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California Senate Judiciary Committee
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California Assembly Judiciary Committee
Assemblymember Brian Maienschein, Chair
Shanna Ezzell, Capital Director
Lance Witmondt, Chief of Staff
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ATTN: Senate Judiciary Committee; Assembly Judiciary Committee

RE: The State Bar of California (Joint Oversight Hearing) + Demand for Reform

Honorable Members of the Judiciary Committees and Staff:

Thank you for your sincere commitment to reforming The State Bar of California. I write to draw your attention to one plain and simple fact: leadership of The State Bar of California, as presently comprised among Ruben Duran, Leah Wilson, George Cardona, and Ellin Davtyan, deliberately misled each of you during the Joint Oversight Hearing. Indeed, things are not what they seem – they are far worse than you could have imagined or speculated. Thomas V. Girardi is a symptom of a disease, but he was not and is not the disease itself.

1) The State Bar of California Threatened Jay Edelson for Going After Thomas V. Girardi

As Jay Edelson and Ari Scharg confirm during a Lawyers Behaving Badly podcast ("Edelson v. Girardi: Collapse of a Titan") – current staff of The State Bar of California threatened Edelson PC for targeting Thomas V. Girardi. Consider the implications of this; it is an acute threat to the public.

https://podcasts.apple.com/us/podcast/edelson-v-girardi-collapse-of-a-titan/id1654960102?i=1000602422362

2) The State Bar of California is Concealing Material Liability and Federal Claims, Now

The State Bar of California, as structured and controlled by active market participants without active state supervision, violates U.S. antitrust laws. *N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n*, 574 U.S. 494, 135 S. Ct. 1101, 191 L. Ed. 2d 35, 83 U.S.L.W. 4110 (2015). The State Bar of California is concealing material state liability from Legislature, much like it previously did in purchasing buildings or renovating them with future funds. See *Justin S. Beck v. Catanzarite Law Corporation, et al.* (United States Southern District of California, 3:22-CV-01616-AGS-DDL). During your hearing, Ruben Duran mentioned his law firm's recusal from a conflict. That conflict involved Best Best & Krieger aiding in defense of alleged conspirators in my case against Duran, Davtyan, Morgenstern, State Bar, and State of California.

3) State Bar Court Must Be Made Available to Members of the Public and Lawyers

The Thomas V. Girardi issue previously, and Kenneth J. Catanzarite issue now, highlight one thing: State Bar Court must be made available to the public directly. Office of Chief Trial Counsel spent $60 million last year to shuffle papers around. As one former employee quoted (which is cited in U.S. District Court proceedings concealed from you), members of the public receive letters today feigning investigations or inquiries that *never happened*.

There is no fear of consequence from corrupt lawyers in California. Your reform must make State Bar Court available to the public. This would be a source of significant revenue, and its mere potential of actual oversight and accountability would ensure tight-knit relationships between private lawyers and staff of The State Bar of California could not prevent discipline proceedings.

https://act.cacommonsense.org/why_legal_reform_is_california_s_most_pressing_issue_and_how_it_affects_you_every_day

4) Office of General Counsel is Unfit to Furnish Oversight of Itself and State Bar Staff

As you'll find in my exhibits (p. 358) – General Counsel Ellin Davtyan *threatened me* to destroy evidence when Suzanne Grandt accidentally revealed internal collusion among Ruben Duran, Leah Wilson, George Cardona, and Carissa Andresen to protect attorney Kenneth J. Catanzarite – an attorney that is allegedly bribing staff of The State Bar of California as we speak.

Before that, Robert Retana colluded with Jorge E. Navarette of California Supreme Court to file an antitrust petition on my behalf *without authority* to conceal alleged crimes involving State Bar staff in October 2022 (S276939). This conduct is being shared with Public Integrity Section of United States Department of Justice Chairman Corey Amundson and the media.

Before that, Suzanne Grandt was promoted in 2017 to her role as Assistant General Counsel of The State Bar of California for lying to federal judge William Alsup, who said "Ms. Grandt told me something that wasn't true, and I relied on it." (Office of General Counsel *seeks* this "talent").

