harmless such party against, all costs and expenses (including attorney’s fees) incurred by such party (whether or not during the term of this Agreement or otherwise), if and to the extent that such party prevails on or is otherwise successful on the merits with respect to any action, claim, or dispute relating in any manner to this Agreement or to any termination of this Agreement or in seeking to obtain or enforce any right or benefit provided by or claimed under this Agreement, taking into account the relative fault of each of the parties and any other relevant considerations.

**9.03. Indemnification of Officers.** The Company shall indemnify and hold harmless Executive to the full extent authorized or permitted by law with respect to any claim, liability, action, or proceeding instituted or threatened against or incurred by Executive or his legal representatives and arising in connection with Executive’s conduct or position at any time as a director, officer, employee, or agent of the Company or any subsidiary thereof. The Company shall not change, modify, alter, or in any way limit the existing indemnification and reimbursement provisions relating to and for the benefit of its directors and officers without the prior written consent of the Executive, including any modification or limitation of any directors and officers liability insurance policy.

**9.04. Waiver.** No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a continuing waiver or a waiver of any similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party hereto which are not set forth expressly in this Agreement.

**9.05. Enforceability.** The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

**9.06. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

**9.07. Headings.** The section headings contained in this Agreement are inserted for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**Company:**

**VINCO VENTURES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Executive:**

**John Colucci**

\_\_\_\_\_  
John Colucci

*Signature Page to Executive Employment Agreement*

## Vinco Ventures Thwarts What it Believes was a Hostile Takeover Attempt by the Farnsworth Group

Rochester, NY, July 25, 2022 (GLOBE NEWSWIRE) — On July 24, 2022, the Board of Directors (the “Board”) of Vinco Ventures, Inc. (Nasdaq: BBIG) (“Vinco Ventures,” “Vinco,” or the “Company”), a digital media and content technologies holding company, among other things, terminated Theodore Farnsworth, the former CEO of Helios and Matheson Analytics and Chairman of MoviePass, as the Company’s Co-CEO less than 72 hours after he was appointed, Lisa King as the President of ZVV Media Partners, LLC and former CEO of the Company, Erik Noble as the Company’s Chief Security Officer and any other role, and any and all arrangements between the Company and Roderick Vanderbilt, including as business development director and Chairman of the Board (Mr. Farnsworth, Ms. King, Mr. Noble and Mr. Vanderbilt referred to collectively as the “Farnsworth Group”). Ms. King and Mr. Vanderbilt still remain members of the Board despite having their roles with the Company terminated.

On July 14, 2022, Ms. King authorized the filing of a Current Report on Form 8-K that incorrectly stated Mr. Farnsworth had been appointed as the Company’s Co-CEO despite being advised that the information contained in the Form 8-K was incorrect and based on an invalid Board meeting (the “First Incorrect 8-K”). The Company attempted to file a Current Report on Form 8-K by the end of the day on July 14, 2022 to correct the First Incorrect 8-K, but this attempted Securities and Exchange Commission (“SEC”) filing was blocked by certain members of the Farnsworth Group, even though Mr. Farnsworth was not legally appointed as the Company’s Co-CEO at the time.

On July 17, 2022, the Board convened a duly noticed meeting, where the Board determined, on the recommendation of the Board’s independent committees, to terminate Ms. King as the Company’s CEO and as a Vinco Manager of ZVV Media Partners, LLC (“ZVV”), and appointed John Colucci, who has over 20 years of marketing and advertising experience, as the Company’s Interim CEO. In the days that followed, the Company and the Farnsworth Group held multiple meetings to try and come to a resolution on the Company’s management and path forward.

On July 21, 2022, the Board convened another meeting where, after all directors waived notice required by the Company’s bylaws, the Board (i) rescinded Ms. King’s termination and appointed her as the President of ZVV, (ii) appointed Mr. Colucci as Interim Co-CEO with operational and financial responsibilities and Mr. Farnsworth as Co-CEO with investor relations and certain business unit responsibilities. At this meeting, the Board also directly instructed the Co-CEOs to file a corrective Current Report on Form 8-K by 5:30 PM on July 21, 2022 in order to meet the deadline imposed as a result of Mr. Colucci’s appointment as Interim CEO on July 17, 2022. Once again, certain members of the Farnsworth Group blocked the Company’s attempt to make a Current Report on Form 8-K filing and the deadline was missed.

On July 22, 2022, without informing anyone at the Company or the Board, the Company believes that certain members Farnsworth Group authorized the filing of a Current Report on Form 8-K signed by Mr. Farnsworth that, once again, materially misrepresented the facts and chain of events (the “Second Incorrect Form 8-K”). The Company believes the filings of the First Incorrect Form 8-K and the Second Incorrect Form 8-K were done unilaterally.

On July 24, 2022, the Board of Directors held another duly noticed meeting where the Board, among other things, (i) terminated each member of the Farnsworth Group, effective immediately, (ii) removed Roderick Vanderbilt as the Chairman of the Board, and (iii) ratified and confirmed the Board’s July 17, 2022 appointment of John Colucci as Interim CEO. The Company’s SEC codes and SEC filings by the Company have been blocked by the Farnsworth Group, so the Company anticipates filing a Form 8-K when those issues have been finally resolved.

On July 22, 2022, the Company was, potentially due to the action or inaction of certain members of the Farnsworth Group, required to make the \$33,000,000 cash payment under the Company’s previously disclosed Senior Secured Promissory Note dated as of July 22, 2021 (the “Secured Note Payment”). After the Secured Note Payment was made, the Company had approximately \$20,000,000 of cash and cash equivalents at its disposal. We also have \$80,000,000 of cash that is subject to certain conditions pursuant to a deposit account control agreement, meaning this cash is not readily available for Company use. The Company is currently in the process of implementing a cost reduction plan.

John Colucci, a member of the Board of Directors of the Company who, at the request of the independent directors, agreed to step in as Interim CEO, stated “I was willing to step in as the Company enters into a new phase to stabilize the Company and implement immediate cost-savings plans and aggressively pursue revenue generating programs with strategic partners. The Company believes it thwarted a hostile takeover attempt for no consideration by the Farnsworth Group, and we are in the process of stabilizing the Company to move forward and continue to achieve its goals that are in the best interest of the shareholders.”

### About Vinco Ventures

Vinco Ventures (Nasdaq: BBIG) is focused on the development of digital media and content technologies. Vinco Ventures’ consolidated subsidiary, ZVV Media Partners, LLC, a joint venture of Vinco Ventures and ZASH Global Media and Entertainment Corporation, has an 80% ownership interest in Lomotif Private Limited. For more information, please visit [investors.vincoventures.com](https://investors.vincoventures.com).

### Forward-Looking Statements and Disclaimers

This press release contains “forward-looking statements” as defined in the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995, which are based upon beliefs of, and information currently available to, Vinco Ventures’ management as well as estimates and assumptions made by Vinco Ventures’ management. These statements can be identified by the fact that they do not relate strictly to historic or current facts. When used in this presentation the words “estimate,” “expect,” “intend,” “believe,” “plan,” “anticipate,” “projected,” and other words or the negative of these terms and similar expressions as they relate to the applicable company or its management identify forward-looking statements. Such statements reflect the current view of Vinco Ventures with respect to future events and are subject to risks, uncertainties, assumptions and other factors relating to Vinco Ventures and its subsidiaries and consolidated variable interest entities including Lomotif, their industry, financial condition, operations and results of operations. Such factors include, but are not limited to, the expected benefits from Vinco Ventures’ investments in Lomotif and related growth initiatives and strategies such as the blended media, cross-platform distribution strategy, the expected benefits of Lomotif’s participation in and sponsorship of live entertainment events, the expected benefits from acquisition of AdRizer and planned integration of the AdRizer technology with Lomotif and Honey Badger and synergies between AdRizer, Lomotif and Honey Badger and such other risks and uncertainties described more fully in documents filed by Vinco Ventures with or furnished to the Securities and Exchange Commission, including the risk factors discussed in Vinco Ventures’ Annual Report on Form 10-K for the period ended December 31, 2021 filed on April 15, 2022, which are available at [www.sec.gov](https://www.sec.gov). Should one or more of these risks or uncertainties materialize, or the underlying assumptions prove incorrect, actual results may differ significantly from those anticipated, believed, estimated, expected, intended, or planned. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. Except as required by applicable law, including the securities laws of the United States, we do not intend to update any of the forward-looking statements to conform these statements to actual results.

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For further information, please contact the Company at: [investors@vincoventures.com](mailto:investors@vincoventures.com)

RESP172





### Vinco Ventures Obtains a Temporary Restraining Order

Rochester, NY, August 8, 2022 – On August 5, 2022, Vinco Ventures, Inc. (Nasdaq: BBIG) (“Vinco Ventures,” “Vinco,” or the “Company”), a Nevada corporation, was granted a temporary restraining order (the “TRO”) from the district court Judge of Nevada (District Court Clark-County, Nevada Case No: A-22-856404-B.) against Theodore Farnsworth, Lisa King, Roderick Vanderbilt, and Eric Noble (collectively, the “Farnsworth Group”). The Farnsworth Group is “enjoined from holding themselves out internally or externally as employed by the Company or acting on its behalf in any capacity; is enjoined from accessing Company’s premises or servers; and is 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.”

Over the past few weeks, the Farnsworth Group has been attempting to seize control of Vinco by intentionally creating chaos and holding Company systems and assets hostage from the Company’s legally appointed officers, imperiling its ability to operate properly. The actions of the Farnsworth Group include, among other things, making unauthorized SEC filings and incorrectly holding themselves out internally and externally as employees of the Company. The TRO expressly enjoins the Farnsworth Group from continuing to take these invalid and incorrect actions.

In the process of this attempted hostile takeover attempt, the Farnsworth Group has ignored legally taken Board actions, made inaccurate SEC filings, posted inaccurate and misleading information on social media sites and YouTube, refused to leave after being fired by the Board, blocked the Company’s SEC filings, held illegal board meetings, blocked emails, taken over administrative rights on email and other systems, taken over HR systems and blocked a reduction in force, put the Interim CEO and CFO on “administrative leave,” and harassed and bullied staff to get access to bank accounts, payroll and payment systems.

Prior to obtaining the TRO, the Company filed a lawsuit against Ted Farnsworth and Lisa King in New York State Supreme Court, and the judge granted an Order to Show Cause, ordering the parties to file documents about why the defendants should not be ordered by the Court to be (1) enjoined from holding themselves out as employed by Vinco, (2) enjoined from accessing computer systems, servers and email, (3) enjoined from entering premises, and (4) compelled to turn over the Company’s SEC passcodes (the “NY Lawsuit”). The Company voluntarily discontinued NY Lawsuit on August 4, 2022.

Certain members of the Farnsworth Group co-founded, or held management positions with, ZASH Global Media and Entertainment Corporation and controlled ZVV Media Partners LLC (“ZVV”), Zash’s joint venture company with Vinco. ZVV has an 80% ownership interest in Lomotif Private Limited, represented to be a Tik Tok rival.

The Company’s Interim CEO, John Colucci, confirmed that “This hostile takeover attempt would not stop us in actively pursuing our strategic imperative project named ‘NoMo LoMo.’ NoMo LoMo may potentially be this Company’s greatest asset with notable business opportunities given the US government’s and other government’s opposition to TikTok on the grounds of its Chinese ownership and national and other security issues. We would not allow this most valuable asset to fall into the hands of the Farnsworth Group or Zash without a fight and without adequate consideration to Vinco’s shareholders. All of our shareholders need to be properly and fairly compensated, and that’s what I’m fighting for.”

It is anticipated that details on this currently called “NoMo LoMo” project may be revealed prior to and during the upcoming Vinco stockholder’s meeting to be held on August 23, 2022 at 10 am.

#### About Vinco Ventures

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#### For further information, please contact:

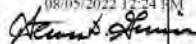
##### Investor Contact

KCSA Strategic Communications  
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8 mconnot@foxrothschild.com  
9 *Attorneys for Plaintiff Vinco Ventures, Inc.*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 VINCO VENTURES, INC.,  
13 Plaintiff.

14 vs.

15 THEODORE FARNSWORTH, LISA KING,  
16 RODERICK VANDERBILT, and ERIK  
17 NOBLE,  
18 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**

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

25 1. Pursuant to Nevada Rule of Civil Procedure ("NRCP") 65(b), the Company has  
26 established good cause for immediate *ex parte* relief, as there is an appreciable risk of irreparable  
27 harm to the Company's business based on the conduct of Defendants Theodore "Ted" Farnsworth,  
28 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

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

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

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

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

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

27 7. Under the circumstances, a TRO is necessary (1) to prohibit and restrain Defendants,  
28

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

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

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

11 1. The Emergency Motion is hereby GRANTED:

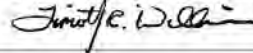
- 12 a. For the duration of this TRO, Defendants are enjoined from holding themselves  
13 out internally or externally as employed by the Company or acting on its behalf in  
14 any capacity;
- 15 b. For the duration of this TRO, Defendants are enjoined from accessing Company's  
16 premises or servers;
- 17 c. Immediately upon receipt of service of this TRO, Defendants and each of them,  
18 are required to relinquish control, or to direct those persons working with or under  
19 them to relinquish control, over the Company's SEC filing passcodes and  
20 cooperate to return SEC codes to the Company's dominion and control under John  
21 Colucci and return all Company personal devices, passwords, servers, documents  
22 (whether in paper or electronic format), payment and payroll systems, and emails  
23 and email servers related to any business of the Company and its affiliates;
- 24 d. Pursuant to NRCP 65(c), the Company shall post a bond in the amount of  
25 \$ 500.00.
- 26 e. This TRO will remain in full force and effect until the conclusion of the hearing  
27 as set forth in Paragraph 2 below, unless the Court otherwise orders the extension  
28

1 of the TRO.

2 2. Pursuant to NRCP 65(b)(3), the hearing on the Company's Emergency Motion shall  
3 be on August 16, 2022 at 9:05 a.m./p.m. Any opposition to the Emergency Motion  
JM Ent 4 shall be filed on or before August 15, 2022, ~~and the Company shall file any reply on or~~  
5 ~~before~~, 2022.

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

8 Dated this 5th day of August, 2022

9 

10 JM

11 Respectfully submitted by:

12 7BA 99C CD9B 124A  
13 Timothy C. Williams  
14 District Court Judge

15 FOX ROTHSCHILD LLP

16 /s/ Mark J. Connot  
17 MARK J. CONNOT (10010)  
18 1980 Festival Plaza Drive, Suite 700  
19 Las Vegas, Nevada 89135  
20 Telephone: (702) 262-6899  
21 Facsimile: (702) 597-5503  
22 mconnot@foxrothschild.com  
23 Attorneys for Plaintiff Vinco Ventures, Inc..

24 \*BlueJeans Dial-in: 1-408-419-1715  
25 Meeting ID: 305 354 001  
26 Participant Passcode: 2258  
27 Online: <https://bluejeans.com/305354001/2258>

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4		
5		
6	Vinco Ventures, Inc., Plaintiff(s)	CASE NO: A-22-856404-B
7	vs.	DEPT. NO. Department 16
8	Theodore Farnsworth,	
9	Defendant(s)	

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

16 Service Date: 8/5/2022

17 Mark Connot	mconnot@foxrothschild.com
18 Doreen Loffredo	dloffredo@foxrothschild.com

NYSC 202207271320 - 28

INDEX NO. E2022005847

RECEIVED INDEX # E2022005847/2022

At Part \_\_ of the Supreme Court of the State of New York in and for the County of Monroe, located in Rochester, New York, on the 29 day of July, 2022:



PRESENT:

HON. Hon. J. Scott Odoris  
Supreme Court Justice 

STATE OF NEW YORK  
SUPREME COURT COUNTY OF MONROE

VINCO VENTURES, INC.,

*Plaintiff,*

v.

THEODORE FARNSWORTH AND LISA KING,


*Defendants.*

**ORDER TO SHOW CAUSE  
SEEKING TEMPORARY  
RESTRAINING ORDER  
AND PRELIMINARY  
INJUNCTION**

**ORAL ARGUMENT  
REQUESTED**

Index No.: E2022005847

UPON Vinco Ventures, Inc.'s ("Plaintiff") commencement of this action by the filing of a Summons and Verified Complaint, and its motion brought to this Court by the present Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction, consisting of (1) the aforementioned Summons and Verified Complaint with Exhibits A and B thereto; (2) the Affidavit of John Colucci sworn to July 27, 2022 with Exhibits 1-10 thereto; (3) the Affirmation of Michael E. Nicholson dated July 27, 2022; and (4) a Memorandum of Law in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction; and upon all other papers and proceedings herein; it is hereby:

**ORDERED**, that Defendants Theodore Farnsworth and Lisa King, or their attorneys, show cause before this Court, Part \_\_, at the Monroe County Supreme Court located in the Hall of Justice at 99 Exchange Boulevard, Rochester, New York, Room \_\_, on the September day of 

Oral argument has been requested  
and will be held via Teams. (20)

9/27, 2022 at 3:00 o'clock in the p.m., or as soon thereafter as counsel may  
be heard, why a preliminary injunction should not be entered; (20)

(i) enjoining Defendants from holding themselves out internally or externally as  
employed by Vinco Ventures, Inc. or as acting on its behalf;

(ii) enjoining Defendants from accessing any Vinco Ventures, Inc. computer systems,  
servers, or emails;

(iii) enjoining Defendants from entering Vinco Ventures, Inc. company property or  
premises; and

(iv) compelling Defendants to relinquish and turn over Vinco Ventures, Inc.'s  
Securities and Exchange Commission ("SEC") filing passcodes to Interim Chief Executive Officer  
John Colucci.

~~ORDERED, that upon each time as the Court rules on Plaintiff's motion for a preliminary  
injunction, Defendants are TEMPORARILY RESTRAINED from:~~

~~(i) holding themselves out internally or externally as employed by Vinco Ventures,  
Inc. or acting on its behalf;~~

~~(ii) accessing any Vinco Ventures, Inc. computer systems, servers, or email systems;~~ (20)

~~(iii) entering Vinco Ventures, Inc. company property or premises; and~~

~~(iv) making any filings with the SEC on behalf of Vinco Ventures, Inc., or retaining  
exclusive control over, and depriving Interim Chief Executive Officer John Colucci of, the  
company's SEC filing passcodes.~~

ORDERED, that service of a copy of this signed Order and the papers upon which it is  
based be made upon Defendants Theodore Farnsworth and Lisa King at their active and  
continuously-utilized company email addresses, [TFarnsworth@vincovenures.com](mailto:TFarnsworth@vincovenures.com) and




L.King@vincovenures.com, and at their personal email addresses, TFarnsworth@gmail.com and LisaKing132@gmail.com, on or before <sup>August 3</sup> July, 2022; and it is further <sup>unless service is accepted by defense counsel and cross motions</sup>

**ORDERED**, that answering papers, if any, shall be electronically filed so as to be received by counsel for Plaintiff by <sup>4</sup> 4 o'clock <sup>p</sup> .m. on <sup>9/6</sup> 9/6, 2022; and it is further;

**ORDERED**, that reply papers, if any, shall be electronically filed so as to be received by counsel for Defendants by <sup>4</sup> 4 o'clock <sup>p</sup> .m. on <sup>9/13</sup> 9/13, 2022. <sup>Reply</sup> on crossmotion, if applicable, is due 9/16/22 by 4 pm

**ENTER:**

Dated: Rochester, New York  
July 29, 2022

HON.   
Supreme Court Justice  
Hon. J. Scott Donovan

# **Exhibit C-6**

August 15, 2022



# **Vinco Ventures Enters Social Media US & Canada Markets in Partnership with AI-Pros**

Vinco Ventures Enters Social Media US & Canada Markets in Partnership with AI-Pros

Rochester, NY, August 15, 2022 – Vinco Ventures, Inc. (Nasdaq: BBIG) (“Vinco,” or the “Company”) announced today that it has been pursuing a strategic initiative project that aspires to be a true Tik Tok challenger. This project resulted in Vinco’s recent signing of a license agreement with AI-Pros Inc. (“AI-Pros”) The license provides Vinco the right to use AI-Pros’ tools and technologies, which could allow Vinco to participate in a social media platform that it believes can significantly enhance its position in the digital advertising markets.

To date, Vinco, through ZVV Media Partners, LLC (“ZVV”), has worked with its joint venture partner, Zash Global Media and Entertain Corporation (“Zash”), to pursue its position in the social media market with the Singapore-based Lomotif app. However, as the Company evaluates its relationship with Zash, and its commitment to the ZVV joint venture, it is very excited to have established its relationship with AI-Pros. With AI-Pros as a partner, Vinco will focus on growing a social media platform that is based on best-in-class technology, primarily targeting the US & Canadian markets as opposed to Lomotif applying older generation technologies and prioritizing non-US and Canadian markets.

In testing, AI-Pros’ technologies have demonstrated higher video resolution, faster video transmission and better video recommendation as compared Lomotif. Moreover, this new platform is being integrated with AI-Core’s advertising platform built on top of robust blockchain infrastructures. The vision is to disrupt the social media industry by recognizing the content creators for their IP, consumers for their data, and advertisers for their ad spend, then distributing the ad revenues fairly to all participants who contributed value to the entire ecosystem.

John Colucci, Vinco’s Interim CEO and President stated, “Social media platform operators should acknowledge all participants and compensate these contributors fairly and properly. We believe our partnership with AI-Pros disrupt what the social media world sees as a shared economy. AI-Pros’ next generation technologies and the potential of sharing revenue with all participants is truly a game changer in this industry. It’s a win-win-win for everyone besides the social media operator and that’s why Vinco wanted to be a part of this new wave as the next phase of our development. We’re excited about the prospects of this business opportunity and working with the AI-Pros team to bring this vision to reality.”

George Yang, founder and CEO of AI-Pros, believes that “Breakthrough technologies are simply a means to an end. By leveraging AI-Core’s machine learning, AI, and blockchain technologies, we strive to use them for the benefit of the people. Content creators should be the real IP owners, consumers should have the right to monetize their own personal data, and advertisers should be able to have a direct relationship with their consumers. This is what we are continually building with our team of experts, professionals, strategic partners, like Vinco, and why we think this will aid in returning the content and data rights to the influencers and users, decentralizing tech oligopolies, and building a more transparent digital economy.”

### **About Vinco Ventures**

Vinco Ventures, Inc. (Nasdaq: BBIG) is focused on the development of digital media and content technologies. Vinco Ventures’ consolidated subsidiary, ZVV Media Partners, LLC, a joint venture of Vinco Ventures and ZASH Global Media and Entertainment Corporation, has an 80% ownership interest in Lomotif Private Limited. For more information, please visit [investors.vincoventures.com](http://investors.vincoventures.com).

### **About Lomotif**

Lomotif is a video-sharing social networking platform that is democratizing video creation. Lomotif, available in the Apple and Google stores, is a downloadable app that has grown worldwide as a grassroots social community with dedicated users spanning from Asia to South America to the U.S. For additional information about Lomotif, please visit Lomotif's website at [www.lomotif.com](http://www.lomotif.com).

### **About AI-PROS**

AI-Pros is headquartered in Silicon Valley and specializes in developing AI recommendation engines and producing conversational AI, as featured at the University of California, Berkeley.

### **Forward-Looking Statements and Disclaimers**

This press release contains “forward-looking statements” as defined in the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995, which are based upon beliefs of, and information currently available to, Vinco Ventures’ management as well as estimates and assumptions made by Vinco Ventures’ management. These statements can be identified by the fact that they do not relate strictly to historic or current facts. When used in this presentation the words “estimate,” “expect,” “intend,” “believe,” “plan,” “anticipate,” “projected,” and other words or the negative of these terms and similar expressions as they relate to the applicable company or its management identify forward-looking statements. Such statements reflect the current view of Vinco Ventures with respect to future events and are subject to risks, uncertainties, assumptions and other factors relating to Vinco Ventures and its subsidiaries and consolidated variable interest entities including Lomotif, their industry, financial condition, operations and results of operations. Such factors include, but are not limited to, the expected benefits from Vinco Ventures’ investments in Lomotif and related growth initiatives and strategies such as the blended

media, cross-platform distribution strategy, the expected benefits of Lomotif's participation in and sponsorship of live entertainment events, the expected benefits from acquisition of AdRizer and planned integration of the AdRizer technology with Lomotif and Honey Badger and synergies between AdRizer, Lomotif and Honey Badger and such other risks and uncertainties described more fully in documents filed by Vinco Ventures with or furnished to the Securities and Exchange Commission, including the risk factors discussed in Vinco Ventures' Annual Report on Form 10-K for the period ended December 31, 2021 filed on April 15, 2022, which are available at [www.sec.gov](http://www.sec.gov). Should one or more of these risks or uncertainties materialize, or the underlying assumptions prove incorrect, actual results may differ significantly from those anticipated, believed, estimated, expected, intended, or planned. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. Except as required by applicable law, including the securities laws of the United States, we do not intend to update any of the forward-looking statements to conform these statements to actual results.

**For further information, please contact the Company at [investors@vincoventures.com](mailto:investors@vincoventures.com)**

# **Exhibit “E”**

At Part \_\_ of the Supreme Court of the State of New York in and for the County of Monroe, located in Rochester, New York, on the 29 day of July, 2022:

(10)

**PRESENT:**

HON. Hon. J. Scott Odoris (10)  
Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF MONROE

VINCO VENTURES, INC.,

*Plaintiff,*

v.

THEODORE FARNSWORTH AND LISA KING,

*Defendants.*

**ORDER TO SHOW CAUSE  
SEEKING TEMPORARY  
RESTRAINING ORDER  
AND PRELIMINARY  
INJUNCTION**

**ORAL ARGUMENT  
REQUESTED**

Index No.: E2022005847

UPON Vinco Ventures, Inc.'s ("Plaintiff") commencement of this action by the filing of a Summons and Verified Complaint, and its motion brought to this Court by the present Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction, consisting of (1) the aforementioned Summons and Verified Complaint with Exhibits A and B thereto; (2) the Affidavit of John Colucci sworn to July 27, 2022 with Exhibits 1-10 thereto; (3) the Affirmation of Michael E. Nicholson dated July 27, 2022; and (4) a Memorandum of Law in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction; and upon all other papers and proceedings herein; it is hereby:

**ORDERED**, that Defendants Theodore Farnsworth and Lisa King, or their attorneys, show cause before this Court, Part \_\_, at the Monroe County Supreme Court located in the Hall of Justice at 99 Exchange Boulevard, Rochester, New York, Room \_\_, on the September day of (10)

Oral argument has been requested  
and will be held via Teams. (20)

9/27, 2022 at 3:00 o'clock in the P.m, or as soon thereafter as counsel may  
be heard, why a preliminary injunction should not be entered: (9)

(i) enjoining Defendants from holding themselves out internally or externally as employed by Vinco Ventures, Inc. or as acting on its behalf;

(ii) enjoining Defendants from accessing any Vinco Ventures, Inc. computer systems, servers, or emails;

(iii) enjoining Defendants from entering Vinco Ventures, Inc. company property or premises; and

(iv) compelling Defendants to relinquish and turn over Vinco Ventures, Inc.'s Securities and Exchange Commission ("SEC") filing passcodes to Interim Chief Executive Officer John Colucci.