It is inappropriate that Office of General Counsel, which also acts as civil defense law firm for litigation against The State Bar of California and its staff concealed from you and the public, is also "Complaint Review Unit." It is facially absurd that Office of General Counsel provides antitrust determinations for itself after U.S. Supreme Court confirmed that a regulator is "not the sovereign." *N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n*, 574 U.S. 494, 135 S. Ct. 1101, 191 L. Ed. 2d 35, 83 U.S.L.W. 4110 (2015)

5) Attorney Catanzarite is Allegedly Another Girardi, And Staff is Covering it Up <u>Now</u>

Please see the conduct to which I have been subject according to Court of Appeal, U.S. District Court, 11th Circuit Court of Appeals, and public records requests attached. This is The State Bar of California in practice, today. They are protecting Kenneth J. Catanzarite and engaged in an active cover up of his conduct – ***even as they were testifying before you this week***. I allege Mr. Catanzarite is bribing Eli David Morgenstern, Senior Trial Counsel, and other staff, today.

6) Legislature, Not The State Bar of California, Must Enact Remedial Legislation

As Leah Wilson said during the hearing, Girardi's victims and "Client Security Fund" have severe limitations. If someone lost $3,000,000 stolen by Girardi, that individual's recovery was limited to $100,000. Client Security Fund is but a de minimis line item for The State Bar of California. It also requires suspension or disbarment first, which means its limitations are under the control and very disfunction that bribery and corruption can influence unjustly.

Restoring public trust requires remuneration to those that have been harmed by the past and current leadership's failures. There is no excuse. People would not be harmed but for the failures. If The State Bar of California as presently comprised, or previously comprised, had a modicum of respect for the public they purport to protect – these issues would not face you today. Legislation must include a function to provide neutral forums to people that have been harmed by The State Bar of California's staff and leadership. Such remuneration would be nominal in the scheme of California's budget.

7) I Own/Run "StopCorruptLawyers.com"; I Get Constant Evidence of Current Corruption

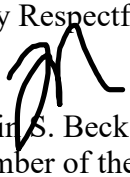
You were led to believe that The State Bar of California has changed. I am here to tell you that is materially false. I started "StopCorruptLawyers.com" to receive evidence from the public about what really happens at The State Bar of California, after experiencing its cover-up of attorney Kenneth J. Catanzarite's conduct. I will present evidence to your committees in the future: The State Bar of California cannot be trusted, because things are no better now than they were before.

CLOSING

For the foregoing reasons, I humbly request the opportunity to testify before your committees in future hearings concerning The State Bar of California. I humbly request the opportunity to rebut testimony of The State Bar of California's leadership: Ruben Duran, Leah Wilson, George Cardona, and Ellin Davtyan.

To make this letter extremely practical, in addition to my request to provide testimony, I request the opportunity to work with legislative counsel on any new bills for reforming The State Bar of California. Such reform cannot rely upon their feedback. It must rely upon feedback of the public that has been unduly harmed by its protectionist, corrupt behavior. I am duly suited to provide this feedback, concretely.

Very Respectfully,



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IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

JUSTIN S. BECK,

Plaintiff,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Defendant,

Case No.: '23CV0882 JES NLS

Judge:

COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES

1. DENIAL OF ACCESS UNDER AMERICANS WITH DISABILITIES ACT, TITLE II

2. FAILURE TO ACCOMMODATE UNDER AMERICANS WITH DISABILITIES ACT, TITLE II

3. UNRUH CIVIL RIGHTS ACT VIOLATIONS

4. EQUITABLE INDEMNIFICATION

COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES

Plaintiff JUSTIN S. BECK ("Plaintiff") for his complaint against SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE ("Defendant") alleges as follows:

1. Plaintiff is a qualified, disabled individual under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (the "ADA") in that he has mental impairments that substantially limit one or more major life activities. A former CEO, Plaintiff is indigent due to the conduct at issue.
2. Title II of the ADA prohibits discrimination on the basis of disability by "public entities," which results in the denial of access to programs, services and activities operated by state and local governments. 42 U.S.C. §§ 12131(1), 12132. Defendant is a public entity subject to the ADA.
3. Title II of the ADA imposes federal mandates on the day-to-day operations of Defendant.
4. Title II of the ADA requires that all programs, services, and activities of Defendant are accessible to the qualified, disabled individual Plaintiff who is presently being exploited by Defendant.
5. As a qualified individual with a disability, Plaintiff was and is being excluded from participation in Defendant services, programs, or activities with malice and knowledge of his harm.
6. As a qualified individual with a disability, Plaintiff was and is being denied the benefits of Defendant services programs, or activities with malice and knowledge of his harm.
7. Defendant's willful exclusion of Plaintiff, denial of benefits to Plaintiff with knowledge of his disability, and discrimination against Plaintiff was and is by reason of Plaintiff's disability.
8. Plaintiff satisfied the claim presentation requirements of Government Claims Act under California law, has vested right to sue Defendant for damages, and Plaintiff brings this action within 6-months of claim denial. Clearly, Plaintiff cannot try this case before Defendant.
9. Plaintiff has further exhausted all purported administrative remedies available under state law and faces an acute and immediate threat of further irreparable harm and further damages as direct and proximate cause of Defendant's violations of Title II of the ADA against Plaintiff.
10. Plaintiff seeks declaratory relief that he is a qualified individual under Title II of the ADA.
11. Plaintiff seeks to permanently enjoin Defendant violations of Title II of the ADA against him.
12. Plaintiff seeks compensatory damages for willful violations and malice under Title II of the ADA and actual damages plus treble damages under state law under Unruh Civil Rights Act.

JURISDICTION

13. This court has original jurisdiction under 28 U.S.C. § 1331 where Title II of Americans with Disabilities Act of 1990, 42 U.S.C.A. § 12101, *et seq*. is mandatory law of the United States.
14. This court has supplemental jurisdiction under 28 U.S.C. § 1367 because the state claims under Unruh Civil Rights Act are so related to claims in the action having original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.
15. Venue is proper in this court under 28 U.S.C. § 1391(b)(1) because Plaintiff resides in this judicial district. Plaintiff also has pending RICO and antitrust claims pending in this court.

PARTY IDENTIFICATION

16. Plaintiff JUSTIN S. BECK ("Beck" or "Plaintiff") is an individual who has a disability under 42 U.S.C. § 12102(1) whose place of residence is 3501 Roselle St., Oceanside, CA 92056. Plaintiff presented claims for money damages to Defendant which were denied on or around December 22, 2022, vesting his right to sue. This case arises from similar facts and circumstances.
17. Defendant SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE ("OCSC" or "Defendant") is a public entity whose public facilities under ADA Title II and Unruh are 751 W. Santa Ana Blvd., Santa Ana, CA 92701 and 700 W Civic Center Dr., Santa Ana, CA 92701.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

1. On March 10, 2023, The State Bar of California publicly confessed it was infected with bribery and corruption. On information and belief, Mr. Catanzarite is allegedly among its worst actors.
2. Before September 14, 2018, when fraudulent schemes targeted Plaintiff through Defendant, dating back to at least 2005, Catanzarite Law Corporation led by attorney Kenneth J. Catanzarite has engaged in a pattern of practice of filing knowingly fraudulent claims, deliberate concealment of material facts, deliberate misstatements to judicial officers, willful obstruction of justice, misappropriation of client assets with intent to defraud, malicious and vexatious litigation, and un-waivable conflicts of interest barred by mandatory law and ethical tenets.
3. On March 17, 2005, Catanzarite Law Corporation placed a lien for $120,000 on its own client's home with alleged intent to steal it. On December 1, 2017, Kenneth J. Catanzarite transferred the ~$1.3 million home to a "Robert J. Valusek ¦ Charla L. Valusek" for a value of $99,500.

4. In 2007 according to public records produced to Plaintiff by The State Bar of California on June 14, 2022, "Catanzarite did not tell the Court that his client, who was declaring bankruptcy, deeded his home to Catanzarite. In bankruptcy, the person declaring bankruptcy cannot sell or give away without telling the Court. **Catanzarite took the property to pay for his fees, but did not tell the [bankruptcy] Court,** violating this strict rule." This was allegedly willful bankruptcy fraud by Mr. Catanzarite, and part of a pattern also carried on through Defendant.
5. In 2011 according to public records produced to Plaintiff by The State Bar of California on June 14, 2022, "Catanzarite violated court rules by making statements to the court without any proof. The court said: "But here plaintiffs [Catanzarite] admit they violated several rules. They also continued to cite the excluded evidence in their reply brief even after the defendants noted the error with their briefs." The Court pointed out that Catanzarite's brief made 39 unsupported factual statements, and paragraphs lacking references. Some statements were completely incorrect. **Catanzarite does not care about the truth in making statements to the Court**."
6. In 2013 according to public records produced to Plaintiff by The State Bar of California on June 14, 2022, "the Court punished Catanzarite for saying one thing, then switching his story. The court stated that **Catanzarite's case was a "sham."** First, Catanzarite claimed that the dental practice run by Dr. Noroski and Dr. Schneider should give back money to patients who had been treated at the dental office, but did not say anything was wrong with the dentistry. Then, Catanzarite realized he had no case, because the plaintiffs who were former patients had their depositions and said they were happy with Dr. Noroski and happy with Dr. Schneider...The plaintiffs dropped out and Catanzarite had no case. Catanzarite asked to file an amended complaint that now said the dental services were bad. **The Court punished Catanzarite...for wasting everybody's time**."
7. An elderly Richard Carlson testified on February 12, 2020, that he was **visited *at his home* by Kenneth J. Catanzarite when he was not seeking an attorney and did not believe he suffered damages**. Mr. Catanzarite filed nine putative class actions on Mr. Carlson's behalf anyway for hundreds of millions of dollars in damages, some of which were filed in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE with alleged intent to defraud.