~~ORDERED, that until such time as the Court rules on Plaintiff's motion for a preliminary injunction, Defendants are TEMPORARILY RESTRAINED from:~~

~~(i) holding themselves out internally or externally as employed by Vinco Ventures, Inc. or acting on its behalf;~~

~~(ii) accessing any Vinco Ventures, Inc. computer systems, servers, or email systems;~~ (70)

~~(iii) entering Vinco Ventures, Inc. company property or premises; and~~

~~(iv) making any filings with the SEC on behalf of Vinco Ventures, Inc., or retaining exclusive control over, and depriving Interim Chief Executive Officer John Colucci of, the company's SEC filing passcodes.~~

ORDERED, that service of a copy of this signed Order and the papers upon which it is based be made upon Defendants Theodore Farnsworth and Lisa King at their active and continuously-utilized company email addresses, TFarnsworth@vincoventures.com and



LKing@vincoventures.com, and at their personal email addresses, TFarnsworth@gmail.com and

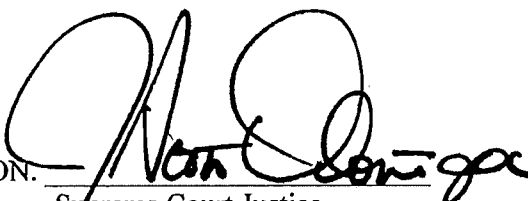
LisaKing132@gmail.com, on or before <sup>August 3</sup> July, 2022; and it is further <sup>unless service is accepted by defense counsel</sup> and cross motions

ORDERED, that answering papers, if any, shall be electronically filed so as to be received by counsel for Plaintiff by <sup>4</sup> 4 o'clock <sup>p</sup> .m. on <sup>9/6</sup> 9/6, 2022; and it is further;

ORDERED, that reply papers, if any, shall be electronically filed so as to be received by counsel for Defendants by <sup>4</sup> 4 o'clock <sup>p</sup> .m. on <sup>9/13</sup> 9/13, 2022. <sup>Reply on cross motion, if applicable, is due 9/16/22 by 4 pm</sup>

ENTER:

Dated: Rochester, New York  
July 29, 2022

HON.   
Supreme Court Justice  
Hon. J. Scott Donovan

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Return To:  
Maureen P. Ware  
99 Exchange Blvd  
Rochester, NY 14614

Receipt # 3152254

Book Page CIVIL

No. Pages: 4

Instrument: ORDER

Control #: 202207291365

Index #: E2022005847

Date: 07/29/2022

Time: 4:20:28 PM

Vinco Ventures, Inc.

Farnsworth, Theodore  
King, Lisa

Total Fees Paid:

\$0.00

Employee: RR

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



# **EXHIBIT B**

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3157256

Book Page CIVIL

No. Pages: 2

Instrument: STIPULATION OF DISCONTINUANCE

Control #: 202208040481

Index #: E2022005847

Date: 08/04/2022

Time: 11:12:59 AM

Return To:  
MICHAEL EDWARD NICHOLSON

Vincio Ventures, Inc.

Farnsworth, Theodore  
King, Lisa

Discontinuance Fee \$35.00

Total Fees Paid: \$35.00

Employee: CW

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



STATE OF NEW YORK  
SUPREME COURT

COUNTY OF MONROE

VINCO VENTURES, INC.,

*Plaintiff,*

v.

THEODORE FARNSWORTH AND LISA KING,

*Defendants.*

**NOTICE OF VOLUNTARY  
DISCONTINUANCE  
PURSUANT TO  
CPLR 3217(a)(1)**

Index No.: E2022005847

**PLEASE TAKE NOTICE** that Plaintiff Vinco Ventures, Inc., by and through its attorneys, Barclay Damon LLP, hereby voluntarily discontinues the above-captioned action, without prejudice, pursuant to CPLR 3217(a)(1).

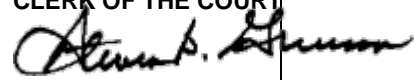
Dated: August 4, 2022

**BARCLAY DAMON LLP**

By: s/ Michael E. Nicholson  
David G. Burch, Jr.  
Michael E. Nicholson

*Attorneys for Plaintiff*  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Tel.: (315) 425-2700

# EXHIBIT C



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 24, 2022

**RECORDER'S TRANSCRIPT OF HEARING  
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff:

JOEL TASKA, ESQ.  
ANDREW CLARK, ESQ.  
REX GARNER, ESQ.

For the Defendants:

WILLIAM S. KEMP, ESQ.  
THEODORE PARKER, III, ESQ  
NATHANIEL R. RULIS, ESQ.  
MADISON ZORNES-VELA,  
ESQ.

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APPEARANCES (continued):

Also Appearing:

AMY L. SUGDEN, ESQ.  
(for Ross Miller)  
GABE HUNTERTON  
JESSE LAW  
ERIK NOBLE (via BlueJeans)

RECORDED BY: MARIA GARIBAY, COURT RECORDER



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**INDEX**

Court's Ruling

Page  
52

1 Las Vegas, Nevada, Wednesday, August 24, 2022

2  
3 [Case called at 10:11 a.m.]

4 THE MARSHAL: Please be seated.

5 THE COURT: Okay, I just want to say good morning to  
6 everyone and welcome you to the I guess midmorning session. And  
7 let's go ahead and set forth -- I'm going to call the one matter I guess  
8 that's Vinco Ventures, Inc. versus Theodore Farnsworth, et al. And let's  
9 go ahead and set forth our appearances for the record.

10 MR. TASKA: Your Honor, Joel Taska and Andrew Clark for  
11 Ballard Spahr for the Plaintiff. And Your Honor, we are the new guys in  
12 the room, so to speak.

13 I do have a couple of matters I wanted to raise as this is  
14 moving quickly. So after appearances are entered and before we get  
15 the motions, I'd like to be heard if I could.

16 THE COURT: Yeah, sir, you can be heard. I don't think I've  
17 ever not permitted anyone to be heard, so.

18 MR. TASKA: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. GARNER: Good morning, Judge, Rex Garner from Fox  
21 Rothschild on -- also on behalf of Vinco.

22 THE COURT: Good morning, sir.

23 MR. KEMP: Your Honor, Will Kemp for Defendant  
24 Farnsworth.

25 MR. PARKER: Your Honor, I'll let Ms. Sugden put her

1 presence -- her appearance on the record first.

2 MS. SUGDEN: Good morning, Your Honor, I entered a notice  
3 of appearance this morning on behalf of Ross Miller, given this Court's  
4 order to appoint him as the third co-CEO.

5 He also has with him Gabe Hunterton. He was not a lawyer,  
6 but and Jesse Lawyer -- Jesse Law, who is not a lawyer as well, but as  
7 part of Mr. Miller's process to get up to speed, he's engaged these  
8 individuals to assist. So we're here today on their behalf.

9 THE COURT: I understand.

10 MS. SUGDEN: Thank you.

11 THE COURT: Good morning, ma'am.

12 MR. PARKER: Good morning, Your Honor, Theodore Parker  
13 on behalf of Lisa King and Rod Vanderbilt.

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

16 MS. ZORNES-VELA: Good morning, Your Honor, Madison  
17 Zornes-Vela on behalf of the Defendant Farnsworth and specially  
18 appearing Defendant Mr. Noble.

19 THE COURT: All right, I think that covers all appearances,  
20 right? Okay, all right, sir, is there something you wanted to say?

21 MR. TASKA: Yeah, thank you, Your Honor. And again, I  
22 know there was a long sort of history that took place last week on this  
23 case. And we are still drinking from the fire hose. We were just retained  
24 this week and getting up to speed.

25 But you know, in looking at the orders and the other filings in

1 the case, we're at a place right now that I wouldn't expect. And the  
2 reason I say that is because it's our side, the Plaintiff's side, that has  
3 claims against the Defendants.

4 They don't have any claims against us. It's our side that filed  
5 the emergent motion. They don't have any motion for a TRO or a  
6 preliminary injunction pending against our side.

7 And the status quo, when we made our filings, the complaint  
8 and the motion for emergent relief, was that the Defendants were fired.  
9 On their best day, even taking everything that they say is true, they were  
10 still fired.

11 And instead, what we wound up here with is not a status quo  
12 where they're -- where they are fired, but a status quo where we have  
13 this sort of coalition government so to speak.

14 And I think that, you know, coming into this fresh, my view on  
15 this is that what the Court needs to do because this coalition government  
16 situation, I'm going to get into that in a little more detail in a moment, is  
17 not helping my client. It's not advancing the purpose of the motion. It's  
18 irreparable harm that's continuing to take place.

19 And I think what the Court needs to do hopefully, I know we're  
20 going to be back here on the 31st of August, maybe there's another time  
21 we can do this, but I think what we need to do is focus like a laser on  
22 whether these folks were actually fired.

23 And that's really going to take the -- an examination of the  
24 single meeting, which is the meeting of the company's Board of  
25 Directors that took place on July 24th.

1           And so, what I'm hoping is we can get back to that place  
2 because what I see coming from the other side is a lot of distraction and  
3 noise.

4           They have tried to create this narrative that it's Mr. Colucci is  
5 the devil incarnate, that he's the bad guy. Even if you took Mr. Colucci's  
6 vote out of the mix on July 24th, the majority of the Board still fired the  
7 Defendants.

8           And so, all of this, including the motions that Your Honor's  
9 going to hear today, are noise. That's all they are. It's a distraction from  
10 the real issue, which I'm hoping Your Honor will get to, which is let's take  
11 a look at what happened at this meeting. Let's see if there was valid  
12 Board action that took place there. Now that's the first thing I want to  
13 say.

14           The second thing I want to say, and this gets back to this --  
15 sort of this coalition government, the company this week had its initial  
16 meeting of the three CEOs.

17           So Your Honor appointed Mr. Miller as -- I believe the  
18 language of the order was that he's neutral and independent and he was  
19 there to sort of break ties, because you know, each side is butting  
20 heads.

21           And, again, I wasn't here. I'm not sure how that happened  
22 exactly, but I don't see any motion on the docket for Mr. Miller's  
23 appointment. I didn't see any sort of --

24           THE COURT: There was a request made in open court, sir.

25           MR. TASKA: Understood, thank you, Your Honor. I don't

1 think there was any particular vetting though of what, you know, Mr.  
2 Miller's alignments were or anything like that to see if he truly would be  
3 neutral and independent.

4 THE COURT: I will say this. Whether someone's  
5 independent, that appears to be a big issue in this case.

6 MR. TASKA: It certainly does, Your Honor. They have  
7 created that issue.

8 My point, going back to my first point, is that's actually not the  
9 issue. And we can talk about that further. But in any event, what we  
10 have here now is the three CEOs per Your Honor's order. One of those  
11 CEOs, Mr. Miller, is supposed to be neutral and independent.

12 And the three co-CEOs had their first meeting on Monday of  
13 this week. And it was videotaped or whatever you call it. It's on video  
14 and we can show it to Your Honor if you'd like to see it.

15 But the -- what we learned there is that when Mr. Miller was  
16 making his introductory remarks, and I'm not casting any aspersions on  
17 Mr. Miller at this point. I don't think, you know, necessarily think he did  
18 anything wrong here.

19 But what we found out is that one of his two personal advisors  
20 on this matter on how to make decisions for the company is a gentleman  
21 named Jesse Law.

22 And Jesse Law was actually in the room with Mr. Miller during  
23 this Zoom call with the three CEOs and some of the other officers.

24 Jesse Law, Your Honor, and I believe he's in the courtroom as  
25 well, he's affiliated with the Defendants. And I can give you the details

1 on that in a moment.

2 And so, the person who is going to be advising our supposed  
3 neutral and independent CEO, the one who's supposed to break ties, is  
4 being advised his decisions are being informed by someone who's  
5 aligned with the Defendants.

6 And to get specific about that, Your Honor, Mr. Law was  
7 recently appointed as manager of Defendant Farnsworth's flagship  
8 company.

9 So this -- you know, there are a lot of things I would like to  
10 change about the way this proceeding has gone and where it seems to  
11 be going, but at a minimum, that has to be rectified because that's in  
12 violation of Your Honor's order.

13 We do not have a neutral and independent third CEO. We  
14 had a third CEO who has -- is being informed on an ongoing basis and  
15 has been informed by somebody who is in bed with the Defendants.

16 And so, that's got to change. And Your Honor, I mean, I don't  
17 know exactly what happened at this meeting, but you can watch the  
18 meeting.

19 One of the things that you'll observe is that one of the  
20 Defendants, Mr. Noble, is there. And he sort of feigns ignorance as to  
21 who Mr. Law is.

22 We've got photos that we can share with Your Honor that  
23 show them in the same room from a period of time months ago.

24 Mr. Law is clearly aligned with the Defendants. Defendants  
25 are hiding the ball on that because they don't want Your Honor to find

1 that out.

2 And in the meantime, the company is suffering. At that  
3 meeting, the one thing that was decided was whether to cancel a  
4 stockholders meeting of the company.

5 And the three CEOs voted. And what a surprise, the  
6 Defendant CEO Ms. King, and Mr. Miller voted the same way to not  
7 have that stockholders meeting over the objection of Mr. Colucci, the  
8 third CEO, who said that meeting definitely has to go forward or else it's  
9 going to harm the company.

10 The very next day, Your Honor, the company's stock dropped  
11 by 14.7 percent. So millions of dollars were lost in that day because of a  
12 decision that was made by the Defendants.

13 The Defendants are now controlling this company, which is  
14 exactly why we came into Court on emergent basis to stop that from  
15 happening. And here's where we are. And I'll shut up now, Your Honor,  
16 and I'm sure I'm going to hear --

17 THE COURT: No, no, no, I'm listening. Sir, I'm listening.

18 MR. TASKA: Yeah, I'm sure we're going to hear quite a bit  
19 from the other side. And we can hear the motions, but Your Honor, the  
20 motions are just -- they're more of the same, a way to distract the Court  
21 to make the Court go down a rabbit hole on this Colucci business when  
22 that's not the issue.

23 If they think Colucci's independent, they have claims against  
24 Colucci, where they want to sue Colucci --

25 THE COURT: No, they don't think he is independent. That's



1 the position they're taking.

2 MR. TASKA: Well, then okay, so he runs breached a fiduciary  
3 duty if something like that, they can have at it. Let them file claims  
4 against him. There are no claims against him right now.

5 The claims in this case are by the company against these  
6 Defendants to get them out. And that's what the Court should be  
7 litigating.

8 THE COURT: And for the record, sir, just so you understand,  
9 I guess we had some discussions. And I was concerned about whether  
10 the litigation was impacting the ability of the company to continue on.

11 And I even thought about at one point, I just kind of mentioned  
12 it *sua sponte* although I would never make this -- that type of decision,  
13 but I said, well, maybe this might be the time for a receiver or something  
14 like that, right, somebody that reports directly to the Court, right?

15 And his name was -- Mr. Miller's name was mentioned as a  
16 potential alternative. And then, the parties caucused for a while and  
17 they couldn't come up to real any -- real conclusion.

18 Counsel on behalf of, wasn't it Mr. Connot?

19 MR. PARKER: Connot.

20 THE COURT: Yeah, he had one position. Mr. Parker had  
21 another position. I think Mr. Kemp had another position.

22 And Mr. Kemp brought up maybe we should have a third  
23 neutral Board member to help with the company being able to continue  
24 to conduct business so on and so on.

25 And so, that's how that happened just to give you a --

1 MR. TASKA: That's helpful, background Your Honor, but --  
2 and on under other circumstances, Mr. Miller might be the perfect  
3 person to do that job.

4 Here, the well has been poisoned. I mean, it's unacceptable.  
5 We can't have this happen where you have Mr. Law and Mr. Miller sitting  
6 together. Mr. Law is with them. He should be sitting over here. So it's  
7 -- don't know if Your Honor has any reaction to that.

8 THE COURT: No, I understand. No, you're just telling me  
9 your position. I get it.

10 MR. TASKA: Yeah, okay. Thank you Your Honor.

11 THE COURT: Mr. Parker?

12 MR. PARKER: Your Honor, I only -- I stood up because I  
13 initially - -and I've never practiced against Mr. Taska. I don't think we've  
14 ever met or had any cases together, but typically when we file motions,  
15 we get the first chance to argue.

16 THE COURT: Right.

17 MR. PARKER: Mr. Taska got up, talking how he was not  
18 going to address the motions in terms of the merits of the motion, he  
19 wanted to put some -- a few things in front of the Court.

20 He starts out by arguing the points within their Opposition to  
21 the motion filed at 10:00 last night.

22 He virtually repeats the declaration signed by Mr. Colucci  
23 going right back to the July 24th, 2022 Board meeting.

24 And so, I find it disturbing that that's how he would enter this  
25 case by saying he's going to inform the Court of something other than

1 the merits of the motions and the oppositions. And that's where he  
2 starts.

3 So I'm a little concerned that perhaps he will from this point  
4 forward adhere to the decorum of those filing the motion actually get to  
5 argue the motion first. He gets a chance to close . And then, we get to  
6 finish.

7 And in terms of what he has said, I also am a little bit  
8 disappointed that he would say I'm not here to cast any aspersions in  
9 terms of Mr. Miller, but then, he starts criticizing Mr. Miller.

10 And so, I'm really troubled by the comments he made to the  
11 Court, which appear not to be not only accurate, but he knew going into  
12 this conversation that he wanted to argue the merit ahead of us. He  
13 wanted to criticize the Court's decision to appoint Mr. Miller.

14 And he wanted to try to figure a way of suggesting a  
15 causation, some form of causation between not having a stockholders  
16 meeting and the stock value going down versus simply a correlation  
17 perhaps.

18 Either way, the arguments that he's already made ahead of us  
19 actually arguing our own motion is inappropriate in terms of when he put  
20 them forward and we've read everything he had to say based upon his  
21 oppositions. And I'm assuming the Court got them roughly at 10:00 last  
22 night.

23 THE COURT: Yeah. And, Mr. Parker, you've been in front of  
24 me enough to know that I'm not -- it's not going to be the first word or the  
25 last word. I make a decision based upon what I think would be

1 appropriate under the facts and circumstances of the case.

2 MR. PARKER: Absolutely, Your Honor.

3 THE COURT: And the law. And the law.

4 MR. PARKER: The other thing that I'm concerned about is he  
5 spent a quit bit of time re-arguing the TRO. The points he's raised now,  
6 we spent three days going over. This Court has heard everything that  
7 he said this morning before --

8 THE COURT: Well, the preliminary -- the injunctive relief  
9 orders --

10 MR. PARKER: Except for the meeting this week.

11 THE COURT: -- aren't current, but they're not currently  
12 pending anyway. Those have been -- yeah.

13 MR. PARKER: Exactly. So if it was up to me, it was a waste  
14 of the Court's time. And to me, it felt like a criticism of the Court's prior  
15 actions that took place after three days of intense oral argument.

16 The other thing I wanted to point out that I'm a little  
17 disappointed in in terms of their entrance into the case is they're arguing  
18 points in their Opposition that in fact are simply untrue.

19 The Court indicated that it had a certain inclination or leaning  
20 towards the complexity of this case. And yet, they put in their Opposition  
21 that this is a simple, not complex case, perhaps a criticism of the Court's  
22 description of how complex this case might be.

23 And the other thing that I thought --

24 THE COURT: I think in a general sense, Mr. Parker, there's  
25 no -- there's -- it's rare. I shouldn't say no. It's rare that you have simple

1 situations where it comes to civil litigation. It's always more complex  
2 once you dig a little deeper than it first appears. And that's true --

3 MR. PARKER: That's right. And maybe he just has not  
4 gotten deep enough in the case to have a full appreciation for the  
5 complexity of this case.

6 And that could be it, because he's also made some comments  
7 about things in his Opposition and statements today that simply are  
8 untrue.

9 Our time for answering the complaint hasn't run yet. I can  
10 suggest to you that there will probably be counterclaims going against  
11 Mr. Colucci for sure in this case, because we're concerned that who  
12 gave Vinco -- in terms of the Board members or the CEOs, we're not  
13 aware of any authority provided hiring this law firm. I've not seen  
14 anything that has authorized the retention of Ballard Spahr.

15 In fact, I didn't see anything authorizing the retention of their  
16 prior counsel or a continuation of the retention of Lucosky Brookman.  
17 So I'd love to see that information, because certainly I'm not aware of  
18 Mr. Miller or Ms. King or Mr. Colucci producing a document retaining that  
19 firm. So these are things that will add to the complexity of this case I'm  
20 sure.

21 But Your Honor, I want to actually get into the meat of the  
22 motions. I'm going to let Mr. Kemp start and we can go from there.

23 MR. KEMP: And, Judge, before we get to the motions, a  
24 couple points. Counsel -- and I recognize it's a complicated case. You  
25 know, it's hard to get to up speed. There's lots of names.

1 And so, counsel got up and the very first thing he said is I  
2 didn't see a TRO filed by the Defendants. We filed an ex parte motion  
3 for TRO. I mean, how can you miss that?

4 MR. TASKA: Where is it on the docket?

5 MR. KEMP: It was emailed to you.

6 MR. TASKA: Was it filed?

7 MR. KEMP: It was emailed to you.

8 MR. TASKA: Wasn't filed.

9 MR. KEMP: Well, it wasn't emailed to you.

10 MR. PARKER: It was submitted to the Court.

11 MR. KEMP: It was emailed to opposing attorney.

12 MR. RULIS: As an ex parte here.

13 MR. KEMP: Yeah, but in any event, and please don't interrupt  
14 me. I didn't interrupt you even though you made a lot of mistakes.

15 So, Your Honor, I understand it's a complex case. It's hard to  
16 get up to speed. But basically, he comes in here and he tells the judge  
17 everything we did last week was wrong in my opinion.

18 Well, file a motion for re-hearing. He just file a motion for  
19 re-hearing. That's his right to do, but he hasn't done it. Might not do it,  
20 but until he does it, why should we re-visit everything he did last week?

21 And then, he says that --

22 THE COURT: You know, I think it's important to point --  
23 because I remember this case. And at the end of the day, ultimately, I  
24 granted the TRO. And then, the TRO was dissolved by an order entered  
25 by me as trial judge in this case, right?

1                   Last but not least, there was a significant discussion as to  
2 what is the status quo or maintaining the status quo. And everyone  
3 agreed -- disagreed as to specifically what that meant.

4                   I looked at it from this perspective as far as maintaining the  
5 status quo would be this. To make sure the Vinco Ventures entity can  
6 continue to conduct business.

7                   And at the end of the day, we can ferret out and decide  
8 ultimately who's in charge of what? Who's on the Board and whether or  
9 not the election was appropriate, whether or not there was an  
10 investigation or not, why there was -- why there was a termination of  
11 Board members and all these things, right?

12                  And so in my mind, the status quo was I wanted to make sure  
13 this company continued on, right?

14                  MR. KEMP: Right, Your Honor.

15                  THE COURT: And functioned as a business. Nothing more,  
16 nothing less. Because as far as the status quo is concerned I basically  
17 am looking at it through those lenses because I anticipate -- and  
18 understand this, and this is what's important to not forget.

19                  This is a business court case. And everyone in here has  
20 practiced in business court, right? In business court, judges are  
21 supposed to expedite these matters, get you in real quick, and do all  
22 sorts of things.

23                  And I looked at it because we had -- I know there was going to  
24 be an answer and counterclaims, right? It's obvious because upon all  
25 the motions that were filed in this case, right?

1           And so, the decision I made, I was looking at it from this  
2 perspective. It's a question of fairness and preserving the ongoing  
3 capabilities of this business, nothing more, nothing less. And at the end  
4 of the day, they'll be some decisions made, maybe by me, maybe by a  
5 jury. I don't know.

6           MR. KEMP: And then counsel --

7           MR. TASKA: Your Honor, can I respond?

8           MR. KEMP: I was not done, okay?

9           MR. TASKA: I --

10          MR. KEMP: I was not done. Sit down.

11          THE COURT: But no -- but sir -- you're going to get no --  
12 gentlemen.

13          Bobby, I don't want to have you have to come in and assist  
14 me.

15          THE MARSHAL: Yes, sir.

16          THE COURT: But anyway, gentlemen, historically, I let  
17 everyone speak their piece, right?

18          And so, sir, I'm going to give you more than a full and fair  
19 opportunity to respond anything Mr. Parker or Mr. Kemp has to say.

20          MR. TASKA: Thank you, Your Honor.

21          THE COURT: Because it's like the prior matter, I don't want to  
22 have hit the moot button as far as this case is concerned.

23          MR. KEMP: And Your Honor, counsel referred to the six-hour  
24 meeting between three CEOs. I have reviewed the tape, but like Mr.  
25 Parker said, I don't think the retention of Ballard Spahr was addressed.



1 He is supposed to be representing Vinco. He is not here representing  
2 Mr. Colucci.

3 Mr. Colucci does not have the unilateral right at this point,  
4 unless he's violated the Court's order, to sit here and retain people from  
5 the company without at least addressing it with the other CEOs.

6 And if counsel says, oh, the company's suffering, well, he  
7 doesn't tell you is that they paid \$875,000 to the Lucosky firm last week,  
8 \$875,000.

9 Remember, we were arguing for hours about whether they  
10 could afford to pay a \$70,000 payroll for two weeks? And now they've  
11 sat here and paid counsel \$875,000.

12 And I don't what Ballard Spahr got. I don't know if they got  
13 \$875,000, but I mean, these are not decisions Mr. Colucci should be  
14 making on his own without consulting the other two CEOs.

15 And then, counsel says, oh, oh, today, the stock market fell  
16 650 points, the company stock went down 12 percent. So that shows  
17 there's a negative shareholder reaction to what the Court did.

18 Well, Your Honor, today, the stock's up 12.81 percent. The  
19 stock market goes up. The stock market comes down. We can't base  
20 the court decisions on whether we have a good or bad day in the stock  
21 market.

22 THE COURT: Well, I will say, this, Mr. Kemp. And I don't  
23 mind saying this. What I was trying to do is add stability to the company  
24 by just -- by I guess following your suggestion. And it appears to me  
25 maybe that did occur. I don't know. But -- and I'm not a financial guy. I

1 mean, I do got a degree in business, but I haven't dealt with those  
2 issues for a long time.

3 MR. KEMP: You know, Mr. Miller's getting up to speed. He  
4 just doesn't have to learn the legal pleadings. He's got to learn the  
5 company.

6 But I mean, that's the fundamental problem here and I think  
7 that brings us to the first motion. And so, I'll let counsel respond to what  
8 we said and then I'd like to address the motion.

9 THE COURT: All right.

10 MR. TASKA: Thank you, Your Honor. Just very briefly. What  
11 I heard were a lot of sort of personal attacks on me and -- but what I  
12 didn't hear out of this side was anything about the issue of Mr. Miller  
13 being advised by Mr. Law, who's affiliated with the Defendant.