8. Between 1988 and 2011, on information and belief, Plaintiff alleges the records and captions of at least 25 cases filed against Kenneth J. Catanzarite, his family, or Catanzarite Law Corporation, were "fixed" and manipulated in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE by court staff to conceal and obstruct them in exchange of alleged bribes.
9. On September 22, 2017, a clerk within SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE was sentenced for "fixing" over 1,000 cases violative of RICO, 18 U.S.C. § 1962(d).
10. On October 13, 2022, the United States Department of Justice announced: "Civil Rights Violations by Orange County, California, District Attorney's Office and Sheriff's Department." The indigent, disabled Plaintiff sought help from Orange County District Attorney's Office ("OCDA") and even filed a police report with Anaheim Police Department ("APD"), but each overtly chose to protect local business Catanzarite Law Corporation, Mr. Catanzarite, and his alleged gang of unscrupulous marauders. Neither OCDA nor APD would even speak to Plaintiff.
11. For the matter of Richard Carlson who did not believe he had suffered damages, was not seeking an attorney when visited at his home by Kenneth J. Catanzarite, a series of Court orders issued in U.S. District Court, U.S. Bankruptcy Court and later in 11th Circuit Court of Appeals.
12. On May 8, 2020, a court order signed by Honorable Judge Scott M. Grossman issued pertaining to "discovery requests served by Mr. Catanzarite in violation of Federal Rule of Civil Procedure 26(g)(1)(B)" which resulted in sanctions. This fraudulent scheme commenced with the elderly "client" Richard Carlson, who was not seeking counsel, and did not believe he had suffered damages when visited at his home by Mr. Catanzarite.
13. An "Order Affirming Order of Bankruptcy Court" on appeal upheld sanctions for "violation of a preliminary injunction." This commenced with the elderly Richard Carlson, who was not seeking counsel, and did not believe he had suffered damages when visited at his home by Mr. Catanzarite.
14. An "Order Liquidating and Awarding Compensatory Sanctions" ordered Mr. Catanzarite must pay "$49,020.50" and "11,639.25" for sanctionable conduct related to Mr. Carlson's "cases." This commenced with the elderly Richard Carlson, who was not seeking counsel, and did not believe he had suffered damages when visited at his home by Mr. Catanzarite.

15. An "Order for Preliminary Injunction and Imposing Sanctions" found that Catanzarite violated a court-ordered preliminary injunction related to the elderly Mr. Carlson by "filing the Henkin-Looper Case and the associated *lis pendens* [in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE]" and "[a]ny further violations of this Court's Orders, the Bankruptcy Code, Bankruptcy Rules, or the Local Rules will result in an order requiring Mr. Catanzarite to show cause why his pro hac vice status should not be revoked."
16. After Mr. Catanzarite disregarded that order, too, an "Order to Show Cause Why Attorney Kenneth Catanzarite's Pro Hac Vice Status Should Not Be Revoked" found Mr. Catanzarite filed a "false affidavit" to certify his pro hac vice status, and that he was in fact suspended from the practice of law in New York, that he "refuses to be governed by" the rules of the court and professional conduct in that jurisdiction, that a website he published "contained misleading information" and "otherwise sought to undermine the bankruptcy process," that Mr. Catanzarite engaged in "numerous discovery violations" resulting in "sanctions," that Mr. Catanzarite engaged in "unilaterally noticing depositions at an inconsiderate time and inconvenient time and place," "violation of preliminary injunction," and that Mr. Catanzarite filed a "false emergency" that was "completely meritless."
17. On June 16, 2020, according to public records produced by The State Bar of California, Mr. Catanzarite informed Office of Chief Trial Counsel that he had been repeatedly sanctioned, but Mr. Catanzarite failed to disclose that his "client" Mr. Carlson on whose behalf 9 putative class actions were filed did not believe he had suffered damages and was not seeking an attorney. Nevertheless, Mr. Catanzarite said he would appeal all sanctions; all were upheld. *Catanzarite v. GCL, LLC (In re Daymark Realty Advisors, Inc.)*, No. 21-12766 (11th Cir. Mar. 9, 2022)
18. On June 11, 2021, an order to expunge notice of pendency of action (*lis pendens*) was ordered removed in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE which was found to have violated a federal court order, and $13,600 in costs were imputed to Catanzarite or his client. Again, this commenced with the elderly Richard Carlson, who was not seeking counsel, and did not believe he had suffered damages when visited at his home by Mr. Catanzarite.
19. On information and belief, Catanzarite bribes OCDA, APD, and The State Bar of California.