14 Your Honor, if -- I was hoping given how quickly things were  
15 moving, we could address that right now. If Your Honor would like us to  
16 file another motion on an order shortening time, we could do that, but  
17 that issue has to be addressed immediately.

18 And I find it ironic that they say the three CEOs should have  
19 decided what counsel to hire. Well, the counsel's that's going be hired,  
20 it's going to be 2 to 1 against whatever Mr. Colucci wants, because  
21 they've stacked the deck so that they have 2 CEOs to our 1 is  
22 essentially what they have done. So that's the troubling issue.

23 I would hope that the Court would find that troubling as well  
24 since the order submitted by Defendant's counsel to Your Honor that  
25 Your Honor signed said that Mr. Miller was going to be neutral and

1 independent.

2           So I guess I just ask Your Honor before we proceed with the  
3 motions, whether we ought to file a separate motion or if we can maybe  
4 hammer out some resolution to that today?

5           MR. KEMP: Judge, we're going to be here Wednesday. I  
6 would suggest they file a separate motion. I'll stipulate to have it heard  
7 on order shortening time.

8           If they want a separate motion challenging Mr. Miller's  
9 independence, I'm going to file a cross-motion trying to figure who they  
10 represent.

11           They are supposedly here on behalf of the company. You just  
12 heard him say one more time that he is filing Mr. Colucci's directive,  
13 period. That has not been brought through the three CEOs.

14           I mean, we posted a bond at 5:00 on Friday. As of 5:00 on  
15 Friday, there were three CEOs with equal authority that were supposed  
16 to run this company.

17           Now he gets hired on Monday apparently by Mr. Colucci,  
18 apparently with company funds, and they don't tell Mr. Miller this or the  
19 other CEO King? I mean, it's unbelievable, Your Honor. And then, to  
20 suggest that we're the problem?

21           THE COURT: I mean, ultimately, and this is how I look at this.  
22 And right now, I have allegations, but I don't have facts. There's always  
23 two sides to the story, I will say that.

24           I'm quite sure whatever assertion is being made on that issue,  
25 Mr. Miller's counsel will probably have -- like to have an opportunity to

1 respond.

2 MS. SUGDEN: Yes, Your Honor.

3 THE COURT: Right, ma'am?

4 MS. SUGDEN: Yes, Your Honor, we do. We certainly have a  
5 response.

6 THE COURT: Yeah, and so, what I think -- and this is a  
7 fairly -- and here's my point. This is something that has to be vetted. I'm  
8 not going to make a determination today on this issue, because there  
9 were similar allegations made regarding Mr. Colucci and his  
10 independence. I didn't take him off the Board.

11 You know, I just put somebody there that I -- that was alleged  
12 to be truly independent. We'll find out, you know. My mind's really open  
13 on that, but that's kind of how I look at it because at the outset, they  
14 were arguing for him to be off the Board. I remember this case.

15 MR. TASKA: Your Honor, I wanted to --

16 THE COURT: There were issues regarding whether or not -- I  
17 mean, I remember this, too. There was an issue regarding the timing of  
18 the termination of Mr. Farnsworth, et al, because they were requesting  
19 an independent investigation.

20 MR. PARKER: That's right.

21 THE COURT: I remember the facts.

22 MR. PARKER: Your Honor, and I just wanted to add to what  
23 Mr. Kemp said in terms of agreeing to a TR -- a OST. On behalf of Mr.  
24 Vanderbilt and Ms. King, we would not oppose an OST on the issue.

25 We would like to see, however, the actual fee agreement.

1 Certainly the model rules in Nevada observed by Nevada that there is a  
2 written fee agreement.

3 So we'd like to see that fee agreement between Ballard Spahr  
4 and Vinco Ventures and I'd like to see who signed it. So if he could  
5 provide that as a part of any motion, we would appreciate that. I want to  
6 make sure that was on the record.

7 And then, finally, Your Honor, your recollection is spot on. I  
8 asked that the CEOs be Ms. King and Mr. Farnsworth. I didn't want Mr.  
9 Colucci involved at all. The Court did not go with my suggestion.

10 THE COURT: Yeah.

11 MR. PARKER: The Court didn't go with Mr. Connot's  
12 suggestion.

13 THE COURT: Right. And I kind of looked at it -- I guess we  
14 all have different definitions of maintaining the status quo. Mine was  
15 more of I want to make sure the company can move forward, because  
16 there was a lot of issues going on notwithstanding the fact that we even  
17 had bandwidth problems with all the investors listening in to the  
18 hearings. And that's a big issue.

19 And trust me on this. I believe -- I fully believe in public  
20 access. There's no question about that, but we couldn't function  
21 because of bandwidth and the computers were crashing and all these  
22 things, you know. So I got some guidance from the Chief Judge.

23 But my point is this. This is business court. Things kind of  
24 move a little faster.

25 Sir, you can file whatever you feel is appropriate.

1 I'm not going to make a decision regarding their request  
2 because they can make a specific request asking that, because at the  
3 end of the day, and this is what I like to do, and I think this is most  
4 important from a historical perspective, I like to vet issues, right? And  
5 maybe counsel wants to chime in when the appropriate time occurs  
6 representing Mr. Miller.

7 And so, I respect your position, sir. All I'm saying is file a  
8 motion. I'll sign an order shortening time. We'll get it on real quick.

9 MR. TASKA: We will, Your Honor. I just want to emphasize  
10 that the emergent nature of this -- because the company -- Your Honor's  
11 intention was that the company function.

12 It is not functioning. This is dysfunction and it's dysfunctioning  
13 in a way that favors Defendants, because it's 2 to 1. They win every  
14 vote, every time.

15 So anything that takes place the next few days until my  
16 motion's heard is going to be 2 to 1. So that's where we are.

17 THE COURT: All right, okay.

18 MR. KEMP: Your Honor, on the three remaining motions.

19 THE COURT: Yes, sir.

20 MR. KEMP: The third one on the payroll, I would suggest we  
21 continue that a week to see where we're -- I'm assuming that the three  
22 CEOs are going to continue to authorize the payroll, but I don't know  
23 that. So I would suggest we continue it for a week.

24 THE COURT: Why wouldn't we continue with the payroll?

25 MR. KEMP: I'm not trying to raise the issue now, Your Honor.

1 I'm just trying to continue the motion --

2 THE COURT: Right.

3 MR. KEMP: -- in case it becomes an issue.

4 I would think they would continue payroll, but I don't know.  
5 You know, I -- maybe after paying all this money to Ballard Spahr and  
6 875,000 to the other firm, all of a sudden, money's not that big of an  
7 issue now. Maybe they will continue the payroll. I don't know.

8 MR. TASKA: So, Your Honor, I -- our position on this motion's  
9 is it's moot. I mean, we made the payroll. I don't know why he filed his  
10 motion. Maybe just another vehicle to take further shots at us. I'm not  
11 sure.

12 But the -- as far as I understand, again, I'm very new to the  
13 case, but what I was told was that the payroll has been paid. And so,  
14 the motion is moot.

15 MR. PARKER: Your Honor, just to make Mr. Taska aware of  
16 why it was filed, the motion was actually submitted to the Court on the  
17 15th of August before we started the hearing on the 16th, 17th, and  
18 18th.

19 So it was done for purposes of making sure that those  
20 employees got paid. I believe because Mr. Taska was not involved,  
21 perhaps he's not up to speed in terms of timing of the filings, but that's  
22 why it was done.

23 And the Court made that a priority. And the Court said several  
24 times, and this keep -- this rings in my head all the time, it resonated I  
25 think with everyone in the room.

1           The Court said I am concerned with the preservation of the  
2 health of this company. He repeated that at least two or three times.

3           And so, you wanted to make sure those employees got paid.  
4 And I believe the authority you've already vested with is three CEOs,  
5 allow them to continue with the preservation of the health of the  
6 company, including of course, paying the employees to make a payment  
7 of any kind.

8           So I agree with Mr. Kemp, I don't think there's a reason that  
9 the Court needs to take this motion up now because I think you've given  
10 the authority to this three CEOs to handle getting these employees paid  
11 timely and not violating any labor laws.

12           MR. KEMP: Judge, I just wanted it to be continued. I mean,  
13 because we might get in a situation like we're having now, where  
14 Colucci does whatever the hell he wants to do and it doesn't matter what  
15 the other two CEOs say.

16           You know, so he may go ahead and fire these people anyway.  
17 I don't have information that he's going to do that, but I don't have  
18 information he's not going to do that.

19           THE COURT: Right.

20           MR. KEMP: So all I'm suggesting is continue it a week in  
21 case it becomes an issue.

22           THE COURT: All right, sir?

23           MR. TASKA: Your Honor, I think he can file a new motion if it  
24 becomes an issue. This motion is moot.

25           And again, the invective directed toward Mr. Colucci -- they



1 have shoved Mr. Colucci out and they're acting like Mr. Colucci's the one  
2 who's running around like a wild man here. He's been shut out of  
3 everything. So that's ridiculous.

4 THE COURT: Yeah, well, here's one of the -- this is very, very  
5 important to point out. It is. And I think it's implicit in one of my status  
6 checks to address this issue because it -- as far as functioning, and this  
7 is important to point out, when it comes to the day-to-day operations of  
8 the company, I think it would be burdensome on the company when it  
9 comes to making administrative decisions vis a vis making payroll, to  
10 have to run to Court for that, right?

11 MR. PARKER: Right.

12 THE COURT: She shouldn't have to file a motion for that.

13 And in order to cut that off as to being an issue, that's one of  
14 the reasons why I set a status check on August 31st of 2022, because  
15 it's right here, status check, expiration of the 8/17/22 order/payment to  
16 vendors and salaries.

17 You know, and my point is nobody should have to file a motion  
18 for that. This is an ongoing business, right, worth millions of dollars, tens  
19 of millions of dollars. And they have payroll obligations.

20 And so, as a trial court, I'm not going to get involved in the  
21 day-to-day operations of a corporation or a company. If I wanted to do  
22 that, I just appoint a receiver and have them report to me, right?

23 And the reason why I brought that up, I mean, I brought that  
24 up *sua sponte* at the last hearing. And I think that's what we ultimately  
25 ended up with a compromise so you're more up to speed.

1 But I mentioned it, but I said look, I would never do that  
2 without it being appropriately vetted because I don't know if this meets  
3 the requirement under the receivership statute in the state of Nevada,  
4 but we need somebody independent to do something to keep this  
5 company moving.

6 So that's so you can understand a little bit of the history,  
7 because there's a lot of moving parts as far as this case is concerned.  
8 And so, anyway, it's moot.

9 I'll go ahead and we'll -- I'll -- we'll -- I'll administratively take  
10 that matter off calendar because we're going to address that on the 31st.  
11 And that's prior to the next payroll, right?

12 MR. KEMP: Yes, Your Honor.

13 MR. PARKER: That's right, Your Honor. The last payment  
14 was the 19th.

15 THE COURT: Yeah, there's a reason why I set these up this  
16 way, right, because I was concerned about that.

17 MR. PARKER: That's correct, Your Honor.

18 THE COURT: So that's a nonissue. We'll address that.

19 And I guess there were issues regarding payment to vendors.  
20 Okay, all right. So let's go on to the next one.

21 MR. KEMP: Judge, why don't we take the easy one, which is  
22 the expedited discovery and the appointment of special master. Okay, I  
23 read their motion last night. I mean, different offer, different view, okay?

24 When we brought this up whether or not the case was  
25 complex, and I'm reading from page 78 of the August 17th transcript

1 Wednesday:

2 The Court: I think this case would meet the definition of  
3 complex litigation, right?

4 Me: I say I agree, but it doesn't say that on the transcript.

5 Mr. Connot: "I tend to think so".

6 That's Vinco's attorney saying that. Not the new Vinco  
7 attorney. Says it's not complex.

8 Your Honor, I don't want to go through bunches of facts and  
9 issues, but I mean, this is a pretty complex case. And so, we think a  
10 special master would assist us. And you can see basically both sides  
11 are not agreeing to anything at this point, so a special master's even  
12 more necessary.

13 THE COURT: All right, we'll hear from the Opposition.

14 MR. TASKA: So, Your Honor, I didn't hear counsel advocate  
15 for the expedited discovery. So I'd like just some clarification as to  
16 whether that's something you're still seeking?

17 MR. KEMP: No, we do want expedited discovery, Your  
18 Honor, because what we're anticipating is that there's a preliminary  
19 injunction hearing like I said before sometime in middle of September,  
20 late September. So we'd like to get these depositions going.

21 MR. TASKA: So, your know, as Your Honor is aware,  
22 expedited discovery is not the norm. It requires good cause to be  
23 shown.

24 I think that counsel's comment about this -- Mr. Connot's  
25 comment about this case being complex probably was aimed at the way

1 they are trying to spin what this case is about.

2 From our perspective, the case is very simple and it's very  
3 narrow.

4 THE COURT: Right.

5 MR. TASKA: Our claims are whether their side -- whether  
6 their clients were properly fired. And that's a very narrow issue. I don't  
7 think that a special master is necessary to deal with that issue.

8 Perhaps what they could do is once they file their own  
9 pleading and have their own claims of record in this case, that they think  
10 make the case complex, they can ask for a special master at that point.  
11 But right now, they've created no record to show that this case is  
12 complex. As far as the motion for -- so that's the special master.

13 As far as the expedited discovery goes, again, we're not sure  
14 what it is that they want to get. If it's expedited discovery on the issue of  
15 Mr. Colucci's independence, again from our perspective, that's a  
16 nonissue.

17 They still lose. They still lose that day of the vote even if Mr.  
18 Colucci was interested, not independent, they still lost the vote 2 to 1  
19 where their clients were fired. So we think that's a nonissue.

20 So no expedited discovery is necessary on that issue. And  
21 there's nothing in the case at this point that shows that a special master  
22 is needed in the absence of them filing any claims and our claims being  
23 very straightforward.

24 MR. PARKER: Your Honor, let me just start out by asking, do  
25 you have any questions regarding the complexity of this case? I don't

1 want to spend a lot of time --

2 THE COURT: Well --

3 MR. PARKER: -- given what you've already heard over three  
4 days prior to --

5 THE COURT: -- these are my thoughts. I don't mind sharing  
6 with everyone.

7 MR. PARKER: Please.

8 THE COURT: Each party has a different position as far as the  
9 complexity of the case is concerned.

10 I understand the Plaintiff's position. Just as important, I  
11 guess, both Defendants have positions regarding I guess what ultimately  
12 resulted in the make-up of the Board in this case, right?

13 And it starts -- it's my recollection, it starts questioning the  
14 conditions and circumstances upon which Mr. Colucci became a Board  
15 member, right? And they're going to the very outset.

16 And so, as a trial judge, I mean, you have to look at it from this  
17 perspective. I'm not saying who's right or wrong as far as their  
18 respective positions are concerned.

19 Notwithstanding that, I don't think either side gets an  
20 opportunity to look at the judge and say look, Judge, this is how the case  
21 should proceed, because both the parties have an opportunity to ferret  
22 out these vis a vis discovery facts that support their positions. I mean, I  
23 get that.

24 And so, it might be very simple. My impression was complex  
25 because we were dealing with what appeared to be fairly significant

1 corporate governance issues, right? That's what we're dealing with  
2 here.

3 And so, I guess Mr. Connot kind of agreed to a certain extent,  
4 but he didn't look at it as being that simple. I understand you have a  
5 different viewpoint and lawyers can do that. They can bring fresh eyes  
6 to the issues that are being litigated.

7 And so, that's the way I see it. I mean, whether it's ultimately  
8 complex or not, it does come down to in a general sense what would be  
9 all the claims asserted in this case.

10 I don't mind saying this. I've never seen lawyers that are  
11 involved in this case involved in anything straightforward and  
12 uncomplicated. I can probably take judicial notice of that.

13 MR. PARKER: Yeah, absolutely.

14 THE COURT: I mean, if this was a rear end motor vehicle  
15 accident, I would anticipate it wouldn't be straightforward and  
16 complicated based on the lawyers involved.

17 MR. PARKER: Your Honor, I take that as a compliment for  
18 everyone. Maybe not so much, but you're right. And typically, Your  
19 Honor, when you start a case off with the filing of a TRO ex parte,  
20 because you're concerned about --

21 THE COURT: Well, procedurally, it's a different case. You  
22 start with the complaint, and answer, counterclaims. It's in a different  
23 position.

24 But it's my recollection these are the -- this is the exact type of  
25 case that Justice Hardesty envisioned when he was one of the justices

1 behind the creation of business court.

2 MR. PARKER: That's right.

3 THE COURT: Right? This is like, yeah, we have a lot of  
4 formalities. And of course, we do that in business court, but you got to  
5 jump in, Judge. You got to get involved in the case, because lawyer -- I  
6 mean, the parties sometimes pay extra money, they get a business court  
7 judge.

8 Business court judge is here. He's involved in discovery  
9 disputes and all those things in order to facilitate and prevent a case  
10 from sitting on the docket for two and a half, three years.

11 MR. PARKER: That's right. And I -- for some reason, I  
12 cannot reconcile why the Plaintiff wouldn't want these issues vetted and  
13 figured out as soon as possible for the health of the company. Why  
14 would you want this to go longer? It makes no sense.

15 The reason why they ask for an ex parte TRO is because they  
16 want an expedited decision from this Court. They didn't give us 30 days'  
17 worth of notice.

18 They came to the Court without us, without notification, which  
19 is allowed under the Rules for certain circumstances because they  
20 wanted a quick resolution to this. And they set a motion up for  
21 preliminary injunction.

22 We're simply saying we also want this decision or resolution to  
23 be arrived to as quickly as possible. One way to do it, of course, is  
24 through discovery on an expedited basis.

25 The difference between a normal case, 16.1 governed, versus

1 16 is that the business court judge gets their hands around the case and  
2 then allows us to do discovery we need to do and quite often an  
3 expedited basis, not unlike the lengthy case that Mr. Miller and I were  
4 against each other on and Mr. Kemp and I worked for two years. And  
5 we took discovery, a preliminary injunction hearing, a TRO hearing, and  
6 a trial within months.

7 And so, I cannot see for the life of me why the Plaintiff  
8 wouldn't want the discovery done as quickly as possible. If the case  
9 turns out to be simple, great. Probably takes them a lot less discovery  
10 than it takes us --

11 THE COURT: Okay.

12 MR. PARKER: -- but it could be done quickly. And certainly,  
13 we suggested Troy Hale [phonetic] as a special master, Your Honor.  
14 He's handled significant cases in this jurisdiction as complex as this one.  
15 And I would think that he would be suitable for this case.

16 MR. TASKA: Your Honor, if I could just respond to that?

17 THE COURT: Right.

18 MR. TASKA: I -- again, I think that the reason we don't want  
19 expedited discovery is because they want to take expedited discovery  
20 on issues that they haven't even pled yet.

21 What I would like -- this motion at a minimum is premature.  
22 Let them plead their claims. The claims and the allegations in their  
23 counterclaims and their affirmative defenses will frame the issues on  
24 which the parties get to take discovery.

25 And then, the Court can decide whether expedited discovery



1 is necessary, whether a special master is necessary.

2 Right now, the claims pled in the case are my client's claims,  
3 Vinco's claims, that the Defendants are fired. That takes --

4 THE COURT: Well, it's actually more than that. There's  
5 allegations in the complaint of civil conspiracy, breach of fiduciary duty --

6 MR. TASKA: Well --

7 THE COURT: -- aiding and abetting, fiduciary duty. It's a  
8 much different case than that.

9 MR. TASKA: Fair enough, Your Honor.

10 THE COURT: Declaratory relief. Those are the four claims  
11 for relief set forth in this case.

12 MR. TASKA: Fair enough, Your Honor. I -- we -- our  
13 perspective is that still is not going to require -- I mean, we're talking  
14 about a very limited period of time that the Defendants went rogue and  
15 started acting on behalf of the company after they were fired. So it's not  
16 going to take a whole lot of discovery for us to get that done.

17 Those are the claims in the case. The Court should base its  
18 decision on the scope of discovery including related matters such as  
19 whether to appoint a special master, such as whether to expedited  
20 discovery on the allegations and claims in the case. That's what frames  
21 the scope of discovery.

22 They have no claims. Our claims don't require that at this  
23 point. So at a minimum, in our view, this is premature.

24 If after they file the claims and the pleadings are closed and  
25 framed, we could probably work something out with them, but right now,

1 I don't think we should be designating in this case as complex or to  
2 appoint a special master, which is going to cost the party money and the  
3 company. It's just premature at this point.

4 THE COURT: Now tell me this. And I have a question for you  
5 in this regard. In light of the current make-up of the Board, and as it  
6 relates to the Board of Directors and how we arrived at -- in the position  
7 we're in today, don't you think there has to be discovery regarding those  
8 specific issues?

9 I'm not necessarily talking about all the claims for relief that's  
10 set forth in the complaint filed by the Plaintiff or all the claims that  
11 potentially that the Defendants will file in their answer as far as their  
12 counterclaims are concerned. I'm focusing on the issue that appears to  
13 be really, really important.

14 And it stems from the TRO in this case. And that focuses on  
15 the Board make-up.

16 MR. TASKA: So, Your Honor, the reason I don't think this is  
17 complex, I said this a few times, but maybe I said it a little too quickly.  
18 But what I want Your Honor to understand is that let's say Colucci is  
19 everything that they're saying he is. Let's say he is devil incarnate,  
20 never should have been on the Board.

21 Our position in the case is that there was still a validly called,  
22 validly noticed meeting. There was a quorum of directors at that  
23 meeting, okay, of four, not the five because we're taking Colucci out  
24 because he's the devil incarnate. So we have four.

25 One of the directors at that meeting where the Defendants

1 were fired abstained. Two voted yes, one voted no.

2 So it's not complicated, Your Honor. You don't have to get  
3 into the issues of Board composition. They were fired by a valid action  
4 of the Board.

5 THE COURT: But the question is --

6 MR. TASKA: Even if you accept everything they say is true.

7 THE COURT: Well, but the question is, was that a valid  
8 composition of the Board?

9 MR. TASKA: Why would it not have been?

10 THE COURT: I don't know that. I can't -- you're asking --

11 MR. TASKA: Well, I haven't heard anything from them.

12 THE COURT: Wait, wait, wait.

13 MR. TASKA: All they've done is cast aspersions on Mr.  
14 Colucci.

15 THE COURT: Wait, wait, wait, what I'm saying is this. I  
16 don't -- that's an issue. That's all I'm saying potentially.

17 MR. TASKA: And --

18 THE COURT: You know, maybe you win on it, maybe you  
19 don't, but it's an issue, but I can't rule as a matter of law.

20 MR. TASKA: Understood, Your Honor, and I'm not asking you  
21 to. All I'm saying is that's the only issue right now in the case, okay?  
22 And that issue is relatively simple to resolve. And for us, it's just not a  
23 case where we need a special master appointed or expedited discovery.  
24 We need to --

25 THE COURT: Well --

1 MR. TASKA: -- just take discovery on that issue. If they --

2 THE COURT: See, this is what you're going to have to do.

3 MR. TASKA: Yeah.

4 THE COURT: I kind of understand at least for now maybe not  
5 the necessity for a special master. I don't mind saying this, but you're  
6 going to have to convince me why don't we wouldn't have expedited  
7 discovery to ferret out all these specific issues as it pertains to Board  
8 composition, corporate governance, the refuse -- termination based  
9 upon -- no, the timing of the termination of Board members as a result of  
10 the requests for an investigation, those types of things, you know.

11 And I don't know the answer to that, but it does seem to me,  
12 and I don't mind saying this, that it would benefit this ongoing business  
13 concern to have those types of issues resolved within a relatively short  
14 period of time, right? That's my point.

15 And some of the other things might be flying down the road,  
16 potentially cross-claims -- counterclaims I should say. I don't know. I  
17 mean, I don't know what the Defense is going to do. It's their right. I  
18 can't predict in the future, but it seems to me there's certain segments of  
19 the discovery in this case that should be expedited.

20 MR. TASKA: Your Honor, that may be true, except that we  
21 haven't even seen what they want yet. They haven't told us what they  
22 want in terms of discovery. I mean, it's really hard to respond to this,  
23 because I don't know what I'm punching back with.

24 MR. KEMP: I told them last week what they wanted.

25 THE COURT: I mean, I'm quite sure you'll get some

1 interrogatories and requests for production of documents and there  
2 might be some depositions and those type of things.

3 And that's kind of my point. I mean, I don't mind saying this. I  
4 mean, I remember -- which I found really fascinating from my first law  
5 clerk when I was on the bench -- appointed 17 years ago, I did a name  
6 search under the old backstone [phonetic] system. I don't think you can  
7 do that today. And it would reflect how many actions a specific lawyer  
8 filed.

9 There was only one problem. The system stopped at 1,000.  
10 She told me my name had 1,000 next to it, right?

11 Here's my point. In every one of those cases, I had no clue  
12 what the adverse party was going to do from a discovery perspective.  
13 Some are very aggressive. Some aren't.

14 And so, I just did what I had to do. And so, here, I have no  
15 clue as to what you're going to do from a discovery perspective. I have  
16 no clue as to what Mr. Kemp or Mr. Parker's going to do.

17 From a historical perspective, I would anticipate they're going  
18 to be pretty aggressive. Notwithstanding that, they got a right to do what  
19 they want to do, you know, on those key issues.

20 And the thing about it is, once again, I don't mind saying this, I  
21 thought that was the purpose of business court, right, to get some of  
22 these issues resolved very quickly, right?

23 That's why you paid for the filing fee -- I mean, the prior  
24 counsel on behalf of your client. They paid more money to get here.

25 And I don't mind saying that one of the disadvantages of being

1 a business court judge is sometimes you have to get involved in  
2 discovery issues.

3 I'd much rather have the Discovery Commissioner here, but I  
4 can't, right? I have to hear it.

5 And so, I mean, I kind of get it. Maybe a special master once  
6 -- assuming there's an answer on file and there's counterclaims filed,  
7 maybe -- and we can always re-visit these issues as far as special  
8 master, but I think expedited discovery focusing on what the material  
9 issues are vis a vis the Board make-up is something that it's an issue.  
10 And maybe the case resolves much quicker in that regard. I don't know.

11 MR. KEMP: And, Judge, just responding to a couple other  
12 points, you know, he says a special master's too expensive. They just  
13 spent 875 grand on the New York firm. I mean, I don't think Special  
14 Master Hale is billing 175 grand on all his special master appointments  
15 in the last two years. I'd be surprised. So -- and I don't think special  
16 master costs are really that significant.

17 And then --

18 THE COURT: Well, I don't think it's -- I don't think that's the  
19 real cost. To me, I was looking at it through this lens. When does it  
20 become necessary?

21 MR. KEMP: Well, I think it's going to become necessary the  
22 day after I notice the first deposition because counsel's going to stand  
23 up and say, that's not relevant, Mr. Kemp. This is just a firing case.

24 You know, and I'm saying, wait a minute, didn't you hear the  
25 judge say that, you know, the special director independence and his

1 financial, did you hear that?

2 And you say no, no, no. And then, I'm going to have to file --  
3 they refuse to.

4 THE COURT: Well, I can tell you this. This is the one  
5 difference I will say, Mr. Kemp, is this. And this doesn't have an impact  
6 on whether I appoint a special master today. But if I don't, he doesn't  
7 hear that. I will have to hear that.

8 MR. KEMP: You will have to hear that.

9 THE COURT: And here's and this is one of the things I don't  
10 mind saying. I understand discovery. I understand proportionality. I  
11 understand you can't instruct witnesses not to answer unless it's  
12 attorney-client, right?

13 And so, in a general sense, I think what my expectations  
14 would be that there'd be no need to call me because if you do, that  
15 shouldn't happen, right?

16 MR. KEMP: Judge, the --

17 THE COURT: Unless it's attorney-client privilege.

18 MR. KEMP: Yeah, the other problem we laid out before is that  
19 there's people in Florida, there's people in New York, there's people in  
20 Canada. You know, it's not just, you know, I can call on a bunch of  
21 people, drive down from Summerlin, let's do the two depositions.

22 THE COURT: I understand.

23 MR. KEMP: And that's why I think a special master would  
24 be -- because I'm assuming some of these people are going to get their  
25 own counsel and whether at Colucci's direction or not, fight this -- fight

1 the deposition notice.

2 THE COURT: Well, I can see it. Whether or not you're going  
3 to have to get it re-issued in another jurisdiction.

4 MR. KEMP: Uh-huh.

5 THE COURT: Whether they're going to file an opposition  
6 there and how we deal with it. And --

7 MR. KEMP: Yeah, I mean, and I don't think you want to deal  
8 with all that, Your Honor. That's why I think a special master is  
9 appropriate.

10 And I think like us, like you, like opposing counsel, it takes a  
11 while to get up to speed on this case, because there's a lot of moving  
12 parts, a lot of different names, a lot of different connections. So I  
13 would -- I think we need a special master sooner as opposed to later.

14 His other point was that these Defendants went rogue, okay.  
15 You know, we're right back to where started the last week with we're  
16 rogue Defendants.

17 If you remember, Wednesday night, when they had a \$96  
18 million bank loan that was coming due, that would have ruined the whole  
19 company, us rogue Defendants had to bail them out. You know, Mr.  
20 Farnsworth had to get in there and bail them out.

21 So, you know, we're rogue when they don't like us, but when  
22 they need us, you know, we're supposed to do what they say.

23 And then, his view of independence, you know, Mr. Law sits  
24 next to Mr. Miller. So now Mr. Miller's an independent.

25 But Mr. Colucci's wife gets over 200 grand. His company



1 works for the company. He doesn't disclose either one of these things,  
2 but he's independent, you know? It's just not consistent, Your Honor.

3 But that's why I think we need expedited discovery. We need  
4 to get the depositions going. We need -- I think we need a special  
5 master because I think the very first letter I'm going to get from him is a  
6 letter saying, oh, we're not producing this person for deposition because  
7 he's not relevant to the firing issue.

8 You know, if it's not my issue, you don't get the discovery, Mr.  
9 Kemp. Go to Court, get an order. That's where we're going to be. So  
10 for that reason, Your Honor, I think we declare -- well, I mean --

11 THE COURT: Here's my next question. From the Defense  
12 perspective, when do you plan on getting answers and counterclaims on  
13 file potentially?

14 MR. KEMP: Well, some of them are going to be third-party  
15 complaints because even though Mr. Colucci's the company for  
16 whatever he wants to do, he technically is an individual entity -- you  
17 know, he's separate entity. So we have to bring him in on third-party.

18 But we had the answer pretty much ready to go. Kind of a  
19 rough answer. It was roughly ready to go. I think we could get the  
20 answer in what, end of the week maybe?

21 [Counsel confer]

22 MR. KEMP: And then, the third-party complaint probably, you  
23 know, we have 20 days, but I think we could file it a little quicker.

24 THE COURT: No, I understand. I do. I get that.

25 MR. PARKER: Your Honor, I don't want to add much to what

1 Mr. Kemp just said, because we've been beating this horse for a little  
2 while now.

3 I think that if the Court did not appoint a special master, we'd  
4 be here on a weekly basis doing OSTs, because every deposition, the  
5 scope of every formal written discovery will be questioned.

6 And unlike the Court, Mr. Floyd [phonetic], Hale, or any other  
7 special master does not have to worry about trials or hearings.

8 THE COURT: I'm starting a trial, when are we starting trial?

9 THE CLERK: Thursday afternoon.

10 THE COURT: Thursday afternoon.

11 MR. PARKER: And that's --

12 THE COURT: We start jury selection -- no, tomorrow. That's  
13 it, tomorrow?

14 MR. PARKER: And so, in going in front of a special master  
15 we're typically there with a call. We can do it over Zoom or just a  
16 conference call. The cost is then reduced significantly because no one's  
17 doing anything in person for the most part.

18 And it's typically a letter, a letter indicating the dispute, all  
19 parties invited to a call in the afternoon or the following day, and it's  
20 resolved.

21 That way, we don't have to file a motion. We don't have to do  
22 an OST. We don't have to have a hearing in between the Court's trial  
23 schedule.

24 And I -- Your Honor, I have been in some complex cases  
25 before Your Honor. And I've seen you handle complex cases that I was

1 not involved in. And you've been able to manage things including  
2 discovery during trial. I've seen it happen.

3 But if we can avoid that at this point, certainly I believe Mr.  
4 Kemp's comments are well taken. And we can avoid the OSTs, the  
5 motion practice, which is more expensive than simply sending a letter to  
6 Mr. Hale and getting a decision.

7 THE COURT: All right.

8 MR. TASKA: Your Honor, like I say, I just feel like they're  
9 asking us to buy a pig in a poke here. We just don't know what the  
10 scope of the case is.

11 The whole reason -- the thing they're worried about that we're  
12 going to object to every discovery request, I mean, the whole reason we  
13 want to have an orderly Rule 16 conference is so that we can discuss  
14 some of those issues. And then maybe, you know, I would never  
15 portend not to fight with them.

16 THE COURT: Wait, but why would you want to delay the --

17 MR. PARKER: Exactly.

18 THE COURT: -- ultimate resolution of the case because I can  
19 relax the 16.1 case conference requirement. We can all agree, right?

20 MR. TASKA: Your Honor, what I fear, what I'm afraid of --

21 THE COURT: Yeah.

22 MR. TASKA: -- is that their side is going to hit our side with  
23 discovery out the wazoo. It's all on irrelevant issues.

24 And that's what I'm concerned about. That's why it would be  
25 nice to have some dialogue with them to be able to try to hammer out

1 what the proper scope of discovery is.

2 And if we just order expedited discovery and appoint a special  
3 master, I mean, that's you know, I think that's just getting way ahead of  
4 ourselves and we should probably have a meet and confer and talk  
5 about it.

6 THE COURT: But I mean, you're -- when it comes to  
7 discovery issues anyway, you're supposed to meet and confer, right?  
8 Rule 16's little bit different.

9 If I mean, I could relax and say there's no need for a Rule 16  
10 early case conference, but file -- make your disclosures, right? Under  
11 the Rules, I can do that.

12 My point is this. I'm trying -- I think it's better to put the case in  
13 a position where we can speed up ultimate resolution, right? That's my  
14 biggest concern.

15 Because for example, I would anticipate it's better for Vinco  
16 Ventures, Inc. sooner than later to have the ultimate finality as far as  
17 some of these decisions are concerned, right? Can't we all agree on  
18 that?

19 Or should this case proceed for the next three years, how is  
20 that in the best interest of the company?

21 MR. TASKA: Well, Your Honor's going to rule how Your  
22 Honor's going to rule. I'm just concerned that if you give them license  
23 just to conduct plenary discovery at this point, without any claims or  
24 affirmative defenses to cabin in what the scope of discovery is, we're just  
25 -- it's just going to be a free-for-all. That's my concern.

1 THE COURT: Yeah, they're going to get their answers, third  
2 party complaints, and their counterclaims on file within the next  
3 what -- how many --

4 MR. KEMP: Yeah, Judge, it'll be before the first deposition  
5 certainly.

6 THE COURT: Right. And I don't want to put pressure on you,  
7 because I wouldn't want their -- I wouldn't want anybody putting pressure  
8 on me to get something to them quicker than I want to do, but --

9 [Counsel confer]

10 MR. RULIS: Sorry, Your Honor. I didn't hear the question.  
11 What was --

12 THE COURT: No, no, I said, sir, I just made a final comment.  
13 I don't want to put unnecessary pressure on to get -- I mean, you can get  
14 it done in ordinary course I would anticipate, but go ahead.

15 MR. RULIS: I think -- go ahead, Teddy, because we've got  
16 different Defendants, but --

17 THE COURT: Right.

18 MR. RULIS: -- certainly I think there's a couple of different  
19 issues.

20 We could probably have the answer on file this week by the  
21 end of the week. And then, you know, we'd want at least a week to get  
22 counterclaims and/or third party claims filed, which I think is still -- I  
23 mean, that's cutting down the time frame that we're allowed, but we can  
24 get that done.

25 MR. PARKER: Right. Your Honor, my -- Mr. Rulis and I were

1 discussing whether or not service was accepted on behalf of all  
2 Defendants.

3 So we may have gotten service on one of my clients after Mr.  
4 Farnsworth. So the timing is a little different. Maybe actually next week  
5 when my responsive pleading is due.

6 And we're still considering in part a motion to dismiss part of  
7 their complaint, but whenever our responsive pleading is due, we will  
8 have it filed timely.

9 And then, I suspect within the next 10 days, which is a  
10 requirement for the compulsory counterclaims, we'll file those.

11 But I think the Court correctly stated that the complaint that  
12 was filed by the Plaintiff is a lot more expansive than Mr. Taska would  
13 have the Court believe today.

14 Certainly, the criticisms of our -- of the Defendants went  
15 beyond simply the July 24, 2022 meeting. There were several claims,  
16 several causes of action alleged.

17 And so, the discovery we're intending to form goes to the  
18 heart of their -- defending the heart of their complaint.

19 THE COURT: All right, I just want to look at one more point  
20 on the motion. All right, this is what I'm going to do as far as expedited  
21 discovery.

22 I'm going to grab that motion as it pertains to that issue. And  
23 as far as discovery commencing from the Defense perspective is when  
24 they get their answer and counterclaims on file. That would be a good  
25 time to start and that'll be real quick from what I understand.

1 Mr. Kemp?

2 MR. KEMP: Judge, I would point out that we have filed a  
3 motion to dismiss on behalf of one of the Defendants for lack of personal  
4 jurisdiction. He's kind of a --

5 THE COURT: Okay.

6 MR. KEMP: -- he's a minor player, but he's not Mr.  
7 Farnsworth or Mr. Colucci. So that -- we expect to win that motion, but if  
8 we lose, his answer probably won't be due for 30, 45 days.

9 MR. RULIS: Right, I believe Your Honor set a hearing for that  
10 on I believe it's November 28th is the hearing on the motion to dismiss  
11 for lack of personal jurisdiction.

12 THE COURT: Yes, it is.

13 MR. KEMP: Yeah, so I'd just like that carved out from --

14 THE COURT: Yeah, we can carve that out. I mean, the  
15 discovery on the other issues. And the reason why I think that's  
16 important to do, to handle that in that way, that will of course at least  
17 assist in the focus of whatever claims are pending in front of this Court,  
18 right?

19 And so, and that probably would save potentially time from  
20 objections in the like, because if that's part of the claims, that's part of  
21 the claims -- or counterclaims or whatever. And then, of course,  
22 every -- each side has a right to conduct discovery on those issues.

23 MR. KEMP: And I think there's a possibility they might really  
24 drop him from the case because I think they joined him initial just to -- on  
25 this SEC code issue, but maybe not.

1 THE COURT: Just as important, too, I mean, just looking at  
2 the mandate of -- and it makes sense. This makes sense, I mean, really  
3 and truly.

4 If you look at the mandate of 16.1(f), as far as complex  
5 litigation is concerned, and this is what our Supreme Court I think was  
6 wise in recognizing at the very outset of the litigation, everything's not  
7 crystal clear, but this is what they say said, quote, in a potentially difficult  
8 or protracted, right, potentially actions that may involve complex issues,  
9 multiple parties, difficult legal questions, or unusual prove problems, the  
10 Court may upon motion for good cause shown, waive any and all  
11 requirements of Rule 16.1 and designate a case complex.

12 And I'm not saying it will ultimately end up that way. Say  
13 hypothetically, if this case ultimately went to trial, maybe it'd be very  
14 much narrow based upon law and motion practice and what happens in  
15 discovery. But for now, it's complex, right?

16 And as far as a special master, what would be his role?  
17 What's the request in that regard, Mr. Kemp? I want to make sure  
18 because that's the one I'm questioning the necessity of -- on this at this  
19 time.

20 MR. KEMP: The first thing he's going to do is decide whether  
21 or not a deposition's relevant because as I anticipate counsel's position,  
22 it will be that if it's not a firing thing, we can't do the deposition. So I  
23 think that's the first thing he's going to do.

24 The second thing is, like I was saying, these depositions are in  
25 multiple states and in another country. So I think there's going to be



1 some coordination required for that.

2 And also, you got to remember, we're trying to get these  
3 depositions done before the preliminary injunction hearing. So --

4 THE COURT: Yeah.

5 MR. KEMP: -- you know, whether it's 30 depositions or I don't  
6 know how many they want to take, 40, 20, whatever it is, that's a lot of  
7 depositions to be taking in six weeks, six to seven weeks. So I think  
8 there's going to be a lot of coordination, Your Honor. And those are  
9 things I think the special master can do.

10 THE COURT: Here's a question I haven't asked this. Is there  
11 an objection from the Plaintiff's perspective of Mr. Hale?

12 MR. TASKA: No, no particular objection. And if Your Honor  
13 directs a special master, but again, our position is that it's premature to  
14 do that at this point.

15 THE COURT: All right. And for that, Mr. Kemp, you get the  
16 last word.

17 MR. KEMP: Yes, Your Honor, I think the thing I forgot is  
18 getting a special master up to speed isn't going to be easy either. You  
19 know, he's going to have to go through the transcripts of last week's  
20 hearing. He's going to have to know the names, look at the charts like  
21 the Court has, try to get his handle around the issues.

22 You know, it's not like we can appoint a special master on  
23 Monday, and Tuesday, he's going to be able to make an informed  
24 decision. That's not going to happen.

25 So I think appointing Special Master Hale now, even though

1 the first deposition's probably at least two, three weeks out, is a good  
2 idea just so he can start getting his handle on this thing.

3 THE COURT: Okay, this is what I'm going to do as far the  
4 special master's concerned. And I'm going to appoint Mr. Hale and I  
5 don't mind saying this.

6 I think Mr. Hale excels in this role in this regard because I  
7 don't know if I would be capable of doing this from a humanistic  
8 perspective, because he served as special master in tens of cases in  
9 which I've been involved in and they've been complex cases.

10 And I marvel at his ability to get orders out within an hour of  
11 the hearing, which I think is kind of unprecedented because I know I  
12 couldn't do that, right? And he does a very good job of that.

13 And so, it's -- and I just want to make sure his role is  
14 understood. It's going to be to facilitate both depositions and written  
15 discovery in this case.

16 And that's going to be his role. I would anticipate it will have a  
17 primary focus on the issues pertaining to the Board. And we can re-visit  
18 the necessity of him continuing on down the road as far as whether it is  
19 a necessity or not.

20 So where does that put us?

21 MR. KEMP: Well, Judge, the final motion is the Motion on  
22 Special Counsel. And again, this is back to Mr. Colucci. When Mr.  
23 Colucci filled out his questionnaire, and there's two issues, I should back  
24 up.

25 Did he make adequate disclosure? And assuming he did and

1 he's not independent, what do we do with all the meetings that he sat  
2 and voted on?

3 I don't think we need to reach that second issue today until we  
4 decide the first issue whether he's independent or not.

5 So in any event, as we pointed out before, his wife got paid  
6 over 200 grand. She works for I-Heart [phonetic].

7 He has a company that -- named Highway Data, which does  
8 business with the company. That wasn't disclosed. The billings there  
9 are pretty significant.

10 We are informed that there's some kind of relationship  
11 between him and Mr. -- is it Yang -- Wang?

12 MR. RULIS: Yang.

13 MR. KEMP: Yang. There's two Yangs. This is the Yang  
14 who's sitting in Court, Your Honor. We are informed that there's some  
15 type of relationship there. The company's paid them millions of dollars  
16 to do development work.

17 And then, we find -- we get a letter or on some sort notification  
18 from Mr. Yang saying, oh, I'm out, you know. I don't think feel like doing  
19 this anymore, but I'm keeping the money. So we want to see what  
20 happened there, but that's the discovery on Mr. Colucci.

21 Now in their opposition, their response was that, oh, we've  
22 hired Howard & Howard to investigate the whistleblower complaints.  
23 Well, first of all, the whistleblower complaints touch on this issue, but  
24 they touch on other issues.

25 But the whistleblower investigation was, shall I say rushed?

1 They contacted us on the Thursday before the evidentiary hearing was  
2 started on Tuesday. And they wanted us to stipulate to bringing five  
3 people in to have interviews in the Howard & Howard office in Las  
4 Vegas.

5 We told them that wasn't possible, because we were  
6 preparing for the hearing, but that we would give them dates as soon as  
7 the hearing was over.

8 Rather than do that, they interviewed Mr. Colucci. Mr. Colucci  
9 told them there was no problem and Howard & Howard issued a report  
10 saying that there's no problem, which I consider kind of a white wash.

11 I don't know how much Howard & Howard was paid, but I don't  
12 think that resolves the issue, but that is their response.

13 So I think what we need to do is do these depositions on Mr.  
14 Colucci, and then, provide the information to the special counsel, but we  
15 need a special counsel.

16 If you recall, the chairman of the Board appointed Gibson &  
17 Dunn to do this. Gibson & Dunn was retained. They agreed to do it.  
18 They had an eminently qualified person to do it, a former I think it was  
19 vice -- he was vice chairman of the SEC, but he was -- this was his area.

20 So they started the investigation. They called up Mr. Colucci  
21 and they said, hey, we've been retained to do an investigation.

22 And Colucci fired back, kind of like they always do, Your  
23 Honor, I mean, you know, that's why Mr. Miller has an independent  
24 counsel now because at the meeting they suggested that there's some  
25 legal liability coming his way, you know, so they fire back.

1           So rather than simply perform the exercise of investigating,  
2 they fire back and they threaten Gibson & Dunn by saying that they were  
3 acting unethically. So Gibson & Dunn backed out.

4           So the special investigation was never or the special counsel  
5 determination was never made.

6           So in any event, we filed a motion to appoint a special  
7 counsel. We think it should be done to determine whether or not he's  
8 independent or not.

9           I mean, you know, the counsel's standard here is if you sit  
10 next to someone in Court, you're not independent anymore. You know,  
11 that's the standard that he applies with Mr. Miller and Mr. Law. I'm -- I  
12 think I'm applying a little more stringent standard.

13           And I think we're going to we're going to meet that easily, but  
14 we are not the ones to make the determination. We, being Defendants  
15 in the case. I think an attorney needs to make the determination.

16           And where we go from there, we'll see, but I don't have any  
17 person in mind. You know, I suggested Mr. Urga [phonetic]. Then I  
18 thought about it. You know, Mr. Urga's a pretty good friend of mine. I  
19 don't know if our friendship could survive this. Just joking a little bit,  
20 Your Honor.

21           But I would suggest we grant the motion. We can pick three  
22 names. They can pick three names. We can do knock-outs, we go first,  
23 they go first, knock one out, and who's ever left, you know, we could do  
24 it that way.

25           The Court could make a determination, but we do need a

1 special counsel to determine whether or not Mr. Colucci's independent.

2 And everything I've seen since we filed this motion gives me  
3 more cause for concern. I mean, since we filed this motion, like I said,  
4 he's paid \$875,000 to the New York firm without informing the other two  
5 CEOs.

6 They've hired another firm to fight everybody, including one of  
7 the independent CEOs without bringing it up to the CEOs. So I am  
8 concerned that Mr. Colucci is just -- doesn't really understand what  
9 having co-CEOs means at this point. And there are probably more  
10 financial interests that we need to take a look at than less.

11 But in any event, someone needs to make the determination.  
12 That's why I think we need a special counsel.

13 THE COURT: All right.

14 MR. PARKER: Your Honor, before Mr. Taska presents his  
15 opposition, Your Honor, I'm assuming you have Mr. Taska's Opposition  
16 in front of you?

17 THE COURT: Yes, I do right here.

18 MR. PARKER: I don't see anywhere within their Opposition  
19 where they addressed Mr. Colucci's failure to disclose or the \$215,000  
20 paid to Mrs. Colucci or the \$100,000 paid to Highway Data, which is Mr.  
21 Colucci's company through the company of Acuity.

22 I don't see that addressed at all in the Opposition. Those are  
23 the issues that came up during the first three days or three days of our  
24 hearings in the last week. And they're not addressed at all in their  
25 opposing papers.

1 I also -- we -- these motions were filed or presented to the  
2 Court prior to the Court's order of last week. And given the Court's  
3 order, I'm not 100 percent sure that you've not already given that  
4 authority to the see -- the three CEOs to hire independent counsel for  
5 this purpose.

6 Having the investigation done benefits the company. I can't  
7 see --

8 THE COURT: Oh, I just want to make sure I'm clear on that  
9 because it's my understanding that's required by NASDAQ rules and  
10 regulations. Is that correct?

11 MR. PARKER: Absolutely. And so, I believe you've already  
12 given the authority to the three CEOs to select an independent  
13 attorney's firm to do this investigation into the proper disclosures or the  
14 adequacy of disclosures given by Mr. Colucci and whether or not the  
15 amounts paid, the compensation paid to he and his wife exceed what's  
16 allowed under the NASDAQ rules.

17 So I think that the motion -- I agree with Mr. Kemp 100 percent  
18 that special counsel needs to be appointed. I'm just not sure given the  
19 authority you've already placed with the CEOs that Mr. Miller does not  
20 have the current authority to select that independent counsel for  
21 purposes of performing and completing the disclosure evaluations of Mr.  
22 Colucci.

23 So I didn't want to go very long, Your Honor, but certainly  
24 harkening back to what Mr. Taska said earlier, and I kind of tried to write  
25 it down.

1           He kept trying to pigeon-hole this case into the July 24th  
2 action of the Board, but if the Court -- if he were to understand some of  
3 the concerns the Court had last week and I think there also prep -- also  
4 available -- still present today, is that Mr. Colucci was not an appropriate  
5 Board member, either independent or not independent Board member.

6           Then perhaps he's not and would not have been at this point a  
7 CEO. And so --

8           THE COURT: I'll frame it slightly different --

9           MR. PARKER: Go ahead, Your Honor.

10          THE COURT: -- because that's not necessarily my concern.

11          MR. PARKER: Uh-huh.

12          THE COURT: That's an issue that's being raised by the  
13 Defense in this case. And specifically, and so it's an issue being raised.  
14 And so, consequently, I can't ignore it.

15                I have to accept it and then permit potential discovery on that  
16 issue and the like because I will say this. I'm not necessarily well versed  
17 in the running of the U.S. Securities and Exchange Commission. I'm  
18 not. You know, I don't even know if federal judges deal with those  
19 issues all the time.

20          MR. PARKER: Right.

21          THE COURT: But there are certain sections or rules that  
22 require an independence, Board members or certain number of Board  
23 members as it pertains to publicly-traded companies.

24          MR. PARKER: That's right.

25          THE COURT: And so, and I recognize that. And at the end of



1 the day, potentially, and I don't know and I'm quite sure they'll be  
2 litigation on this issue if the allegations are supported by facts that he  
3 wasn't truly independent, maybe that could have been impacted his  
4 appointment on the Board. I don't know.

5 But I would imagine this fact that knowing that there's probably  
6 a lot of well-developed litigation on this specific issue on a federal level,  
7 that there's case law out there that discusses this special issue.

8 And for example, I don't know what the learned treatises might  
9 be when it comes to the U.S. Security and Exchange Commissions, but  
10 I'm quite sure -- and the rules and regulations, but I would be shocked if  
11 there's not stuff out there.

12 MR. PARKER: Okay. Of course, Your Honor.

13 THE COURT: You know, and so that's kind of how I looked at  
14 that issue, but the bottom line is it's an issue that's been raised. And it  
15 was raised at the very outset of the TRO hearing and so on and so on.

16 And so, all I can say in this regard it's a fascinating issue  
17 raised, Mr. Parker, whether the Board has the authority to do that or  
18 whether I should do it independently. I get that and I recognize that.

19 MR. PARKER: Okay, I just wanted to make sure, because I  
20 truly believe after the Court gave us quite a bit of time last week,  
21 Tuesday, Wednesday, and Thursday and then, of course, signed the  
22 order.

23 I thought that order was giving or gave Mr. Miller, Mr. Colucci,  
24 and Ms. King as co-CEOs the authority to hire independent or special  
25 counsel to complete this vetting of Mr. Colucci.

1                   And I would suspect as a part of that, a determination may be  
2 made whether or not the acts of that Board with Mr. Colucci voting on  
3 certain items, whether or not they had the authority to do so, and  
4 whether or not they're void because of his inappropriateness on the  
5 Board.

6                   So those are things that we -- I foresee getting into. And I  
7 think that whomever is selected, that needs to be done as quickly as  
8 possible.

9                   So I join in -- of course, we filed the motion jointly, but I would  
10 like the Court to -- if the Court has already given that authority to Mr. -- to  
11 the -- Mr. Miller and Mr. Colucci and Ms. King, then I'm not asking the  
12 Court to divest them of that authority.

13                  If the Court is not impliedly giving them that authority, then  
14 we're asking the Court to do so.

15                  THE COURT: Okay. We'll hear from the Plaintiff, sir?

16                  MR. TASKA: Yes, Your Honor. So I actually think that might  
17 not be a bad idea to have whoever's running the company make the  
18 decision on whether this is necessary to do.

19                  But what I would ask Your Honor is that no decision on that  
20 matter be made until our motion is heard on the issue of the three CEOs.  
21 Because right now, it's 2 to 1. They win, they win every vote. That's  
22 how it works.

23                  So we at least would like to wait until we can present our  
24 motion to talk about the governance, the coalition government if you will  
25 before a decision is made on this motion.

1           Because right now, who's asking for the motion? It's the two  
2 Defendants or the Defendants who were fired, who were running the  
3 company before this litigation. And now, they're trying to run the  
4 company through the Court by asking the Court to order a special  
5 counsel to be appointed.

6           That's not appropriate. If a special counsel is to be appointed,  
7 it's something that the company should decide, not Defendants who  
8 have been fired from the case. It shouldn't be for them to decide it.