CATANZARITE'S FRAUDULENT SCHEMES TARGET PLAINTIFF VIA DEFENDANT

20. Consistent with his patterns of practice, commencing September 14, 2018, Kenneth J. Catanzarite of Catanzarite Law Corporation commenced a fraudulent and vexatious scheme targeting Plaintiff in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE.

21. The scheme in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE targeting Plaintiff involves seven frivolous and knowingly fraudulent cases or adversary cross complaints filed on behalf of directly adverse parties without standing or objective probable cause.

22. Using SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, Kenneth J. Catanzarite deliberately abused the court system to exploit Plaintiff and others, created, and exacerbated Plaintiff's disability with Defendant, willfully corrupted due process for Plaintiff and other innocent people, repeatedly misled judicial officers inside and outside Defendant's walls, engaged in non-judicial acts of fraud to perpetuate his fraudulent schemes, and is now taking advantage of Plaintiff's disability with Defendant maliciously to cover it all up.

23. For the first case, filed for a non-shareholder of MFS in a fraudulent derivative action:

> (1) The Pinkerton Action. *Denise Pinkerton v. Cultivation Technologies, Inc., et al.,* OCSC No. 30-2018-01018922. Catanzarite filed this lawsuit on September 14, 2018, on behalf of an elderly woman (via an attorney in fact) who invested all her retirement savings in MFS shares. This shareholder, individually and derivatively on behalf of MFS, asserted CTI, Probst, O'Connor, Cooper, and [Plaintiff] involved with CTI, engaged in fraud, conversion, breach of fiduciary duty, conspiracy, fraudulent concealment, and theft of trade secrets. In addition to damages, this derivative action demanded the cancellation of CTI stock certificates, an injunction preventing the sale of CTI stock, an injunction forcing CTI to stop using MFS's trade secrets, and the payment of punitive damages and attorney fees. For this lawsuit, CTI attorney of record was Winget, Spadafora, Schwartzberg LLP (Winget). On January 23, 2019, a few days before Catanzarite filed a shareholder derivative action involving CTI shareholders, Catanzarite dismissed several defendants from the Pinkerton Action, including CTI and members of the O'Connor Faction (O'Connor and Cooper). It also deleted causes of action for misappropriation of trade secrets, unfair competition, and declaratory relief against CTI. In August 2019, Catanzarite amended the complaint to remove all shareholder derivative causes of action on behalf of MFS. Thus, the only defendants remaining were members of the Probst Faction (Probst, Justin Beck, I'm Rad, LLC, Robert Kamm, Robert Bernheimer, Irving Einhorn, and Miguel Motta). *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 3 (Cal. Ct. App. Jun. 28, 2021) [The derivative action filed by Catanzarite was compromised without court approval (See F.R.Civ.P.23.1(c) and Exhibit 1). After serving 5,000 discovery requests including 500 on MFS itself, Catanzarite simply took over its adversary, MFS, by allegedly extorting signatures and property from O'Connor, Cooper, Higgerson to avoid a motion for security.]