9           So I actually agree in part with my opponents on this, but I  
10 think that the decision also wait until we figure out who's going to be  
11 running this company.

12           MR. PARKER: Your Honor, I had to get up here and address  
13 that last comment by Mr. Taska. I am astounded that he would oppose  
14 the CEOs of this company selecting special counsel when someone  
15 selected his firm.

16           And I don't know if the three CEOs did it or someone outside,  
17 someone rogue member did it. But certainly, this Court to my  
18 knowledge did not give Vinco Ventures authority to hire Ballard Spahr.  
19 So who made that decision and who gave that authority?

20           If it wasn't the three CEOs, and it wasn't this Court, we have  
21 issues, of course, because the expenditure is something that is not a  
22 routine and ordinary expenditure to my knowledge.

23           So either Mr. Taska agrees that the three CEOs has -- have  
24 the authority or we ask the Court to make a decision.

25           MR. TASKA: Your Honor, we have previewed for Your Honor

1 today a serious issue of the third CEO being compromised. And what  
2 they're saying is that that compromised CEO, and Your Honor will hear  
3 this in full as soon as we can get it up before Your Honor, because they  
4 agreed to do it on OST.

5 And counsel is suggesting that after we've made allegations  
6 and we have evidence that the third supposed neutral independent CEO  
7 is compromised, that that group of CEOs should make the decision on  
8 whether to investigate Mr. Colucci?

9 I mean, that's -- it would be outrageous, Your Honor. The  
10 decision needs to wait until we have an appropriate governing structure  
11 in place.

12 MS. SUGDEN: Your Honor, just because there's been  
13 several comments about this 2 to 1 --

14 THE COURT: Yeah.

15 MS. SUGDEN: Automatic, many aspersions about the  
16 impropriety of Mr. Miller. So, first of all, he had obviously just gotten  
17 appointed on Friday the 19th. He attended a Board meeting at 8:45  
18 Monday morning.

19 I believe there's only one issue as far as there were several  
20 things to go through. One issue was to the timing of the shareholder  
21 meeting.

22 Several things were met to satisfaction. I'll let you clarify,  
23 because I wasn't there, but it just -- there's been too many comments  
24 made that we can't respond regarding these allegations.

25 MR. MILLER: Your Honor, if I may.

1 THE COURT: Yes.

2 MR. MILLER: As an officer of the Court and your appointee,  
3 you know, I've been reluctant to engage publicly on these issues. I think  
4 that was part of the Court's order in appointing me, sending me into  
5 these decisions in the hopes that we could find solutions to the critical  
6 issues that need to be addressed, so that catastrophic things, potentially  
7 catastrophic things didn't arise as we pointed out in the order the  
8 Hudson Bay type of [phonetic]. And so, that has been the immediate  
9 intent.

10 You know, you appointed me quite unexpectedly on Friday. I  
11 worked extensively through the weekend to try to get ready, assembling  
12 any potential resources.

13 Obviously, the order didn't come with a roadmap, but it did  
14 come with case law that I reviewed as to potential authority of a  
15 court-appointed co-CEO.

16 I tried to be very mindful of that. I had worked cooperatively  
17 with everybody in the company so far that I could find. And I've made  
18 great efforts to try to do that.

19 You know, and despite the fact that we're here as part of  
20 adversarial proceedings, I've tried to approach it from more of a  
21 business sense.

22 That's why one of the first calls I made was bringing in Mr.  
23 Hunterton. He's a friend of mine. Fortunately, he's retired. He's run two  
24 companies twice the size of MGM, some of the largest gaming  
25 companies in the world.

1           And you know, he's helped me try to navigate these issues.  
2   You know, there is no bias. We'll wait to discuss that, but you know,  
3   because there is so much interest, Your Honor, on a Friday afternoon, I  
4   could see my name all over the media as this announcement came  
5   through. There's a lot of interest watching these proceedings.

6           You know, the shortest answer for the decisions that we've  
7   been able to reach is that over the weekend, there was a lot of  
8   suggestion that I immediately intervene. I was taking some time to get  
9   up to speed.

10          We had a call scheduled as co-CEOs at 10:00 on Monday  
11   morning. And there was a strong case to be made that there was a  
12   decision that couldn't wait. We accelerated that, convened at 8:45. We  
13   made a unanimous decision on that issue.

14          We then moved to the 10:00 meeting, where there's a whole  
15   litany of issues that potentially needed to be addressed. We did our best  
16   to try to filter through which ones were of critical importance and which  
17   decisions needed to be made ultimately that this couldn't wait.

18          You know, obviously, there is passionate opinions within this  
19   litigation, within the company. On the couple days that I've been there  
20   and the individuals I've talked to, you can see the reason for the  
21   passion.

22          There are offices all over the world. There are people behind  
23   this company, the affiliated companies, subsidiaries, passionate and  
24   very successful executives that they've got working. Those are  
25   complicated decisions that we're going to have to wrestle with.

1 I don't know if there's a roadmap for the process that we're  
2 going to try to follow. I try to be deferential to the culture of the company  
3 as to how those decisions are made.

4 We've only had one issue of dissent where we voted. We had  
5 to make a decision. I listened to, you know, as much information as I  
6 could in order to try to ratify the decision. We'll talk about that I'm sure in  
7 the week to come as the decision that was ultimately made.

8 But to say that this is continued stalemate is not accurate. We  
9 are moving in a slow and deliberate pace. I took great interest in trying  
10 to read the Court's minutes and heard the Court grappling with this kind  
11 of idea, saying that you weren't prepared to render decisions on a lot of  
12 the issues for which you hadn't heard a lot of evidence and just didn't  
13 know the facts.

14 I tried to take a similar approach. And I've heard, you know,  
15 Your Honor's news about the foundations of Nevada's business court.  
16 I'm not sure whether or not when the Court appointed me, the Court was  
17 aware of my participation in that original debate.

18 But I had advocated as Secretary of State that I believe that  
19 one of the failings of Nevada's corporate governance is once we put  
20 ourselves out there and try to be the Delaware of the West was that we  
21 didn't have a chancery court.

22 If you listen to the business representatives across the  
23 country, why don't you move to Nevada? You file here. You may  
24 incorporate here. Why don't you move your location to Nevada?  
25 Because we can't get our disputes resolved in the same manner as the

1     chancery court.

2             Justice Hardesty in your -- as you've alluded to in his wisdom  
3     opted for an earlier model, that brought something like this in for some  
4     more creative approach where the Court could insert itself in attempt to  
5     resolve, you know, a real deadlock that could be potentially catastrophic  
6     for this company.

7             But I believe firmly that what the Court has entrusted me to do  
8     in attempt to resolve here is an effort to bring stability to this company,  
9     so it has a chance going forward.

10            And of course, I take the allegations of impropriety and lack of  
11    independence very seriously. And, Judge, I don't know any of the  
12    participants in this case, other than the litigants, prior to showing up on  
13    the scene here. I mean, where there's maybe a 24-hour period where  
14    I've met everybody. I'm trying to get up to speed as quickly as possible.

15            There aren't any prior relationships. And if there were, Mr.  
16    Kemp and Mr. Parker and I litigated a case for a couple years, Mr.  
17    Parker referenced.

18            I know the importance of being a corporate executive because  
19    my dad was unfortunately caught up in as part of a Board member of the  
20    Wynn Hotel in extensive litigation.

21            You know, when he was governor, I watched him struggle with  
22    issues. I've never seen issues that wore on him like that civil litigation.  
23    Mr. Kemp himself personally sued my dad during the middle of those  
24    proceedings.

25            So if there's an allegation that I'm not prepared to step in here



1 and make the -- independent judgment that's necessary in the best  
2 interests of the shareholders, and in the best interests of the company,  
3 Judge, I'm prepared to address it immediately.

4 But I felt it important for me for make a statement today in  
5 front of the Court as reluctant as I was to try to do that.

6 Because this litigation can have catastrophic consequences  
7 for this company. And I don't think that's fair. And I don't think that was  
8 the intent of the Court.

9 THE COURT: I understand. And as far as a couple of  
10 comments you made, sir, I agree with you. And that's why as a trial  
11 judge, I can't treat this as a regular Rule 16.1 case. It's complex  
12 litigation.

13 I do understand the basis or the foundation of the creation of  
14 business court. I've been doing now for about four plus years, five  
15 years.

16 Before that, I handled construction defect, which is equally, as  
17 you probably know, very complex.

18 And so, and you bring up the Wynn shareholder derivative  
19 litigation cases. They were in this department. You know, so for  
20 whatever reason.

21 But my point is this. And this is kind of how I look at it. That's  
22 going to be decision-making for another day.

23 But at the end of the day, I have to make a decision as it  
24 pertains to the independence -- I'm sorry, as to whether or not there  
25 should be a special counsel to conduct an investigation of a Board

1 member. And that's really and truly what it comes down to.

2 I do know this that -- and this is based upon my review of the  
3 regulations as it pertains to the corporate governance requirements  
4 specifically relating to the NASDAQ and the U.S. Security and Exchange  
5 Commission, that that's a requirement as a matter of law, right, as a  
6 condition to being appointed on a Board.

7 And so, the way -- and I thought about this issue. Mr. Parker  
8 brought up void. When he said that I was thinking *void ab initio*, I don't  
9 know, from like from the very beginning, but I mean, I don't know if that's  
10 the ultimate answer, but -- because we're not there yet. We're not even  
11 close to being there.

12 By my point is this. And this is kind of how I see it. I know I  
13 mentioned this. Either if I didn't appoint a special counsel to conduct an  
14 investigation as it pertains to a specific Board member, that doesn't  
15 stand for the proposition that the Defendants can't conduct their  
16 investigation specifically and his background as it pertains to discovery  
17 and the like, right?

18 MR. TASKA: Well, Your Honor actually raises a good point,  
19 which is that they're going to be doing all this work. They will leave no  
20 stone unturned, I'm sure, when they get to take their plenary discovery  
21 on Mr. Colucci.

22 And so, why are we doing this now? Why are we appointing  
23 special counsel now? Let them develop the facts that they need to  
24 develop. Let's not have the Court, you know, sort of insert itself into this  
25 company any more than necessary by also appointing special counsel.

1           That's something that the three CEOs should do when the  
2 three CEOs -- when that issue -- when the dust finally settles on that  
3 issue. It's just not something that should be done right now. It's not  
4 going to slow anything down to wait a week until we get this sorted out.

5           And then, I just --

6           THE COURT: When, you're saying wait a week till we get it  
7 sorted out, I want to make sure I'm clearly understanding what you're  
8 saying?

9           MR. TASKA: I'm talking about waiting a week so that our  
10 motion get -- whatever the time frame is before our motion that we  
11 intend to file --

12          THE COURT: Okay.

13          MR. TASKA: -- on the subject of the governance is resolved.

14          And on that topic, by the way, I appreciate Mr. Miller's  
15 statement. And you know, nobody's saying that Mr. Miller had some sort  
16 of intent here to do anything wrong. Nobody was saying that.

17          All we're saying is that -- all we know is that the person who  
18 showed up on the first meeting in the room with Mr. Miller was -- as his  
19 consigliere, I mean, what he said -- Mr. Miller said he meaning Jesse  
20 Law, seems to be a good resource and help make decisions that are  
21 necessary at this pace.

22          So that I interpret to be he's going to rely on Mr. Law to be his  
23 consigliere. That person is employed by the Defendant. That's the  
24 point. That's all we know at this point, Your Honor.

25          I'm not saying that Mr. Miller questioning his preparedness, his

1 devotion, his sincerity in anything. All I'm saying is somehow, Mr. Law  
2 was sitting in the room with Mr. Miller. Mr. Law is with the Defendants.

3 MR. PARKER: Your Honor, Mr. Taska for some reason  
4 believes that it's more important to investigate Mr. Miller, who's just been  
5 appointed as a C -- a co-CEO than to investigate a co-CEO and a Board  
6 member.

7 Mr. Colucci is a Board member and a CEO. Why wouldn't the  
8 importance of investigating that person who fills two important roles be, if  
9 not at least equally important, more important?

10 Again, I believe you've already given that authority to the three  
11 CEOs. But if the Court believes that's not implicit in the order provided  
12 last week, then we again ask that this Court do the same and order that  
13 an independent counsel be involved.

14 Because any action that's taken from this point forward  
15 without that person, Mr. Colucci being vetted, is potentially a void,  
16 voidable, or as you indicated, Your Honor, *void ab initio*.

17 And we're talking about large expenditures here, a couple of  
18 million dollars, we believe, were dedicated to AI Pros, which we believe  
19 there potentially is a conflict there with Mr. Colucci.

20 The \$875,000 that Mr. Kemp has referenced that we found  
21 was paid to Lucosky and Brookman.

22 Whatever amount is being paid to Ballard Spahr, again, with  
23 no apparent written authority to make these expenditures or these  
24 retentions.

25 We've not seen anything that the CEOs have been provided

1 authorizing the retention of Ballard Spahr, the payment to Lucosky and  
2 Brookman or anything else that may come in the interim, Your Honor.

3 So we definitely need to have this done as soon as possible.  
4 And potentially have the Court do it if you don't believe that the three  
5 CEOs were given that authority.

6 THE COURT: Right, and what's your response, sir? My  
7 thought, sir, in listening, they keep come -- they circle back to -- yeah. I  
8 think this is how I'm going to handle it. We don't need to go there.

9 When are you getting your motion filed, sir?

10 MR. TASKA: Uh --

11 THE COURT: As it pertains to the court-appointed  
12 independent tie-breaker?

13 MR. TASKA: Sure, well, we will have to huddle up after this  
14 hearing, but I think we can probably get it on file by Friday.

15 THE COURT: Okay, because I don't want to wait on this one.  
16 So today is what, Wednesday?

17 THE CLERK: Yes, sir.

18 THE COURT: All right, okay. And if I hear it on the Order  
19 Shortening Time, would it be okay to set that for hearing next  
20 Wednesday?

21 MR. PARKER: That's when we're here as well, Your Honor.

22 MR. RULIS: We're here already.

23 THE COURT: Okay.

24 MR. PARKER: Yes, that'd be perfect.

25 THE COURT: This is what I'm going to do. And I don't

1 necessarily like to punt, but when I read my order, and I think this is what  
2 Mr. Parker was referring to, and this is on page 3 of the order at line 19,  
3 paragraph 3, the three CEOs for Vinco Ventures are to equally share  
4 responsibilities and decision-making authority. And it's implicit in that.

5 MR. PARKER: That's what I thought, too.

6 THE COURT: But what I'm going to do is this, before that final  
7 determination is made by the Board, I'm going to at least given an  
8 opportunity to hear the issues as it pertains to Mr. Miller.

9 MR. PARKER: Sounds good.

10 THE COURT: That's how I'm going to do it.

11 MR. TASKA: Thank you, Your Honor.

12 THE COURT: Yeah, I think that's the fairest way to handle  
13 that. All right, does that cover everything?

14 MR. PARKER: It does, Your Honor.

15 MR. RULIS: Yes, Your Honor.

16 THE COURT: All right. My Law Clerk says we're very busy  
17 next Wednesday, so we have to keep it short.

18 MR. KEMP: Do you want -- would you want to put is on a  
19 special time at the end perhaps?

20 THE COURT: No, no, what it is, I think we're in trial.

21 MR. KEMP: You're in trial, you're in trial.

22 THE COURT: Yeah, we're in trial.

23 MR. KEMP: Okay.

24 THE COURT: So but we'll get it done. We'll do what we have  
25 to do.

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MR. KEMP: Okay.

THE COURT: But that's what we'll do. All right.

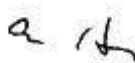
MR. TASKA: Thank you so much, Your Honor. Have a good day.

THE COURT: Everyone, enjoy your weekend.

[Proceedings concluded at 11:51 a.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.

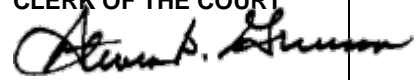


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Chris Hwang  
Court Reporter

# **EXHIBIT D**





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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

**DEFENDANT'S OPPOSITION TO  
PLAINTIFF VINCO VENTURES, INC.'S  
MOTION FOR CLARIFICATION OF  
THE COURT'S AUGUST 17, 2022 ORDER  
PERTAINING TO MEETINGS OF THE  
BOARD OF DIRECTORS**

Hearing Date: September 7, 2022

Hearing Time: 1:30 p.m.

Defendant Theodore Farnsworth ("Farnsworth" or "Defendant"), by and through his attorneys of record, the law firm of Kemp Jones, LLP, hereby submits his Opposition to Plaintiff Vinco Ventures, Inc.'s ("Vinco Ventures") Motion for Clarification of the Court's August 17, 2022 Order Pertaining to Meetings of the Board of Directors on Order Shortening Time.

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1 This Opposition is made and based upon the Memorandum of Points and Authorities  
2 submitted herewith, the exhibits attached hereto, the pleadings and papers on file herein, and any  
3 oral argument permitted by the Court.

4 DATED this 6th day of September, 2022.

5 KEMP JONES, LLP

6 /s/ Madison Zornes-Vela

7 Will Kemp, Esq. (#1205)

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

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

3800 Howard Hughes Parkway, 17th Floor

Las Vegas, Nevada 89169

10 *Attorneys for Defendant*

11 *Theodore Farnsworth*

## 12 MEMORANDUM OF POINTS AND AUTHORITIES

### 13 I.

### 14 INTRODUCTION

15 Plaintiff's Motion purportedly seeks clarification on the Court's prior order regarding  
16 Board meetings. Like Plaintiff's August 31, 2022 Motion to modify the Court's Order appointing  
17 the three Co-CEO's, this motion is another unfounded attempt by Plaintiff to re-write history and  
18 seek reconsideration of one of the Court's prior orders.

19 On August 17, 2022, this Court entered an Order, which, among other things, requires that  
20 any meeting of the Board of the Directors be held only if: (1) unanimous consent by the Board  
21 members to a meeting, with at least 48-hours' notice and an agenda accompanying the notice; or  
22 (2) by order of the Court. The Order further provides that the Board members must not  
23 unreasonably withhold their agreement to hold a board meeting and/or waive the 48-hours' notice  
24 requirement.

25 The unanimous consent requirement for all Board meetings going forward was of  
26 particular importance to Defendants because of the events that transpired in July and August 2022,  
27  
28

1 which led to the instant litigation and many of the issues raised herein. Following Gibson Dunn’s  
2 aborted investigation and the issues it identified regarding Mr. Colucci’s independence, Mr.  
3 Colucci and his Board allies effectuated a series of tumultuous Board meetings in an apparent  
4 effort to remove current Company management and gain control over operations. Mr. Colucci  
5 and his Board allies hijacked these meetings and crammed through numerous important decisions  
6 without any prior notice let alone discussion on critical corporate governance issues.

7 To prevent these antics from continuing, and to assist the Court’s efforts to preserve the  
8 status quo and protect Vinco Ventures’s ongoing operations, Defendants proposed the unanimous  
9 consent requirement for all Board meetings going forward. At the hearing wherein this term was  
10 discussed, counsel for Defendant Farnsworth made it clear that the intention of this provision was  
11 to require unanimous consent from all Board members to hold Board meetings. This is the same  
12 counsel who drafted and submitted the proposed order that the Court ultimately entered as the  
13 August 17, 2022 Order. There is no dispute the Court entered Defendants’ proposed position on  
14 this issue.

15 Despite the language of the August 17, 2022 Order and the unequivocal representations  
16 by counsel at the hearing and throughout the parties’ negotiations on this issue, Plaintiff now  
17 argues the unanimous consent requirement for Board meetings is simply Defendants’  
18 “interpretation.” The Court must reject Plaintiff’s self-serving and contrived feigned ignorance.  
19 Plaintiff further contends this Order is unworkable, offering three unfounded and speculative  
20 reasons why. Because the Court’s 8/17/22 requires the Directors to not unreasonably withhold  
21 their consent to a Board meeting and provides a Board meeting can be held pursuant to Court  
22 order, Plaintiff’s arguments against the unanimous consent requirement are not persuasive.  
23 Defendant respectfully requests the Court deny Plaintiff’s Motion and reaffirm the unanimous  
24 consent requirement.

25 ///

26 ///

**II.**  
**RELEVANT FACTS**

As this Court is aware, this action involves important corporate governance issues for Vinco Ventures and involves serious allegations regarding the actions and fitness of several Vinco Ventures directors, executives, and others involved in Vinco Ventures’s business operations.

On August 17, 2022, the Court entered an 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 (“8/17/22 Order”).<sup>1</sup> The 8/17/22 Order requires unanimous consent for any Board meeting. *Id.* at ¶ 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.”)

Unanimous consent for holding Board meetings moving forward was one of Defendants’ unwavering requirements during the parties’ negotiations underlying the 8/17/22 Order. This is because Mr. Colucci and his Board allies improperly utilized “Board meetings” to purportedly accomplish their hostile takeover. Between July 17, 2022 and July 24, 2022, “the Board” conducted a flurry of meetings wherein Colucci and his Board allies who joined his hostile takeover hijacked the meetings and crammed through numerous important decisions without any prior notice, let alone discussion on these issues. *See e.g.*, 8/15/22 Declaration of Roderick Vanderbilt at ¶¶ 15, 31-32; 8/15/22 Declaration of Lisa King at ¶¶ 13, 17, 19-20. Additional meetings occurred after the Court granted Plaintiff’s ex parte request for the now-dissolved Temporary Restraining Order, which precluded Defendants’ involvement.

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<sup>1</sup> Notice of Entry of the 8/17/22 Order was filed on August 18, 2022. Because Plaintiff’s Motion refers to the August 17, 2022 Order, for the sake of consistency and clarity, Defendant will also refer to it as such.

At the continued hearing on August 17, 2022, after Plaintiff backed out of its previous agreement that no board meeting would be conducted without unanimous consent, the parties presented this as one of the remaining issues to the Court, explaining:

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.

Aug. 17, 2022 Recorder's Transcript of Hearing Plaintiff Vinco Ventures Inc.'s Emergency Motion for Temporary Restraining Order and Preliminary Injunction ("8/17 Trns"), 45:19-46:6 (emphasis added).

In response to this proposal, Vinco counsel said that there was a need for an emergency board meeting that very night because of the alleged Hudson Bay default notice. The Court then agreed to a Hudson Bay carve out:

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 ....

8/17 Trns, 73:20-24.

The Court signed Defendant Farnsworth's proposed Order, which was consistent with Mr. Kemp's and the Court's statements on this issue. *See* 8/17/22 Order.

Until an email from John Colucci on August 27, 2022, Plaintiff never advanced the inane argument that there was an additional "carve out" that would allow for calling board meetings for any reason by giving 48-hours-and-one-second (or more) notice. *See Exhibit 1.* As Defendant explains herein, a 48-hour-and-one-second carve out would basically gut paragraph 5 of the August 17 Order in its entirety and allow Colucci and his Board allies free reign to continue the obstreperous conduct that triggered this litigation.

**III.**  
**ARGUMENT**

**A. The August 17, 2022 Order Requires Unanimous Consent from All Board Members to Hold a Board Meeting.**

Contrary to the Plaintiff's contrived position, the 8/17/22 Order orders that Vinco Ventures Board meetings can be held only if: (1) all Board members consent to the meeting, at least 48-hours' notice is provided, and an agenda accompanies the notice; or (2) by order of the Court. 8/17/22 Order at ¶ 5.

Defendants' proposed requirement for unanimous consent to hold Board meetings (which the Court adopted) was critical to Defendants because of Mr. Colucci and his Board allies' egregious and outright abuse of the Board meeting process to purport to effectuate their hostile takeover. This entire controversy started when Mr. Colucci became a board member less than three months ago in mid-June, and within three weeks, launched a scheme to disenfranchise two duly-elected board members (Lisa King and Roderick Vanderbilt), terminate the long-standing CEO of Vinco (Lisa King) and eliminate any involvement by Defendant Farnsworth (the individual who raised hundreds of millions of dollars in financing for the company). One unsavory tactic Mr. Colucci and the other two Board members involved in his scheme repeatedly employed during the hostile takeover was to schedule board meetings on quick notice, with no agenda, and then attempt to cram through critical votes to disassemble the company—*e.g.*, the vote to fire 80% of the work force, the vote to fire King as CEO, the vote to fire Farnsworth as co-CEO, and numerous other actions to seize control of Vinco Ventures.<sup>2</sup>

Given the egregious abuses to the board meeting process employed by Mr. Colucci and his Board member allies, Defendants unequivocally sought the requirement that all Board meetings be held with unanimous consent. Prior counsel for Plaintiff was keenly aware this was Defendants' position given that Defendants' counsel made their position clear on the record. 8/17

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<sup>2</sup> Some of these illicit actions were taken at purported board meetings conducted when Defendants King and Vanderbilt were restrained from attending by the TRO Vinco obtained without notice and which has since been dissolved by the Court.

Trns at 45:19-46:6. There is no dispute Court signed and entered Defendant Farnsworth’s proposed order, which included the unanimous consent requirement. Even if paragraph 5 could have been drafted differently, it does not negate the intent and purpose of this provision, which was made clear at the August 17, 2022 hearing. While certain persons on Plaintiff’s Board may not like the 8/17/22 Order and want to again re-write history<sup>3</sup>, there is no legitimate dispute this Order requires unanimous Board consent to hold a Board meeting.

The argument that the Court intended to require unanimous consent for meetings noticed in 48 hours but did not intend its Order apply to meetings noticed in 48-hour-and-one-second is nonsensical and is a blatant attempt to pervert and/or violate the Court order. **The Vinco bylaws already require 48 hours’ notice for board meetings.** If the unanimity requirement imposed by the Court is limited to meetings called with less than 48 hours’ notice, it is meaningless because such meetings are already prohibited without unanimous consent (or waiver). The entire reason for the unanimity provision in the 8/17/22 Order was to prevent the Colucci-engineered chaos that the serial board meetings were inflicting.

To support its improper attempt to inappropriately seek what is effectively reconsideration of the Court’s Order, Plaintiff argues the unanimous consent requirement is “unworkable” because it purportedly allows any single Director to interfere with the other Directors’ ability to satisfy their fiduciary duties, “clashes” with paragraph 2 of the same Order, and will force the parties back to Court every time the Board need to make a decision. These unfounded and speculative arguments are not persuasive.

Plaintiff fails to explain how the unanimous consent requirement for meetings has any impact on a Director’s ability to “stay reasonably apprised of Company issues.” Mot. at 8:14-16. A board meeting is not the sole vessel by which a director can stay reasonably informed of Company issues. Regardless, while the 8/17/22 Order requires unanimous consent to hold a

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<sup>3</sup> See Plaintiff’s August 29, 2022 Motion (seeking to undo the Court’s order appointing Ross Miller and Lisa King as Co-CEO’s with John Colucci, leaving Mr. Colucci the sole CEO); *see also* Defendants’ Opposition, filed on August 20, 2022.

Board meeting, the Order also requires that the Board members must not unreasonably withhold their agreement to hold a board meeting and/or waive the 48-hours' notice requirement. 8/17/22 Order at ¶ 5. As Plaintiff also recognizes, the Court's August 19, 2022 Order further specified that "[t]he Board and Plaintiff's executives shall take all reasonable steps necessary to ensure Vinco Venture's ongoing business operations." 8/19/22 Order at ¶ 5. The 8/17/22 Order also allows the parties to seek a Court order requiring a Board meeting be held. 8/17/22 Order at ¶ 5. Hence, if any Director believes its ability to exercise his or her fiduciary duties is impacted by another Director's **unreasonable** refusal to provide consent to hold a Board meeting, Plaintiff can seek a Court order requiring a Board meeting. *Id.*

Plaintiff likewise fails to demonstrate how the unanimous consent requirement "clashes" with paragraph 2, which requires Board approval of any expenditure in excess of \$250,000. A Board meeting is not required to approve an expenditure as this can be handled via other means such as through written consent. If any expenditure approval cannot be done by written consent, then the Board can hold a Board meeting to discuss the same, for which no Board member can unreasonably withhold their consent. There is simply no inherent conflict between these directives.

Finally, and for the same reasons, the unanimous consent requirement does not "force the parties back to Court every time the Board need to make a decision." Again, because the 8/17/22 Order requires the Board member to not unreasonably withhold their consent to hold a Board meeting, Plaintiff's contention here is unfounded and speculative. In fact, the only reason the parties would repeatedly end up before this Court on this issue is if Mr. Colucci and his allies continue to try and use Board meetings as weapons to improperly promote their self-serving agenda.

The Court should deny Plaintiff's Motion. The unanimous consent requirement for Board meetings was clearly discussed and understood to be part of Defendant Farnsworth's proposed Order, which the Court entered as its own. To the extent the 8/17/22 Order requires "clarification", Plaintiff fails to demonstrate any legitimate reason the Court should reconsider the Order to remove the unanimous consent requirement for Board meetings.



IV.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court deny Plaintiff's Motion. The Court's August 17, 2022 Order clearly requires unanimous consent from all Board member to hold a Board Meeting, and Plaintiff fails to demonstrate any reason the Court's Order requires clarification.

DATED this 6th day of September, 2022.

KEMP JONES, LLP

/s/ Madison Zornes-Vela  
Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
Madison Zornes-Vela, Esq. (#13626)  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
*Attorneys for Defendant*  
*Theodore Farnsworth*

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 2022, I served a true and correct copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF VINCO VENTURES, INC.'S MOTION FOR CLARIFICATION OF THE COURT'S AUGUST 17, 2022 ORDER PERTAINING TO MEETINGS OF THE BOARD OF DIRECTORS** via the Eighth Judicial District Court's electronic service system on all parties on the Court's service list.

/s/ Ali Lott  
An employee of Kemp Jones

# **Exhibit 1**

**From:** Mike Distasio mike@chair.com 

**Subject:** Please see Monday Board meeting request attached

**Date:** August 26, 2022 at 5:22 PM

**To:** Elliot Goldstein goldsteinelchonon@gmail.com, Giovanni Colucci john@hwydata.com, Roderick Vanderbilt rodv1@msn.com, Lisa King Lking@vincoventures.com, Rod Vanderbilt rodvanderbiltvin@gmail.com, Giovanni Colucci john@hwydata.com

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MD

Mike Distasio



Vinco - Board  
Meetin...22).pdf

RESP278

**From:** Elliot Goldstein [elliott@whitedoveequities.com](mailto:elliott@whitedoveequities.com) 

**Subject:** Board meeting request for Monday 6pm

**Date:** August 26, 2022 at 5:38 PM

**To:** Lisa King [Lking@Vincovenures.com](mailto:Lking@Vincovenures.com), Rod Vanderbilt [rodvanderbiltvin@gmail.com](mailto:rodvanderbiltvin@gmail.com), John Colucci [jcoluccivincovenures@gmail.com](mailto:jcoluccivincovenures@gmail.com), Mike Distasio [mike@chair.com](mailto:mike@chair.com)

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EG

Please see attached board meeting request.

Have a fantastic weekend!

Elliot Goldstein, Partner

White Dove Equities


[908.216.1254](tel:908.216.1254)

[Elliot@Whitedoveequities.com](mailto:Elliot@Whitedoveequities.com)



Vinco - Board  
Meetin...22).pdf

RESP279

**From:** Lisa King Lking@Vincovenures.com   
**Subject:** Re: Please see Monday Board meeting request attached  
**Date:** August 27, 2022 at 6:48 AM  
**To:** Mike Distasio mike@chair.com  
**Cc:** Elliot Goldstein goldsteinelchonon@gmail.com, Giovanni Colucci john@hwydata.com, Roderick Vanderbilt rodv1@msn.com, Rod Vanderbilt rodvanderbiltvin@gmail.com  
**Bcc:** Nathanael Rulis n.rulis@kempjones.com, Teddy Parker tparker@pnalaw.net, Madison Zornes-Vela m.zornes-vela@kempjones.com, Ted Farnsworth Tedfarnsworth@gmail.com, Erik Noble enoble@zash.global

LK

Mike & Elliot,

I am not available for the requested Board meeting on Monday, August 29 and disagree that we need a Board meeting in order to accomplish the narrative for the special meeting. We can review a draft via email as soon as it becomes available. This review will involve all three co-CEOs as well.

As far as scheduling a Board meeting, the previous Court order said that it required unanimous Board approval (or Court order) to set a meeting. See paragraph 5 in the attached. As a result of not having unanimous approval to conduct a Board meeting, one shall not occur on Monday, August 29 and no motions or votes can be taken.

Additionally, I refuse to attend Vinco Ventures, Inc., a public company Board meeting on a private Zoom invite, as shown in Elliot's notice, unless required to do so by court order. Vinco Ventures, Inc. private Board meetings should be conducted on a corporate Zoom or Google Meets account.

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

On Aug 26, 2022, at 5:21 PM, Mike Distasio <mike@chair.com> wrote:


Mike Distasio  
<Vinco - Board Meeting Notice (Meeting Date August 29, 2022).pdf>



2022.08.17  
Order...gs.pdf



Vinco - Board  
Meetin...22).pdf

**From:** Giovanni Colucci john@hwydata.com   
**Subject:** Re: Please see Monday Board meeting request attached  
**Date:** August 27, 2022 at 10:42 AM  
**To:** Lisa King Lking@vincoventures.com  
**Cc:** Mike Distasio mike@chair.com, Elliot Goldstein goldsteinelchonon@gmail.com, Roderick Vanderbilt Rodv1@msn.com, Rod Vanderbilt rodvanderbiltvin@gmail.com

GC

Lisa,

The unanimous vote in the court order is exclusively associated to calling a board meeting in less than 48 hours. To my understanding Elliot and Michael have given us more than enough time.

As far as your opinion on the matter. Here is the job duty of the board:

“The board is responsible for protecting shareholders' interests, establishing policies for management, oversight of the corporation or organization, and making decisions about important issues a company or organization faces.”

If you feel this is not an important issue of the company and choose not to show up I'm sure the board will understand.

Since you did not ask or suggest another date and time. Along with the fact you are telling the board what to do as a Interim CO-CEO. The board of this company is our boss essentially. If they want to have the meeting they will.

Thank you

On Aug 27, 2022, at 6:48 AM, Lisa King <Lking@vincoventures.com> wrote:

Mike & Elliot,

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P + (315)-420-8036

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Mike Distasio  
<Vinc - Board Meeting Notice (Meeting Date August 29, 2022).pdf>



RESP281

**From:** Giovanni Colucci john@hwydata.com   
**Subject:** Re: Please see Monday Board meeting request attached  
**Date:** August 27, 2022 at 11:52 AM  
**To:** Lisa King Lking@vincoventures.com  
**Cc:** Mike Distasio mike@chair.com, Elliot Goldstein goldsteinelchonon@gmail.com, Roderick Vanderbilt Rodv1@msn.com, Rod Vanderbilt rodvanderbiltvin@gmail.com

GC

Lisa,

I have had three firms explain.

Everyone of them felt the same way.

The context of this is being used correctly in the email I wrote and you are referencing to.

John Colucci

On Aug 27, 2022, at 11:33 AM, Lisa King <Lking@vincoventures.com> wrote:

John,

Your understanding of the court order is incorrect. Have your attorney explain it to you.

Lisa

On Aug 27, 2022, at 10:42 AM, Giovanni Colucci <john@hwydata.com> wrote:

Lisa,

The unanimous vote in the court order is exclusively associated to calling a board meeting in less than 48 hours. To my understanding Elliot and Michael have given us more than enough time.

As far as your opinion on the matter. Here is the job duty of the board:

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RESP282

Additionally, I refuse to attend Vinco Ventures, Inc., a public company Board meeting on a private Zoom invite, as shown in Elliot's notice, unless required to do so by court order. Vinco Ventures, Inc. private Board meetings should be conducted on a corporate Zoom or Google Meets account.

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Lisa King  
P + (315)-420-8036

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Mike Distasio  
<Vinco - Board Meeting Notice (Meeting Date August 29, 2022).pdf>



2022.08.17  
Order...gs.pdf



Vinco - Board  
Meetin...22).pdf



**NOTICE OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF VINCO  
VENTURES, INC.**

Dated August 26, 2022 prior to 6:00 PM ET  
Sent to each Board member via email

To the Directors of Vinco Ventures, Inc.

In accordance with the Bylaws of Vinco Ventures, Inc. (the “Company”), Michael DiStasio and Elliot Goldstein, two independent directors, are noticing a special meeting of the board of directors of the Company to be held on Monday, August 29, 2022, at 6:00 PM ET, via the zoom link below. Attendance at the board meeting shall include current directors, the Company’s co-CEOs, John Colucci, Lisa King and Ross Miller, and the Company’s CFO, Phil Jones.

The agenda of matters to be covered at this special meeting is below. If a director has any additional matters to be included on the agenda, such director suggest such item for inclusion on the agenda via email to the entire Board by 12 p.m. August 29, 2022.

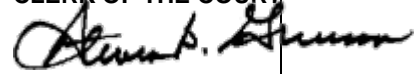
The agenda for the meeting is as follows:

1. Narrative for the Special Meeting of the Stockholders scheduled for Tuesday, August 30, 2022.

Join Zoom Meeting

**REDACTED**

# EXHIBIT E



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  
FRIDAY, SEPTEMBER 9, 2022

**RECORDER'S TRANSCRIPT OF HEARING  
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff:

JOEL TASKA, ESQ.  
ANDREW CLARK, ESQ.  
DAVID E. CHAVEZ, ESQ.  
(via BlueJeans)

For the Defendants:

WILLIAM S. KEMP, ESQ.  
THEODORE PARKER, III, ESQ  
NATHANIEL R. RULIS, ESQ.  
(via BlueJeans)  
MADISON ZORNES-VELA,  
ESQ. (via BlueJeans)

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APPEARANCES (continued):

Also Appearing:

AMY L. SUGDEN, ESQ.  
(for Ross Miller)  
ROSS MILLER  
ERIK NOBLE (via BlueJeans)  
GABE HUNTERTON  
THEODORE FARNSWORTH

RECORDED BY: MARIA GARIBAY, COURT RECORDER

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**INDEX**

Court's Ruling

Page  
53

1 Las Vegas, Nevada, Friday, September 9, 2022

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

4 THE MARSHAL: -- is in session. The Honorable Timothy C.  
5 Williams presiding. Please be seated and come to order.

6 THE COURT: All right, I just want to say good afternoon,  
7 everyone. Let's go ahead and set forth our appearances for the record?

8 MR. KEMP: Your Honor, Will Kemp on behalf of Defendant  
9 Farnsworth.

10 MR. PARKER: Good afternoon, Your Honor, Theodore  
11 Parker on behalf of Lisa King and Roderick Vanderbilt.

12 MR. TASKA: Good afternoon, Your Honor, Joel Taska and  
13 Andrew Clark on behalf of the Plaintiff.

14 MS. SUGDEN: Good afternoon, Your Honor, Amy Sugden on  
15 behalf of Ross Miller, also for Gabe Hunterton as well.

16 THE COURT: All right. So once again, good afternoon. Tell  
17 me, where are we at?

18 MR. KEMP: Your Honor, with regards to the financial  
19 information we finished the day with, they wanted the protective order  
20 entered. We negotiated and finished the protective order. Special  
21 Master Hale [phonetic] entered it yesterday promptly I may add. And --

22 THE COURT: He's extremely --

23 MR. KEMP: He's very fast.

24 THE COURT: Yes.

25 MR. KEMP: And at the end of the day, they gave us some

1 financial information that indicates some payments or reserves or  
2 whatever.

3 And, frankly, it's raised a lot of questions. There appears to  
4 have been a \$450,000 payment made after the Court issued the  
5 prohibition on payments over 250,000.

6 So I think there's a -- there's a couple motions that are either  
7 heading down to the Court or sitting on their desk asking for OSTs on  
8 those.

9 And then, my -- a bitter concern at least from me is this AI  
10 Pros situation. And to give the Court a little background again, AI Pros  
11 is Mr. Yang's company.

12 And AI Pros executed NDAs with two companies, AdRizer and  
13 Mind Task [sic] that we're affiliated with, but we haven't acquired. And  
14 took -- it was given a lot of intellectual property by them to review.

15 After that, AI Pros approached the company and wanted to  
16 enter into some kind of agreement. Ms. King, when she was co-CEO,  
17 didn't approve of that.

18 Mr. Farnsworth didn't even know about it. And then, there  
19 was a payment made to AI Pros of \$975,000 on July 21st. And again, I  
20 would point out that Ms. King asked Mr. Noble to meet with Mr. --

21 THE COURT: And what was the figure again? How much?

22 MR. KEMP: 4 -- the 975,000 was the first payment, Your  
23 Honor. So Ms. King asked Mr. Noble to verify that, you know, what  
24 they're paying for is real, okay?

25 And Mr. Noble met with Mr. Yang or corresponded with him,

1 I'm not sure which, and was not able to bless the product that was being  
2 purchased.

3 After that, there was another \$500,000 paid to this AI Pros on  
4 August 15th. So now we're up to a million and a quarter.

5 So what my concern now is that I see in the -- being released  
6 that they gave us to us yesterday that there was a transfer for  
7 \$4,000,000 from Vinco to an entity known as Edison National, LLC,  
8 which is a subsidiary of Vinco.

9 And the ledger entry says, "holding for AI Pros operating  
10 funds".

11 THE COURT: Who's AI Pro again?

12 MR. KEMP: Okay, AI Pros again is a company that does  
13 business out of I believe Northern California. I think they're incorporated  
14 in Delaware.

15 And they're run by a man named George Yang. And George  
16 Yang, I don't know if Your Honor recalls, but George Yang was sitting in  
17 the audience for two days. He came down to give testimony in support  
18 of Mr. Colucci's position because AI Pros is subject to some of the  
19 counterclaims that are made here.

20 And in fact, Mr. Yang was served with a deposition notice.  
21 And that was the deposition that was supposed to go forward on  
22 Monday that we had to get Special Master Hale appointed for.

23 And Special Master Hale has now continued that deposition to  
24 September 22nd, I believe. But in any event, that's who AI Pros is.

25 THE COURT: So I want to make sure. So we had 975,000,



1 another 500,000?

2 MR. KEMP: Right.

3 THE COURT: And now 4,000,000?

4 MR. KEMP: And I don't know if the 4,000,000 has been paid  
5 or is being held to be paid. We're trying to get clarification on that. I  
6 mean, but this is unbelievable because we have --

7 THE COURT: I want to make sure I understand the dates. So  
8 the 975- was when?

9 MR. KEMP: July 21st.

10 THE COURT: Okay, 7/21.

11 MR. KEMP: The 5 -- another 500,000 on August 15th.

12 And then, on August 15th, that same day, another \$4,000,000  
13 transferred from the Vinco account in the bank to an account of -- it's  
14 listed on the thing as EN, LLC, which we think refers to Edison National,  
15 LLC and --

16 THE COURT: And that was on 8/15?

17 MR. KEMP: 8/15. And so, my concern is it says, "holding for  
18 AI Pros operating funds".

19 We also know that Mr. Colucci signed a licensing agreement  
20 with AI Pros on July 22nd, 2002 or 2022 that was not approved by the  
21 Board, was not approved by Ms. King, was not approved by Mr.  
22 Farnsworth, wherein AI Pros is to get \$1,950,000.

23 And we have heard, we have not seen, but we have --

24 THE COURT: And that's why in this case what's currently  
25 pending before me; is that correct?

1 MR. KEMP: No, well, I don't know the exact filing date.

2 THE COURT: 7/22?

3 MR. KEMP: But this license agreement's July 22nd. We have  
4 heard rumor that there's another licensing agreement, which we assume  
5 is in the same amount, 1,950,000.

6 And again, you know, we're talking spending millions of dollars  
7 without even telling the co-CEOs what's going on? It's unbelievable.

8 But the 1,950,000 and the other 1,950,000, that's 2,000,000  
9 plus 2,000,000, that conveniently equals the \$4,000,000 that was moved  
10 on August 15th to this Edison account.

11 So we're trying to get clarification on this. So I'm concerned  
12 about the 450-, but that's maybe the tail wagging the dog.

13 The AI Pros thing, I think, is more significant. And the other  
14 point I'd make on AI Pros is I can't remember if it's the president of Mine  
15 Task --

16 MR. PARKER: Tank.

17 MR. KEMP: Mind Tank or AdRizer, but one of the other  
18 accuses AI Pros of stealing their intellectual property. And again, they  
19 signed NDAs with this entity and that's how they got it.

20 And you know, there's some facts about stuff being on  
21 websites and being removed after complaints were made. And there's a  
22 pending whistleblower complaint now, maybe two. I know there's at  
23 least one.

24 But you know, this is serious, Your Honor. They came in here  
25 last week and said, oh, geez, we're down to our last 17 000,000, which

1 wasn't really true, because they didn't count the other 10,000,000.

2 I don't know how this 4,000,000 or 6.5 -- 6.25 to AI Pros is  
3 being counted, but when you're talking about \$17,000,000, and here's  
4 6.25 million going out the door without appropriate approvals or vetting, I  
5 mean, I think it's a serious thing.

6 And I just want to bring it to the Court's attention because like I  
7 already said, we have an OST pending now on the \$450,000 payment.  
8 And we're working on probably another motion with regard to this AI  
9 Pros thing.

10 Because assuming for the sake of argument that the money  
11 hopefully is still in this EN, LLC, which again, I think means Edison  
12 Nation, LLC account at the bank, and it hasn't been transmitted to AI  
13 Pros, I mean, we got to make sure it stays there.

14 And you know, like I've already said twice, how this could all  
15 be happening without the knowledge and consent of the co-CEOs when  
16 they're having calls arguing about \$100 invoices is just beyond belief,  
17 but that's the status of the financials, Your Honor.

18 THE COURT: All right.

19 MR. PARKER: Your Honor, if I could. I sent over to the Court  
20 maybe an hour, hour and a half ago, a motion. I don't know if the Court  
21 had a chance to take a look at it.

22 I brought a hard copy just so the Court could have something  
23 in front of it. If I could approach, Your Honor?

24 THE COURT: Make sure, before you approach.

25 MR. PARKER: I've done --

1 THE COURT: Okay.

2 MR. PARKER: -- oh, of course, Your Honor. I gave copies to  
3 everyone before we started. And it lays out, Your Honor, in short  
4 fashion, these unexplainable expenditures.

5 And I wanted to clear up a few things that Mr. Kemp raised  
6 with the Court. Your Honor, August 15th, was the day before --

7 [The Judge confers with the Clerk]

8 THE COURT: Go ahead, Mr. Parker.

9 MR. PARKER: Thank you, Your Honor. So, August 15th,  
10 Your Honor, was the day before we began the three-day hearing on  
11 Plaintiff's motion for TRO preliminary injunction.

12 And I want to frame the discussion because August 15th, the  
13 day they earmarked this \$4,000,000 amount for AI Pros was the very  
14 day before we appeared in Court before you on the 16th.

15 Ms. Adele Hogan is there. Mr. Colucci is there. Mr. Yang is  
16 there all before your Court -- all before Your Honor. And these  
17 expenses were earmarked the day before we show up.

18 And while we're there on the 16th, Mr. Connot made several  
19 remarks indicating that there's no Board meetings occurring, there's  
20 nothing that's happening that should give rise to the Court having to  
21 address an acute issue.

22 And I put that out there, Your Honor, because it's in the  
23 transcripts on the 16th and the 17th how interested this Court was in  
24 finding and establishing a status quo, then maintaining it.

25 And so, it's apparent to me now that we've finally received

1 some semblance of some financials now that they attempted to get all of  
2 these expenses in a place where we could not, we being the other Board  
3 members, could not affect change or prevent those monies from looted  
4 from our accounts.

5 So when you consider roughly \$6,000,000 being spent  
6 between the 15th and last week, knowing full well this Court intended  
7 and actually created an order where nothing beyond \$250,000 was to be  
8 -- supposed to be spent without unanimous agreement, this is not just an  
9 affront to the comments made before the Court, but it's a direct violation  
10 of the Court's order.

11 And so, Your Honor, we've asked in this motion, and hopefully  
12 the Court will sign an OST, that Mr. Colucci, Mr. Jones, Mr. Goldstein,  
13 Mr. Distasio, and Mr. Garrows all be held in contempt.

14 We've also asked that Lucosky Brookman also be held in  
15 contempt because not only was Ms. Hogan here asking for permission  
16 to associate and -- as counsel under Supreme Court Rule 42, but she  
17 heard the comments, and in addition to knowing the order of the Court,  
18 accepted a \$450,000 payment.

19 Now we're still waiting to get backup. And I want to be, you  
20 know, forthright with the Court. I spoke to Mr. Taska yesterday. And on  
21 Monday, we're going to hopefully exchange disclosures.

22 So we should see the backup for these expenditures. And as  
23 Mr. Kemp said, if the expenditures have not truly been made, but simply  
24 reflected on their ledger, then that's also some explaining that needs to  
25 be done.

1           What I do know is that Ms. Lisa King, a Board member, and  
2 co-CEO, Mr. Vanderbilt, the Chair of the Board, they're not aware of any  
3 of these expenditures. And it's my understanding that Mr. Farnsworth  
4 was not aware of it.

5           Additionally, Your Honor, Mr. Kemp was actually giving AI  
6 Pros more deference than they're entitled to. They were paid more than  
7 975-. I have in front of me a copy of the AI Pros invoice, dated March  
8 28, 2022, where they received a downpayment of \$650,000.

9           And this was part of a 1.-- a \$2.6 million dollar invoice to  
10 Magnify-U, which of course is one of the companies under the Vinco  
11 umbrella.

12           And I also have a separate invoice related to AdRizer for a  
13 payment of \$550,000 for a total invoice of \$2.2 million.

14           And then, there's a third invoice from AI Pros, where a  
15 downpayment of 975,000, that's the payment that Mr. Kemp was  
16 speaking of, that was made --

17           THE COURT: I don't mind saying this. I'm trying to figure out  
18 how could all this be occurring when we're haggling over making  
19 payroll?

20           MR. PARKER: Well, this is -- listen, we are amazed. Now  
21 these payments came down --

22           THE COURT: I mean, seriously, we're here haggling over  
23 trying to make payroll and whether that would be appropriate or not.

24           MR. PARKER: Absolutely, Your Honor. Now these payments  
25 were made and I said up front, they were made in March, but what we've

1 known now is that in furtherance of these agreements, they earmarked  
2 \$4,000,000 on the 15th.

3 I also want to point out, Your Honor, Ms. Lisa King, at the time  
4 CEO, instructed Erik Noble and Erik Noble informed Vinco Ventures that  
5 to hold all payments to AI Pros. This is an email dated July 19th, 2022  
6 sent at 3:08 p.m.

7 At this point, there was suspicions regarding the relationship  
8 between Colucci and AI Pros. And for some reason, Mr. Colucci got  
9 involved and attempted to, I don't want to say coerce, but facilitate those  
10 payments.

11 And so, the red lights went off. All of the caution signs were in  
12 front of us. And Lisa King said hold these payments.

13 Despite her suggestions and her concerns for the health of  
14 this company, especially the theft of AI from Magnify-U, AdRizer, Mind  
15 Tank, and Vinco Ventures as a corporation, they found it wise to spend  
16 or earmark \$4,000,000 for this company.

17 It defies logic. To me, it defies the comments made to this  
18 Court and certainly is a violation of the spirit of the Court's order.

19 In addition, in my opinion, holding that money there is a  
20 violation of the Court's August 17th, 2022 order.

21 Now, Your Honor, we bring this up because we asked from  
22 Day 1, please provide us with a general ledger, a summary of the  
23 expenses, because all CEOs deserve that information, not just Mr.  
24 Colucci.

25 All the Board members deserve that information, not just Mr.

1 Colucci or Mr. Goldstein or Mr. Distasio. And certainly, not just counting  
2 for --

3 THE COURT: And they've been in their positions for what, 90  
4 days?

5 MR. PARKER: Yes. They've had this -- they've had -- strike  
6 that, Your Honor. They've had this information since they tried to kick  
7 the Defendants off the Board as CEOs.

8 THE COURT: And I understand what you're saying, but I  
9 mean, they've been in a position for Vinco.

10 MR. PARKER: That's right.

11 THE COURT: For example, Mr. Colucci and all of this -- all  
12 these money transactions started occurring over the last 90 days.

13 MR. PARKER: Handled the last month. That's right.

14 THE COURT: I'm going to tell everyone. I'm very concerned.  
15 This case was filed on August 3rd, 2022. And I would anticipate that  
16 once a case is filed, and I realize there's a TRO, but you would think that  
17 the decisionmakers would be very cautious once the case is filed in  
18 district court.

19 MR. PARKER: Absolutely, Your Honor.

20 THE COURT: You understand what I'm saying because --

21 MR. PARKER: I certainly --

22 THE COURT: Because at that point, and I realize the relief  
23 might be slightly different as being requested, but you're under the  
24 jurisdiction of a trial court at that time, right?

25 MR. PARKER: That's right.



1 THE COURT: And that's a game changer.

2 MR. PARKER: It is. And Your Honor, I -- I'm going to show  
3 some deference to Mr. Taska because he was not here on the 16th, the  
4 17th, or the 18th. So he may not have read the transcripts and  
5 appreciate the severity of the situation given Mr. Connot's comments.

6 But Mr. Colucci certainly was here. Ms. Adele Hogan was  
7 here. And Mr. Yang was here.

8 This flies in the face of everything this Court tried to do to  
9 create a situation where you preserved the health of this company.

10 So, Your Honor, I -- Mr. Kemp and I wanted to put this in front  
11 of the Court because to me, it plays into the motion that Mr. Taska will  
12 argue in a few moments regarding having Board meetings.

13 And this Court said if there was an issue that could not be  
14 unanimously agreed upon, I will make myself available. That's what this  
15 Court said. In fact, you said we could call you as a group if it was  
16 something so important.

17 I can't understand how they could make these decisions to  
18 pay these monies and not consider that important enough to first advise  
19 all the CEOs, including Mr. Miller, and advise the Board members.

20 And then, if they could not make a decision bring it before the  
21 Court. You don't spend almost \$6,000,000 of money when you're saying  
22 you can barely make payroll.

23 And so, I just wanted the Court to have an understanding of  
24 where we are, Your Honor, why this motion was filed, why these people  
25 are being -- why the Court's being asked to find these people in

1 contempt because we think what they've done is a complete violation of  
2 the -- of your order and some type of action should be taken.

3 THE COURT: All right, we'll hear from the -- I guess we have  
4 no opposition right now. Any comments, sir, you want to make?

5 MR. TASKA: Well, Your Honor, first of all, I'm reminded of the  
6 very first time I stood up in this case and Mr. Parker admonished me for  
7 standing up and just talking about whatever I wanted. It didn't really  
8 relate to a motion that was before the Court on that day.

9 THE COURT: But, sir, I'll tell you this. I won't admonish you  
10 and I'll listen.

11 MR. TASKA: What's that?

12 THE COURT: I will listen and I'm not admonishing you.

13 MR. TASKA: I understand that, but I didn't even know this  
14 was the day where we just got up and talked about anything we wanted,  
15 because that's what they just did.

16 Now they just filed a motion. Literally, I saw it 10 minutes  
17 before I left the office to be able to come down here. They're cherry  
18 picking facts. We have not yet had an opportunity to respond to their  
19 allegations.

20 And, obviously, they've gotten to Your Honor. Your Honor is  
21 concerned, you said, about all this. Well --

22 THE COURT: Any -- I don't mind saying this. I am concerned  
23 and from a historical perspective I don't mind saying this, a few weeks  
24 back there was a big issue and discussion as to whether or not this  
25 company should continue to make payroll. And there were issues raised

1 regarding the financial health of the company and those type of things.

2 And notwithstanding that and after vigorous discussion, I went  
3 ahead and issued whatever order I issued regarding making the  
4 \$700,000.

5 And then, I come into today and I thought we were going to  
6 have a motion for consideration. I thought -- and there were issues  
7 regarding getting the financials. That's why I appointed to Mr. Hale. He  
8 does a wonderful job, by the way.

9 And everyone that can agree that he's probably the most  
10 efficient special master anyone has ever seen. And he is. He just is, but  
11 my point is this. I didn't think we would be discussing potentially an  
12 issue regarding 4,000,000, 500,000, 975,000. That's a lot of money.

13 MR. TASKA: Should I just testify then, Your Honor, like they  
14 just did?

15 THE COURT: No, no, no, but --

16 MR. TASKA: I mean, it's not true. It's not true. And we  
17 haven't had an opportunity to respond yet.

18 THE COURT: No, here's my point.

19 MR. TASKA: Okay.

20 THE COURT: And I'm not going to rush to judgment, but I'm  
21 going to sign the order shortening time.

22 MR. TASKA: That's fine, Your Honor.

23 THE COURT: Yeah, but I mean -- and we'll find out whether  
24 Mr. Parker's position has merit, based upon the facts or not.

25 MR. TASKA: Yes, we will.

1 THE COURT: Yeah, we'll find that out, but when should we  
2 set this? When's a good time? What's open?

3 MR. PARKER: Today, Tuesday, Your Honor.

4 THE COURT: Well, this [indiscernible] remember this is what  
5 everyone has to understand. This is business court, right? Yeah, it is.  
6 It's business court. It's a different matter.

7 Sometimes you have to make room, right? That's kind of how  
8 it is. It's not a question of what's convenient.

9 [The Judge confers with the Clerk]

10 THE COURT: How's Wednesday afternoon?

11 MR. PARKER: I'm going to be in -- out of the jurisdiction,  
12 Your Honor, Wednesday.

13 THE COURT: Tuesday afternoon?

14 MR. PARKER: I can do Tuesday afternoon.

15 THE COURT: Tuesday afternoon, how's that?

16 MR. TASKA: I believe that works for us, Your Honor. Yeah,  
17 Tuesday afternoon works.

18 MR. PARKER: Thank you, Your Honor.

19 THE COURT: Tuesday afternoon at 1:30. I'll sign this. And  
20 I'll give it to you.

21 UNIDENTIFIED SPEAKER: Thank you, Judge.

22 THE COURT: All right. And we'll deal with that.

23 And what we'll do as far as the opposition, if you can get that  
24 to me so we're coming -- when are we again Tuesday afternoon?

25 THE CLERK: Tuesday, the 13th.

1 THE COURT: Say Monday by close of business is fine.

2 MR. TASKA: Understood.

3 THE COURT: All right, and we'll move on. I guess next up is  
4 the motion for clarification; is that correct?

5 MR. TASKA: There are a few easier matters, Your Honor, if  
6 you want to take those first.

7 THE COURT: I'd rather take the easier matters.

8 MR. TASKA: I believe that we were to report on selections for  
9 potential special counsel. Each side was supposed to do that. So I'm  
10 happy to give you our names and --

11 MR. KEMP: Judge, I didn't think we were supposed to come  
12 to Court. I thought we were supposed to meet and confer among  
13 ourselves on those names.

14 MR. TASKA: Okay, I may have understood. I thought we  
15 were supposed to have it. I thought that was on the agenda for today.

16 MR. KEMP: Yeah, we have names. I don't have them with  
17 me now, but I can meet and confer with counsel after we're done here.

18 THE COURT: Was that something we have to address right  
19 now?

20 MR. TASKA: We don't have to address it right now. I just  
21 thought and specifically, in fact, I know it was specifically stated as on  
22 the agenda for today's court hearing.

23 MR. KEMP: Judge, maybe we can meet and confer. And if  
24 we can't resolve it, we'll come back Tuesday and finish it.

25 MR. TASKA: Sure.

1 THE COURT: Okay, yeah, it was on a status check expiration  
2 of current order, names for special counsel, whether it was 10/5/2022  
3 motion. An order to show cause is moot. Yeah, you're right.

4 But if you want to come back and deal with that, that's okay.  
5 Is that fine? I don't mind telling you this. I'd rather have consensus and  
6 an agreement, but if you can't, I'll decide the issue.

7 MR. TASKA: So that's fine with us, Your Honor. We'll meet  
8 and confer with Defendant's counsel.

9 THE COURT: And we can -- how about deciding that  
10 Tuesday at 1:30?

11 MR. TASKA: Sure.

12 THE COURT: We'll decide that first up.

13 All right. So I guess going back to the status check, we have  
14 names -- I guess that would be names for special counsel. Is that  
15 correct?

16 MR. TASKA: Correct.

17 THE COURT: What about expiration of current order?

18 MR. TASKA: Well, I -- that's slightly more complicated, but  
19 the other one I think we can quickly dispose of, Your Honor, is whether  
20 the motion for sanctions against Defendants is moot.

21 THE COURT: Okay.

22 MR. TASKA: And it is certainly not moot. We intend to  
23 proceed with that.

24 THE COURT: All right. I understand.

25 MR. TASKA: And then we get to the --

1 THE COURT: Because that's currently -- let me look here. I  
2 just want to make sure. That's currently set for October 5th, 2022?

3 MR. TASKA: I think that's right, Your Honor.

4 THE COURT: Okay, so that'll stay on calendar. I'll knock that  
5 off the list. Okay, next issue?

6 MR. TASKA: So the next issue I believe is the expiration of  
7 the 8/17 order and whether payroll continues to be made, whether  
8 employees of those companies can't be terminated. And you know, our  
9 position, Your Honor, is that the order should not remain in effect.

10 And we have a declaration that we're filing now from the  
11 company's CFO, which I can provide a hard copy of to Your Honor, but  
12 he explains that there's approximately 16,000,000 left in useable cash in  
13 the company right now.

14 And just for example, if the reduction in force that the Board  
15 approved, but then Ms. King refused to implement, if that were imposed,  
16 that could save close to a half a million dollars a month.

17 And so, you know, with all due respect to the employees and I  
18 understand they need to get paid, but this is about the company and the  
19 company shareholders.

20 So we think that the order for continuing to have to make  
21 payroll and restraining the company from being able to terminate  
22 employees of these companies should be lifted.

23 And, again, whoever then is running the company can make  
24 the decisions about what should happen here.

25 It's not appropriate for this Court to be making that decision,

1 you know, when there are other people running the company day-to-day.  
2 That's our position on that, Your Honor.

3 THE COURT: I was hoping that the Board would be making  
4 that decision, right?

5 MR. KEMP: The problem, Your Honor, is --

6 MR. TASKA: What a nice segue, Your Honor, to our motion,  
7 but sorry to interrupt, Mr. Kemp.

8 MR. KEMP: The problem here is Mr. Colucci and Mr. Jones  
9 are pretty much doing anything they want. You know, this discussion of  
10 these other payments, they weren't even telling Mr. Miller and Ms. King  
11 who are the co-CEOs until yesterday after we asked that it be ordered to  
12 be produced what they've been paying since August 16th.

13 Only yesterday did we get a list of what they've been paying  
14 since August 16th, which led to problems.

15 But you know, to suggest that there's, you know, been a  
16 submission to the CEOs on this issue is flat out wrong. They haven't  
17 even brought this up at a meeting that what reduction of force would be  
18 agreed to or not agreed to.

19 And so, what -- when he says a reduction in force --

20 THE COURT: Mr. Kemp, I don't want to cut you off, but I  
21 mean, the first issue I would want to know the answer to would be the  
22 necessity for the reduction of workforce, right? That's the first reason,  
23 why?

24 But just as important, I would -- I was hoping that this would  
25 be decided by the Board, the three-member Board. That's why I put Mr.



1 Miller in position.

2 MR. PARKER: You mean the three CEOs.

3 MR. KEMP: CEOs.

4 THE COURT: CEOs, I'm sorry.

5 MR. KEMP: Yeah, Your Honor --

6 THE COURT: Yeah.

7 MR. KEMP: -- why aren't the CEOs --

8 THE COURT: I'm sorry, CEOs.

9 MR. KEMP: Yeah, why isn't a proposal if Mr. Colucci wants to  
10 fire everybody take -- make a proposal and Mr. Jones, make a proposal  
11 to the other two CEOs, see if you can get a consensus, see if you can at  
12 least get one of them to agree to it.

13 THE COURT: Right.

14 MR. KEMP: I mean, I'm not saying there's not one  
15 unnecessary employee in the whole company that they couldn't  
16 eliminate, but that's an issue for the co-CEOs.

17 And to suggest now that, oh, Judge, we want this order to  
18 expire so we can go back to something that Mr. Colucci's Board  
19 approved while we were restrained from participating and say, oh, this is  
20 a pre-approved reduction of force, this is already approved. You know,  
21 that's what they want to do, Your Honor. And that would just be totally  
22 wrong.

23 MR. TASKA: So Your Honor, that misstates our position on  
24 this. Our position, I actually think for once I agree with Mr. Kemp that  
25 this issue should go back to the three CEOs for decision and should not

1 be something that's adjudicated by the Court by this continuing order  
2 when the Court is not privy to everything that's going on with the  
3 company.

4 It's something that the three CEOs should collectively decide.  
5 So that's our position.

6 MR. PARKER: Your Honor, this is -- I like the argument Mr.  
7 Taska just advanced, but it just makes no sense.

8 And I like it because it sounds good in a vacuum in a silo, but  
9 how do you make decisions on HR without an HR evaluation, a comp  
10 study, financials?

11 How does a group of CEOs make those types of decisions in  
12 terms of something so important as a RIF, not knowing the number of  
13 employees to be reduced, the reasons, how the company will function  
14 without that number of employees?

15 None of those things can be done without that type of  
16 information being provided to all CEOs. Mr. Miller's not gotten it.

17 THE COURT: Well, I can say this, Mr. Parker, I can't disagree  
18 with you in principle, but I would think this type of information would be a  
19 condition precedent to making that type of executive decision.

20 MR. PARKER: Absolutely. And for weeks, we've been asking  
21 for it. And I -- Mr. Miller's here and his counsel is here. They have not  
22 received it to date.

23 MR. TASKA: So --

24 MR. PARKER: I'm sorry, I didn't interrupt you, Mr. Taska.

25 MR. TASKA: Okay.

1 MR. PARKER: When I'm done, you can have at it.

2 MR. TASKA: All right.

3 MR. PARKER: Knock yourself out.

4 THE COURT: Gentlemen, one thing I am is patient. So I'm  
5 going to -- Mr. Taska, if you'll -- there's something you want to point out  
6 after you're done.

7 MR. TASKA: Well, I --

8 THE COURT: Wait, wait, wait.

9 MR. TASKA: Okay, sure.

10 THE COURT: He has the floor right now. You can stand up  
11 and I will listen. I just want -- because I mean, from a historical  
12 perspective, I can say this. I don't think whether you argue more or not  
13 doesn't determining the ultimate outcome of my decision made here.

14 MR. PARKER: Exactly.

15 THE COURT: I think everyone has been here knows that, you  
16 know. That's not what -- because I want to hear it. But in a general  
17 sense, it appears to me and this is a comment and understand I'm not a  
18 CEO, but I do understand how businesses work.

19 And I don't understand -- I don't -- I'm not necessarily  
20 intimately familiar with the types of data a CEO would use and rely upon  
21 to make that type of decision, but I know there has to be information  
22 there --

23 MR. PARKER: Absolutely, Your Honor.

24 THE COURT: -- to make that decision. I do know that.

25 MR. PARKER: And --

1 THE COURT: And to meet with the head of personnel, the  
2 head of human resources or whatever the new name might be for that  
3 from a business perspective, but I would think.

4 MR. PARKER: Your Honor, I had the privilege and the  
5 heartache of having to go through furloughs for some of my quasi-  
6 governmental agencies that I represent in 2008 here in Las Vegas.

7 And as the Court probably remembers, there were times  
8 where certain agencies had to do furloughs as opposed to RIFs.

9 But the considerations for furloughs versus RIFs were, one,  
10 latent with a lot of HR information, options, the buyouts, what does it  
11 cost depending on contracts to actually RIF someone because there  
12 may be severance obligations.

13 All of these are things and the forms of information that a CEO  
14 or a CEOs would be entitled to, to make these types of drastic decisions.

15 We've never received that information to date. As of  
16 September 9th, 2022, a month and a day after the Court issued the first  
17 TRO, we still have not received any of this information. And so, for Mr.  
18 Taska to sit here saying that these CEOs can make that decision without  
19 that information is ridiculous.

20 Now if he wants to allude to a time where a smaller  
21 consideration was at hand regarding some employees being reduced,  
22 that was not the 80 percent that Mr. Connot and Mr. Colucci were  
23 speaking of on August 16th.

24 And yet, we still have none of this information. Mr. Ross  
25 doesn't, Mr. Miller doesn't have it, Ms. King doesn't have it. Mr.

1 Vanderbilt doesn't have it.

2 And so, unless they're holding that information to themselves,  
3 keeping it close to the vest, I don't know how anyone, much less these  
4 three CEOs can make that determination.

5 So I would ask, especially since we're waiting until Monday to  
6 get disclosures exchanged, that there could never be a decision by any  
7 CEO or the Court without this information.

8 And so, we need that information before the CEOs can  
9 schedule a meeting on the topics, have it fully vetted, and then, make  
10 determinations, Your Honor.

11 MR. KEMP: Yeah, Judge, we don't even know how much  
12 money the company has. Last week, they said 17,000,000. Today, they  
13 said 16,000,000. We've already alluded to the fact that they got  
14 10,000,000 back from the Hudson transaction that Mr. Farnsworth  
15 helped negotiate.

16 So we would -- we think they have at least 27 or 26, whatever.  
17 I don't know where this 4,000,000, 5,000,000, 6,000,000 to AI Pros fits  
18 into this or not, whether he's counting that as money he's -- part of the  
19 16,000,000 or that's on top of the 16,000,000.

20 But this is pretty basic -- these are pretty basic facts that the  
21 co-CEOs should know. Because let's say that they're not counting the  
22 4,000,000 in the AI Pros and let's say that hopefully, it's still in the  
23 company account somewhere.

24 You know, when the payroll's 75,000 every other week, you  
25 know, 4,000,000 goes a long way, Your Honor.

1 But I think the primary point is they haven't given the co-CEOs  
2 Ms. King, Mr. Miller even basic information as to how much money they  
3 got.

4 The only thing we hear is 17,000,000 to 16,000,000 with no  
5 explanation whatsoever. You know, you would think that, you know, that  
6 there'd be some presentation of what money's in the bank, what  
7 investments they have, you know, what obligations. You would think  
8 that the CFO would present that.

9 But what's really going on here is Mr. Colucci's just keeping to  
10 do what he wants to do. And for whatever reason, Mr. Jones is just  
11 going along with him, Your Honor.

12 And that's why I don't think counsel suggests that you can just  
13 dump this on the CEOs and get an intelligent decision is well taken.

14 MR. TASKA: So, Your Honor, a few responses to that. I said  
15 the CEO should decide this issue. And then they started talking about  
16 how the CEOs need information to decide the issues. I don't dispute  
17 that, but the CEOs should make the decision, not this Court.

18 In terms of information, this is the first I'm hearing about a lack  
19 of information, other than there was a request made for a spreadsheet  
20 that we provided yesterday.

21 And we provided it pursuant to a protective order that was just  
22 signed yesterday. Promptly after the protective order was signed, we  
23 provided it.

24 Now if there is information -- so that's what's happening in the  
25 Court. They never moved to compel any information from us. They've

1 never done anything except for that one spreadsheet.

2 As I told Mr. Parker last night, if you think there's something  
3 there that you're not seeing, pick up the phone and call me up. Instead,  
4 he stands up here and rants to the Court like as if we're withholding  
5 information in violation of some court order.

6 I don't know what information he's talking about. And if there's  
7 information that Mr. Miller and Ms. King are not getting that they desire,  
8 they -- that's the first I'm hearing about.

9 Mr. Miller's here. Maybe we should ask him what information  
10 Mr. Colucci is supposedly withholding from him because nobody's ever  
11 said to that me. That's never been brought to my attention by counsel or  
12 by anyone else.

13 So, if that's an issue, I would say have at it, file a motion and  
14 we'll take it up there, but they're just testifying. They're testifying about  
15 why the CEOs can't function, because supposedly, there's not  
16 information going to them.

17 What testimony is there on that? What information? They're  
18 just -- it's lawyers just standing there talking, Your Honor.

19 And as for the 4,000,000 that they keep talking about, now I'm  
20 going to testify because that seems like the thing to do, you know, with  
21 them is the 4,000,000. It was never paid to AI Pros. It was never paid to  
22 AI Pros. The 4,000,000 was never paid to AI Pros.

23 So all of this nonsense about this big concern about the  
24 \$4,000,000 as Your Honor will hear on Monday and find out, it's just  
25 nonsense and it's meant to poison the well before Your Honor for the

1 actual motions and issues that are on the agenda for today.

2 THE COURT: All I can say in that regard, sir, is the truth will  
3 set us all free. And what I mean by that is if it's not true, then it's not  
4 true. It will have no impact on me.

5 If the 4,000,000 is missing or something like that, I shouldn't  
6 say missing. It's gone to a certain place it shouldn't be, then that would  
7 impact my decision.

8 Because at the end of the day, it's all going to be based on  
9 facts and not argument of counsel. They'll be in a bank account or  
10 they'll be some testimony or they'll be something that I can make a  
11 decision based upon, right? I understand and --

12 MR. TASKA: Well, Your Honor, I would respectfully request  
13 that you admonish counsel to stop testifying.

14 THE COURT: Yeah.

15 MR. TASKA: We're here on a legal motion. And  
16 [indiscernible] the status matters, they keep standing up and talk about.  
17 First of all, all the expenditures that they cherry pick facts, that it's -- you  
18 hear one side, it's a distorted story, okay?

19 THE COURT: Yeah.

20 MR. TASKA: You're going to hear the real story once we  
21 present evidence.

22 THE COURT: Yeah, but I just have one comment on that.  
23 And one thing I don't do, I don't handcuff lawyers.

24 MR. TASKA: Sure.

25 THE COURT: I don't.



1 MR. TASKA: As long as Your Honor can understand, and I'm  
2 sure you do, the difference between argument from lawyers, which is  
3 what they're doing and actual facts and findings of fact, which is based  
4 on evidence.

5 THE COURT: At the end of the day, I don't think I've ever  
6 made decisions based upon argument. I don't think so. It's always been  
7 facts.

8 MR. TASKA: That's good to hear, Your Honor.

9 THE COURT: I mean, you know, I mean, I will say this, we've  
10 handled some complex cases in this department, you know.

11 Hopefully, all the decisions that have been made have been  
12 fact-based, you know. But you're going to get -- that's why I'm going to  
13 give you a chance to rebut whatever argument they make, sir, based  
14 upon factual basis.

15 And you'll bring it to my attention. You can say, Judge, you  
16 know, they're out to lunch on this one and this is why. That's fine.

17 MR. TASKA: We will, Your Honor. I - and again, I don't want  
18 to get off track, but because they raised it, I would like to know what  
19 information is being withheld from Mr. Miller and Ms. King.

20 THE COURT: Raise it.

21 MR. TASKA: And I will address it if that's what's happening.

22 THE COURT: Yeah, well, this is kind of how I look at that.  
23 And I don't want to speak for anyone. I guess what they're saying is  
24 before a, quote, personnel decision could be made to lay off a significant  
25 amount of the workforce, the, quote, shot maker, shot callers, or

1 decisionmakers that would be the co-Board of CEOs would potentially I  
2 would think this is probably true.

3 I realize there's no argument on it, but there would have to be  
4 some data, some sort of recommendation from HR and those types of  
5 things before a decision's made where you lay off a high percent of a  
6 workforce, right?

7 MR. TASKA: I agree 100 percent. And what I'm responding  
8 to is an accusation made by these lawyers that information germane to  
9 that decision has not been circulated among the co-CEOs.

10 THE COURT: Yeah.

11 MR. TASKA: And if that is the case, why are we just hearing  
12 about now in reaction to something? Why wasn't there a motion filed if  
13 there's such critical information that's not being provided?

14 Never once heard that before from anyone in this courtroom,  
15 including Mr. Miller who's here or his counsel, Your Honor.

16 THE COURT: And this is -- before you start, Mr. Kemp, this is  
17 an important point to really underscore. And everyone has to  
18 understand this.

19 I get it. There's two sides to every story. There is. And so,  
20 when I really refer to maintaining the status quo, it's probably not a  
21 status quo everyone wanted.

22 I wanted -- because there's allegations made as to Mr. Colucci  
23 in this case and there's other allegations made as it relates to the other  
24 Board members and/or members of the executive team. I get that.

25 But when I talk about maintaining the status quo, I'm really

1 focusing on making sure that Vinco Ventures, Inc. can be an ongoing  
2 concern until the right decisionmaker's are in place to decide what the  
3 potential outcome and/or course this company shall follow. That's really  
4 and truly what it's all about.

5 Because for example, Mr. Colucci might have his thoughts,  
6 but maybe other members of the, quote, executive team and/or Board  
7 members might disagree.

8 There's questions as to how he got to his position. I  
9 understand that, but at the end of the day, I haven't made any decisions  
10 on that. Ultimately, the facts will decide which side is correct as far as  
11 those issues are concerned.

12 So when I made -- I'll be candid with everyone. When I'm  
13 talking about maintaining the status quo, I'm not talking about favoring --  
14 in favor of what Defense wants or what Plaintiff wants.

15 I'm -- I want to keep the ongoing -- the business ongoing and  
16 potentially profitable until someone can make a decision as to what  
17 course this company should follow. That's all, right? And it's that  
18 simple. So --

19 MR. TASKA: Yeah.

20 THE COURT: And that's why I'm trying to approach it in that  
21 regard.

22 Mr. Kemp, sir?

23 MR. KEMP: Yeah, responding to counsel's allegation that no  
24 one has made requests for information prior to today, Lisa King has sent  
25 numerous requests to Mr. Jones for information.

1 And I'll remind the Court and counsel that that's how we  
2 started on Wednesday. I pointed out that Ms. King had filed yet another  
3 email to Mr. Jones asking for information on what bills have been paid  
4 since August 16th. And he ignored it once again.

5 So, you know, either counsel is conveniently forgetting that  
6 and is unaware of all the emails from Ms. King, the co-CEO, to the Chief  
7 Financial Officer that are getting ignored and stone-walled or -- but in  
8 any event, Your Honor, I mean, the suggestion that the co-CEOs have  
9 been -- have not been asking for information is totally wrong.

10 And I will file -- some of them might have to be filed under seal  
11 because they do have confidential financial information referenced, but I  
12 will file all the multiple emails that Lisa King has sent. And I believe the  
13 Chairman has also sent emails during the last 30 days asking for certain  
14 things, all of which are stonewalled.

15 And that's why we had to come to Court two days ago based  
16 on Ms. King's Monday email to Mr. Jones, saying at least give us the  
17 check register and it was agreed to be provided.

18 But they wouldn't give it -- to this day, they won't even tell us  
19 the balance of the accounts, Your Honor.

20 So to suggest that information has been requested that has  
21 not been requested and it's just the co-CEOs being negligent in their  
22 duty, but I will ask Ms. King to draft a comprehensive email and copy  
23 counsel. And I'm sure I'll have all that information on Monday at 5:00.

24 THE COURT: Anything else on that issue?

25 MR. TASKA: No, Your Honor. But just getting back to the

1 issue at hand, which was the continuation of the order, again, we think  
2 it's something the CEOs should decide. And I agree that the CEO  
3 should have the information that they need to decide.

4 And if that is something that counsel wants to address on a  
5 counsel to counsel level, I'm happy to talk to them about it.

6 THE COURT: Well, ultimately, something has to be done by  
7 me today, right?

8 MR. KEMP: Not really, Your Honor, because the next  
9 payroll's not till Friday.

10 THE COURT: Of next week?

11 MR. KEMP: Next Friday, so yeah, we can punt it till Tuesday  
12 if we wanted to.

13 THE COURT: All right, so here's my next question in lieu of  
14 punting this till next Tuesday, what do we do? I mean, as it relates to  
15 the co-CEOs and decision-making pertaining to potential and significant  
16 personnel decisions? What do we do?

17 MR. KEMP: We'll have Ms. King get the email out. Counsel's  
18 already indicated he'll provide any and all information in the request.  
19 We'll ask for the information.

20 Presumably, we'll get it over the weekend or first thing  
21 Monday morning. They can have a co-CEO discussion on Monday  
22 afternoon before we come here Tuesday. And we'll see if they have an  
23 agreed-to plan. If they don't, then it falls back on the Court.

24 THE COURT: Any -- wait, Mr. Parker.

25 Any comment on that, sir? Does that sound like that's

1 workable?

2 MR. TASKA: Yeah, I think that's totally reasonable, sure.

3 THE COURT: Okay, all right, I just want to make sure.

4 MR. PARKER: I was going to stipulate to that, Your Honor.

5 THE COURT: Okay, I understand. Okay, that's fine. Okay,  
6 now looking at my checklist here. All right, and we've already discussed  
7 the production of current checks? Have we?

8 MR. KEMP: Yes, Your Honor, I think I'll just have Ms. King  
9 address this. They haven't given us July's checks.

10 And -- but I'll have her address in the email, but I don't think  
11 there's a need for the Court to get involved at this point --

12 THE COURT: All right.

13 MR. KEMP: -- till we see what happens.

14 THE COURT: I'm quite sure you agree with that.

15 MR. TASKA: I do, Your Honor.

16 THE COURT: All right. I don't want to be presumptuous here.

17 So I guess next we go to the final matter. That's the motion  
18 for clarification. Is that correct?

19 MR. TASKA: Sure, Your Honor, thank you. So, look, Your  
20 Honor's already been socialized to this issue so to speak --

21 THE COURT: Yeah.

22 MR. TASKA: -- because there's another motion filed on it by  
23 Defendants.

24 And you know, the issue to remind Your Honor is that one of  
25 the independent directors tried to call for a meeting several days ago.

1                   And in response, I got a call from Mr. Parker, who said to  
2                   courteously, and I appreciate it, said we're going to be filing a motion on  
3                   that.

4                   And following that, within an hour, there was a motion for  
5                   sanctions against my -- oh, against the independent directors for  
6                   violating the Court's August 17th order.

7                   So what we decided to do was we decided to postpone that  
8                   meeting, cancel the meeting and seek clarification from the Court  
9                   regarding whether Board meetings may be called or if Board meetings  
10                  can be called only if there is unanimous consent among the directors  
11                  that a Board meeting can be held.

12                  So, you know, our position on this is that Your Honor's order,  
13                  the plain language of it as we read it does not require unanimous  
14                  consent for any Board meeting.

15                  But the way the order is written, which they drafted,  
16                  Defendants' counsel drafted, is that there's unanimous consent required  
17                  when a meeting's going to be held without 48 hours' notice or an  
18                  agenda.

19                  And if you read the language of the order, that is how it reads.  
20                  And you know, we can go back to parol evidence here so to speak, Your  
21                  Honor, and look at the transcript. And they cherry picked some stuff  
22                  from the transcript. And we cited some stuff.

23                  And frankly, you know, as I read the transcript from those  
24                  three days, there were so many issues flying around that it was very  
25                  difficult to read from the transcript to glean any, you know, intent from

1 any particular issue, which of course, is why Your Honor memorializes  
2 the ruling in an order.

3 And that's how we read the order. It's consistent with the  
4 comment actually cited in Mr. Parker's brief that Mr. Connot made where  
5 Mr. Connot said, but certainly upon 48 hours' notice, there should be  
6 able notice properly noticed under the bylaws and statute of director  
7 meeting to transact business that's properly before the company.

8 So I think there were a lot of views being expressed during the  
9 hearing. And the Court ultimately entered the 48-hour rule requiring  
10 unanimity.

11 And that made sense because the -- as I understood it, one of  
12 the problems was that there were a number of hastily called Board  
13 meetings. And they were being called without, you know, they were sort  
14 of sandbagging of the directors. And that was claim.

15 And so, the 48 hours' notice provision said, look, you can only  
16 have an emergency meeting. You can only have an emergency meeting  
17 in less in 48 hours' of notice if anyone agrees.

18 But I think more importantly, Your Honor, than any  
19 interpretation of the Court's language of the order or what was said that  
20 day during the -- those three days during the hearings, I think we have to  
21 step back and take a look at what their Defendants' interpretation would  
22 do.

23 And what it has done is that it has neutered the Board. The  
24 Board, there is no Board. Doesn't exist anymore.

25 And the reason that is is because the way they are interpreting



1 Your Honor's order is that any meeting of the Board of Directors must  
2 have unanimous consent of the directors to be able to take place. There  
3 must be unanimous consent.

4 So what does that mean? That means one director, like Ms.  
5 King, could hold up a Board meeting from ever taking place. And that's  
6 what she tried to do with respect to the meeting that I referred to when I  
7 started to argue.

8 She declined to attend. And, therefore, Defendants were  
9 going to take the position, oh, Ms. King doesn't want to attend I guess,  
10 you know, we can't have a meeting and we're going to sanction you  
11 guys if you have one.

12 So that's the way it went. And I think one of the things Mr.  
13 Kemp mentioned before as well, you can conduct more business other  
14 ways. You can have consent.

15 Well, the bylaws require unanimous consent. So that doesn't  
16 happen either.

17 So the Board can basically -- the Board and Your Honor, just  
18 as a reminder, that the Nevada statute on point says that the Board of  
19 Directors shall have, quote full, control over the affairs of the company.  
20 Okay? That's in NRS 78.120. Full control of the affairs of the company.

21 We now have a Board that can't do anything if Ms. King or Ms.  
22 Vanderbilt -- or Mr. Vanderbilt don't want it to happen. They can't do  
23 anything because they can filibuster. They can stonewall. They can say  
24 no, no meeting. You're going to send around consents? No, we're not  
25 going to return ours.

1           The Board cannot function unless Ms. King or and Mr.  
2 Vanderbilt say that it's okay for the Board to function. So that's where  
3 we are.

4           So we have neutered the Board. The Board doesn't exist  
5 even though under Nevada law, a Board is supposed to control the  
6 affairs of the company.

7           And, look, the only other thing I'll point out is that I don't think  
8 Your Honor intended that result. Maybe Your Honor did intend that  
9 result for the Board to not have any ability to function.

10          And if that's the case, that's the case and we will, you know,  
11 as I said, we were planning to take that up if that's the Court's decision  
12 on that.

13          But you know, I will note on that that there were other sections  
14 of the Court's order that suggest that was not the Court's intent.

15          Section 2 of the order, and we were talking about this before,  
16 states that the Board must unanimously agree to expenditures in excess  
17 of 250,000.

18          Well, if unanimous consent is required for that limited purpose,  
19 Your Honor, look, I don't want to go back to statutory arguments  
20 because I don't -- but you know, that's clear. And that's part of our  
21 position here, that it's inconsistent with Nevada law. It's inconsistent  
22 with Your Honor's order of that day.

23          It's inconsistent with Your Honor's order of two days later  
24 where Your Honor said, quote, the Board and Plaintiff's executive shall  
25 take all reasonable steps necessary to ensure Vinco Ventures' ongoing

1 business operations.

2 Again, the Board, okay, is part of that. The Board shall take  
3 all reasonable steps necessary to ensure Vinco Ventures' ongoing  
4 business operations.

5 Now they can't. They won't. Board meetings are over. Board  
6 decisions are over. The ability of the Board to control the affairs of this  
7 company is over and it's now vested in the triumvirate of CEOs that we  
8 have in front of us.

9 And I don't know about Your Honor, but based on some of the  
10 discussions today, that does not seem to be going very well. And I think  
11 that giving the Board its power back, the democratically elected Board  
12 by the shareholders, that's who should be running this company. Thank  
13 you, Your Honor.

14 THE COURT: Thank you, sir.

15 Mr. Parker?

16 MR. PARKER: Your Honor, I wrote down a quote from Mr.  
17 Taska. He says the Board can't do anything. Mr. Taska was not here  
18 on August 17th when the Court in my opinion did something that  
19 perhaps was completely out of the box, but so -- such a well-placed and  
20 well-timed decision on suggestion perhaps I should say, that it resulted  
21 in a loan notice of default being handled within 24 hours.

22 Your Honor suggested to the parties to discuss, while Mr.  
23 Farnsworth was sitting right here, a carve-out position to your order to  
24 allow Mr. Farnsworth to address a default notice on a \$96 000,000 loan  
25 *sua sponte* on this.

1 And that decision resulted in that loan not defaulting, Mr.  
2 Farnsworth participating until the wee hours of the morning. And the  
3 three CEOs were able to resolve that default notice.

4 And yet, Mr. Taska comes here two weeks later and says this  
5 company can't do anything.

6 You've created a tripartite CEO circumstance that has worked.  
7 Where's the failings? Have we brought one issue to this Court that is an  
8 operational or programmatic decision that this company's not been able  
9 to make since you made that order?

10 Since August 17th, we've not brought one issue to the Court  
11 to resolve. That's a demonstration that your order is working.

12 Now I give Mr. Taska credit because although he was not here  
13 on the 16th, the 17th, and the 18th, he did read my opposition. And he  
14 did in fact mention the reference to the transcript where Mr. Connot said  
15 it's virtually the same thing that Mr. Taska said.

16 If we can't have Board meetings, this company can't function.  
17 The company is functioning. The employees have not been laid off.  
18 Payroll has been met.

19 Your order is exactly what this company needed, is exactly the  
20 security the shareholders needed, and it's still an ongoing concern.

21 If we leave it to the devices of that Board, controlled by Mr.  
22 Colucci, we probably have more than just the \$6,000,000 we're trying to  
23 recover at this point or at least figure where it is.

24 We would have 80 percent of the employees laid off by now.  
25 That's would have happened -- that what would have happened had we

1 left this to the Board that Mr. Taska is suggesting this Court should turn  
2 the reins back over to.

3 What you've done instead is you've placed the former  
4 Secretary of State, is current Clark County Commissioner a lawyer in  
5 good standing, as a co-CEO, along with Ms. Lisa King and with Mr.  
6 Colucci.

7 And they've handled all of the issues that we're aware of at  
8 least without having to come to the Court for the Court's intervention.

9 How can Mr. Taska in good faith say that this order is not  
10 exactly what this company needed at the time and still needs to prevent  
11 it from compromising, I would suggest, the livelihood of the employees,  
12 the investment of the shareholders, and the assets the company still  
13 owns.

14 Your Honor, I pointed out in the transcript, where in my  
15 opinion, the Court considered Mr. Connot's comments and decided that  
16 if there's an issue, that this Court or the, I'm sorry, the CEOs could not  
17 resolve, the Court will make itself available even if it's without filing a  
18 brief, but a necessary calling.

19 The Court extended itself as not just Judge Williams, so you  
20 would normally do that, but as a business court judge.

21 And so, I'm taken aback by Mr. Taska's suggestion that this  
22 Court has in any way by virtue of this order prevented this company from  
23 moving forward.

24 I've not heard from Mr. Miller or Ms. King or even from Mr.  
25 Colucci by way of a motion that this Court -- that this company's been

1 unable to do something. What I would ask the Court to do first is  
2 consider procedurally whether or not this motion is correct.

3 This motion appears not to be one for clarification but one for  
4 modification. And there's two different approaches to that and there's  
5 two different rules.

6 So we pointed out in our opposition that this is improper  
7 motion if you're trying to modify. If you're simply seeking clarification of  
8 what the order means, then that's fine.

9 But it doesn't revert back to a modification of it. The Court can  
10 simply clarify its position. And to the extent a modification's being  
11 sought, I believe we get a chance to brief that issue as well.

12 For purposes of clarification, Your Honor, I think the transfers -

13 -

14 THE COURT: Really as far as clarification concerned, unless  
15 it's a Rule 60(b)(1) issue --

16 MR. PARKER: That's right.

17 THE COURT: -- seeking relief from a Court's order for  
18 inadvertence, mistake, or something like that, then it would be a motion  
19 for reconsideration pursuant to the EDCR.

20 MR. PARKER: That is correct, Your Honor. And so, I'm  
21 concerned, Your Honor, that Mr. Taska's -- I'm not even concerned. I  
22 mean, it's clear Mr. Taska wants to modify the order.

23 Mr. Taska wants this Court to allow a Board meeting to  
24 happen because he believes in the Board setting Mr. Colucci, Mr.  
25 Goldstein, and Mr. Distasio will have a meeting and somehow legitimize

1 \$6,000,000 of its -- of payments to be made or made to AI Pros.

2 It will somehow legitimize spending almost 1.3 million in  
3 attorneys' fees from Lucosky Brookman. It will legitimize the amount of  
4 money paid to Ballard Spahr, to Fox Rothschild and to Howard &  
5 Howard, despite any of the CEOs having any of the backup information  
6 to those expenditures, no contracts, no fee arrangements, no fee  
7 agreements, none of that information.

8 THE COURT: Well, here's my question, Mr. Parker. And I  
9 just want to make sure I understand what's going on from a factual  
10 perspective.

11 Are you saying that these were expenditures made by, quote,  
12 the Board that didn't go through the -- and I'm talking about the Board of  
13 Directors that didn't go through administratively what would normally  
14 happen and those decisions were made by the CEO, along with the  
15 financial advisers and along the company structure?

16 MR. PARKER: Absolutely, absolutely what I'm saying, Your  
17 Honor. And I noticed Miller didn't intend to testify here, but I have  
18 information from Ms. King indicating that Mr. Ross has asked for  
19 financial information that he's not received.

20 Like Mr. Kemp said, Ms. King has asked for financial  
21 information she has not received.

22 And yet, and I don't even want to say to a Board because  
23 they're making these decisions without notification to the Chair of the  
24 Board, which the bylaws allow and afford the Chair to actually control  
25 these meetings, but he's not being informed of them much less of the

1 items being decided and the payments being made.

2 So why would you ever retreat from this order and give the  
3 power to these I would say the three people who are in contempt of the  
4 Court's order.

5 They've demonstrated why they should not be given control of  
6 this company. You have done what is right and what is I would say very  
7 practical in terms of how to keep this company a going concern, how to  
8 protect its employees, how to protect the shareholders while we try to  
9 get to the meat and the evidence of this case.

10 Your Honor, I don't know if Ms. Sugden would represent on  
11 the record and --

12 THE COURT: No, we won't take any testimony.

13 MR. PARKER: But she's a lawyer.

14 THE COURT: Yeah, but I mean I understand.--

15 MR. PARKER: Okay.

16 THE COURT: I got you. I do.

17 MR. PARKER: So my point was certainly Your Honor, we will  
18 provide proof that Ms. King has asked for this information and in a  
19 declaration she can indicate and perhaps Mr. Miller will also sign a  
20 declaration that he's asked for documentation related to these  
21 expenditures, which I believe is a complete demonstration of why this  
22 Board, Mr. Colucci, Mr. Goldstein, Mr. Distasio should not be given any  
23 control of this company.

24 I think the Court has done exactly what was needed. And you  
25 took extensive oral argument over three days to come to this decision.



1           Your Honor, I ask that the order remain in place, that you not  
2 give -- you not modify this order, and that no further clarifications be  
3 made. Thank you, Your Honor.

4           THE COURT: Thank you, sir.

5           Mr. Kemp?

6           MR. KEMP: Your Honor, if you recall, the whole reason for  
7 this provision was that we were concerned about all these meetings Mr.  
8 Colucci and the other two independent directors were calling. Giving 40  
9 hours' notice, but no agenda.

10           And then, the meeting would start and they just cram down  
11 this, that, and the other thing. That was the problem we were worried  
12 about, okay?

13           And to suggest that, oh, the Court's order should be read as  
14 only applying to meetings that take place within 48 hours, those are  
15 already prohibited without unanimous consent by the bylaws.

16           So what they're really saying is that the Court ordered  
17 something that was already prohibited be prohibited again. Makes no  
18 sense.

19           And if you take a look at the record, and we cited this on page  
20 5 of our opposition, remember, we were trying to agree to stipulated  
21 order that night with Mr. Connot and I thought we had one.

22           And then, at the last minute, they couldn't agree to points 4  
23 and 5. So 4 and 5 were the -- so what we propose -- and this is from the  
24 record.

25           "So what we propose is that they wouldn't hold any Board

1 meetings unless there's 48 hours' written notice and there's unanimous  
2 agreement of the Board members." That's what we proposed. There  
3 was no pushback on that, okay?

4 What they pushed back on is they wanted to have this  
5 emergency meeting for Hudson Bay and the Court agreed to a carve-  
6 out.

7 And then, I said again, at the same point of the transcript, I  
8 think it's a reasonable decision because right now, it's 48 hours and we  
9 just want to stop this thing where everyone notices the Board meeting.

10 And again, that's the problem of Mr. Colucci and the two  
11 independent directors noticing Board meetings with 48 hours' notice, no  
12 agenda, and just cramming things through. That's what we were trying  
13 to stop here.

14 Now moving on, the Court accepted paragraph 4 as we  
15 drafted it, to resolve the concern that I raised that it did do a carve-out.  
16 And the carve-out was for this Hudson Bay situation, the note being  
17 called that night.

18 And if you recall, Mr. Farnsworth dropped everything, worked  
19 till 4:00, 5:00 in the morning, got this thing resolved because he is the  
20 one who primarily deals with the money people.

21 And it was resolved favorably to the company. They filed a  
22 SEC document talking about what a great result Mr. Farnsworth  
23 negotiated.

24 But in any event, that was the only carve-out. There were not  
25 two carve-outs as they're proposing now. And that's why their argument

1 makes no sense, Your Honor.

2 And I would also point out they haven't even tried to submit  
3 unanimous consents on specific issues. For example, the reduction of  
4 force is supposedly a key thing.

5 Why don't they draft up a white paper or three or four-page  
6 paper with their reduction of force proposal. Send it to Ms. King. And  
7 see what she can or cannot agree to. Maybe we can do it by unanimous  
8 consent.

9 But there is another fallback that they haven't alluded to and  
10 they're hiding from. The Court can set a Board meeting upon request of  
11 the parties. That's expressly in the order.

12 You know, we're -- turns out we come here every twice a  
13 week now. You know, if they have some emergency issue that needs to  
14 be addressed, and you know, if it is an emergency issue as the Hudson  
15 Bay situation exemplifies, I think they'd find us very accommodating  
16 because we care more about the company than I submit they do.

17 But in any event, if we won't agree to a Board meeting on a  
18 specific issue that's of dire concern, they can come to Court and get the  
19 Court to authorize the Board meeting on that particular issue.

20 And so, for that reason, I think really as Mr. Parker said, what  
21 they're trying to do is re-visit the order improperly.

22 But you know, it's crystal clear from the transcript that night  
23 what was intended by this order. And the fact that the -- there was a  
24 carve-out made proves it, in addition to the comments I made. And so  
25 for that reason, Your Honor, we'd ask their motion be denied.

1 THE COURT: All right, thank you, sir.

2 Mr. Taska, sir?

3 MR. TASKA: Look, Your Honor, I don't think Your Honor's  
4 going to rule in my favor on this. I accept that, but just for the record, I  
5 am not -- no one is suggesting that the three CEO solution was not a  
6 thoughtful solution by the Court to come up with something.

7 But there comes a point where courts can overstep their  
8 bounds. And under NRS 78, the Board by statute is given the power to  
9 run the company. There are very discreet exceptions for when a court  
10 can override that.

11 THE COURT: And what statute is that, again, 78?

12 MR. TASKA: Uh --

13 THE COURT: Because here's my question and understand  
14 this. And this is a unique case in this regard.

15 Because everyone -- I guess the best way to say it is Plaintiff  
16 wants their status quo. Defendant wants their status quo.

17 I looked at it from a different perspective as to the status quo  
18 pertaining to the health of the company and precluding any significant  
19 decisions for me -- being made by anyone that can put that in peril.  
20 That's how I looked at that, right?

21 MR. TASKA: Understood.

22 THE COURT: And so, from this perspective, it's one of those  
23 things where -- what's the best way to say it? The facts aren't fully  
24 developed. They're not.

25 You're 100 percent right. They're arguing. I understand it's

1 not testimony. You've argued. You appear to be more bottom line, but  
2 at the end of the day, I don't know who's right or wrong. I don't mind  
3 telling you that.

4 Got a lot of argument, but I do know this that potentially we'll  
5 put it this way. Two and a half weeks or so ago, this company was in  
6 dire straits, right? There was a note called in the sum of what  
7 \$7,000,000? Was it 7-, 8,000,000?

8 MR. KEMP: 96-.

9 MR. TASKA: 96,000,000.

10 THE COURT: 96,000,000. Yeah. I mean, a significant sum,  
11 right? And so, I did what I could do. And it apparently worked to attempt  
12 to remedy that issue. And ultimately, the company's continuing on.

13 Now here's one -- this jumps out at me. How could that  
14 happen with a functioning Board, right? How is that note in the sum of  
15 the \$96,000,000 getting called?

16 And it was within -- how long was it from being called? What  
17 was the time period? 24 hours, 48 hours?

18 MR. TASKA: Exactly.

19 THE COURT: Right. And so, I don't know and I look at the  
20 statute and I know it's been cited. I don't think it was discussed in any  
21 great detail, but I'm not here to usurp a Board, but there's allegations of  
22 misconduct pertaining to a Board and how the Board came to be, right?

23 And so, what I'm doing is this. I'm saying, look, Board, you  
24 can go ahead and if you want to call it meetings and I want -- and there  
25 was allegations that these Board meetings were being called without

1 agendas and stuff like that. I just wanted to give a protocol for that.

2 Secondly, as far as the executive team is concerned, that's  
3 why I did what I did there, too. So the business can keep and continue  
4 to function.

5 But my concern is this. And it's really this simple. Everyone's  
6 making allegations. They are, right?

7 And for now, they're all allegations. But there is one fact that  
8 I'm sure of, one fact, and that's that note was being called. And I don't  
9 see how a functioning Board and/or an executive team could let that  
10 happen, right?

11 And so, the reason why I formulated it, and I think, yeah, Mr.  
12 Kemp is correct in this regard. That language here is pretty good as to  
13 what happened, because it really does express my concerns. And so,  
14 what I'm saying is this. And that question how can you let a  
15 \$96,000,000 note call?

16 Now you said there's -- what section are you saying because  
17 I'm quite sure this would come under some sort of exception because  
18 the -- because I even talked about this, too.

19 Remember, there was all these arguments that said, well,  
20 maybe I should appoint a receiver. And I went back and looked at it in  
21 light of the current posture of the company at that time with a note being  
22 called, I probably could have appointed a receiver, right?

23 However, and this was a big issue, I was concerned this case,  
24 this company's being traded on the NASDAQ and what potential impact  
25 that would have on stock value, right?

1                   And so, what -- and the reason why I think this is important if  
2 there's going to be a writ, and we can do that, but I'm looking at it from  
3 this perspective and it's really just simple because I don't think it -- it's  
4 really addressed.

5                   I'm going to deny it without prejudice. And what I mean by  
6 that is this.

7                   If there's -- if my decision is violating Nevada statutory law  
8 without exception, you can tee it up for me so I can take a more rigorous  
9 review of what the Nevada law is in that regard. Do you understand  
10 what I mean?

11                  MR. TASKA: Certainly, Your Honor.

12                  THE COURT: Now.

13                  MR. TASKA: We -- yeah.

14                  THE COURT: So, I mean, if I run afoul as far as Nevada law's  
15 concerned, I welcome you to point me in the right direction so I can read  
16 it, and then, I'll modify it.

17                  But for now, I'm going to deny it without prejudice. I just want  
18 to tell you that. And there's a reason why. Because I look back and I  
19 don't mind telling everyone this. I was very much concerned about the  
20 health of the company. Nothing more, nothing less.

21                  And a note -- and I forgot it was \$96,000,000. That's a lot of  
22 money. And that was part of my ultimate concern.

23                  And anyway, that's my decision as far as that's concerned.  
24 And it's good that you brought it, at least I can tell you what my primary  
25 concern was.

1                   And if the statute doesn't permit that -- because I don't  
2 remember the chapter being cited and briefed, was it?

3                   MR. TASKA: It's NRS 78.120. We cited it in our papers. And  
4 it's very simple. Just that the Board has full control over the company.  
5 And you know, we can certainly brief it for Your Honor, but the point is  
6 that there are certain exceptions.

7                   There are, you know, obviously, there can be creative judicial  
8 solutions to problems, but when the staff -- when the statutory regime  
9 like NRS 78 provides for specific exceptions when the Court can step in  
10 --

11                  THE COURT: And --

12                  MR. TASKA: -- that's when the Court is limited from  
13 overstepping its bounds.

14                  THE COURT: And what is that 78 once again?

15                  MR. TASKA: 78.120. Is that right?

16                  MR. PARKER: Your Honor, as a housekeeping matter, this  
17 may be helpful to Mr. Taska on Wednesday, file with the Court was just  
18 an lodgment of exhibits. That lodgment included the emails from Lisa  
19 King asking for the financials. So that -- those documents have already  
20 been provided.

21                  So, Mr. Taska, if you take a look at that, that may be helpful  
22 for you. It may save the Court some time. I think it saves everyone  
23 some time.

24                  THE COURT: All right, and I see 120. That's the general  
25 powers.



1 MR. PARKER: Yeah.

2 THE COURT: I get that. I understand.

3 MR. TASKA: But should it be minimized because it's general  
4 ballot? Those are the ballots and that's how it works to be clear.

5 THE COURT: I understand that, but you said there were  
6 exceptions. And we should probably be fully briefed and see if one  
7 occurs.

8 And what happens under a situation where -- and there's  
9 been -- no one's explained to me why was a note being called for  
10 \$96,000,000?

11 Because we have to put things in perspective. And that's  
12 when I was making the decisionmaking. That's why I did the carve-out.

13 MR. PARKER: Absolutely.

14 THE COURT: Right?

15 MR. TASKA: And we're past that, Your Honor. And we still  
16 have a corporation, a public corporation, that has a Board that can't  
17 function --

18 THE COURT: Right.

19 MR. TASKA: -- doesn't function.

20 THE COURT: Well, I mean, there -- one thing we know for  
21 sure and I don't think there's been any attempts to function that have  
22 been brought to my attention, have there?

23 UNIDENTIFIED SPEAKER: No.

24 MR. TASKA: Your Honor, the independent director tried to  
25 call a meeting, Mr. Distasio. That's what started all this.

1 THE COURT: All right.

2 MR. TASKA: And Ms. King said, no, I'm not going.

3 THE COURT: Okay, well --

4 MR. TASKA: So she filibustered it.

5 THE COURT: All right. So that's after my order?

6 MR. TASKA: Absolutely, Your Honor.

7 THE COURT: Okay.

8 MR. TASKA: So the Board under Your Honor's order cannot

9 function. That's it, Your Honor.

10 And I appreciate Your Honor's offer to let us brief this issue

11 more fully, which we may take Your Honor up on, but we are going to

12 take this up to the Supreme Court, because we don't have time, which is

13 we have to get this up. And I just wanted to let Your Honor know that

14 that's our intention.

15 THE COURT: Well, that's fine. That's fine.

16 MR. TASKA: So, thank you, Your Honor.

17 THE COURT: You're welcome. Anything else?

18 MR. KEMP: No, Your Honor.

19 THE COURT: Wednesday?

20 MR. PARKER: Tuesday, Your Honor, 1:30.

21 THE COURT: All right.

22 MR. PARKER: Thank you, Your Honor.

23 THE COURT: Enjoy your weekend.

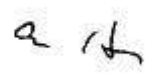
24 MR. PARKER: You too, Your Honor.

25 [Proceedings concluded at 2:57 p.m.]

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



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Chris Hwang  
Court Reporter