24. For the second case, rejected with "every fiber of [Court's] being" on May 1, 2019, in a trial:

> (2) The MFS Action. *Mobile Farming Systems, Inc. v. Cultivation Technologies, Inc., et al.*, OCSC No. 30-2019-01046904. Catanzarite filed this lawsuit in January 28, 2019, for MFS and "derivatively on behalf of its wholly owned subsidiary [n]ominal [d]efendant [CTI]." MFS asserted it was entitled to file a derivative action because it organized CTI and acquired 28,000,000 shares of CTI common stock, and therefore, CTI was its wholly owned subsidiary. The complaint asserted MFS contributed assets to CTI (a seedling trailer and a shipping container) and paid start-up costs. MFS sought cancellation of CTI's shares as well as any "insider loans and transactions." It alleged CTI owed MFS "$75,007.24 plus accrued interest of $12,444.29" (MFS's start-up loan) and other damages to be proven at trial. (Underline omitted.) The complaint sought attorney fees, punitive damages, and interest. The lawsuit was based on the premise that no CTI shareholders, other than MFS shareholders, had any valid stock or voting rights. This complaint also asserted the Probst Faction violated Corporations Code section 1507 by "preparing, signing and circulating false minutes, issuing securities, transacting business with insiders, [and] borrowing money from insiders and records relating to CTI." MFS requested that the court enjoin the Probst Faction from operating CTI until the court held a section 709 hearing "to determine the rightful ownership of CTI, its appropriate [b]oard of [d]irectors, and executive structure. The court initially granted a temporary restraining order (TRO). According to Probst, the TRO was financially devastating for CTI because "CTI's operations ground to a halt" for several months. Probst declared, "CTI did not have access to its working capital and... key customers became aware of the TRO and refused to continue to place orders and the cash flow began to severely suffer." The court dissolved the TRO in May 2019, after holding a section 709 hearing. The court determined MFS was not a CTI shareholder and could not challenge the election of CTI's directors. In August 2019, the same day Catanzarite amended the Pinkerton Action to be a direct rather than derivative action, Catanzarite also transformed the MFS Action into a direct action. The first amended complaint (FAC) omitted CTI as a party and alleged only direct claims against members of the Probst Faction [including Plaintiff] for breach of fiduciary duty, conversion, misappropriation of trade secrets, and unfair competition. *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 4-5 (Cal. Ct. App. Jun. 28, 2021) [Facing a trial of fact (709 trial) Mr. Catanzarite knew he would lose, he knew he had to place another chess piece on the board to further monopolize due process rights of everyone with impunity].

25. For the third case, directly conflicting with the first/second case as all three were operative:

> (3) The Mesa Action. *Mesa, et al. v. Probst, et al.*, OCSC No. 30-2019-01064267. Catanzarite filed this shareholder derivative class action on April 16, 2019. The complaint asserted the "nature of [the] action" was on behalf of shareholders owning both MFS and CTI shares seeking to "join MFS in a consolidated action with [the MFS Action] and to among other relief, recognize the ownership and control of CTI as held by" four groups of shareholders. (Capitalization and bold omitted.) These shareholder groups included MFS (holding 28,000,000 CTI shares), as well as any MFS shareholders who purchased CTI shares in various offerings. The complaint expressly excluded shares held by Probst Faction members, their attorneys, agents, or affiliates. Richard Mesa initiated the lawsuit in three capacities: (1) individually as a "shareholder of both" MFS and CTI shares; (2) in a representative capacity on behalf of over 100 similarly situated shareholders; and (3) derivatively on behalf of CTI. The Mesa Action asserted nine causes of

action against the Probst Faction and CTI as a nominal defendant. Identical to allegations in the MFS Action, the Mesa Action sought to enjoin the Probst Faction from operating CTI until there could be an expedited section 709 hearing. In addition to damages, the class sought punitive damages and attorney fees. One month later, Catanzarite amended the complaint to add Cooper and Tom Mebane as plaintiffs and FinCanna as a defendant. More significantly, the complaint's "nature of the action" changed. The class members no longer sought to join the MFS Action or seek recognition of MFS's controlling shares over CTI. Instead, the Mesa Action plaintiffs sought to declare the current CTI directors' meetings and actions void. In particular, the class sought to unravel CTI's financial dealings with FinCanna, who had just foreclosed on CTI's properties. The FAC included two new causes of action, as well as allegations the Probst Faction wrongfully liquidated CTI's assets and that FinCanna should not have initiated foreclosure proceedings. The FAC asserted FinCanna "claims ownership of the extraction facility and CTI's employees have effectively become [FinCanna] employees." Furthermore, it maintained CTI shareholders "have suffered a total loss of their share value of not less than $5,000,000 and millions more in business opportunities...." CTI's attorney of record, Winget, filed an answer asserting the plaintiffs lacked standing or were not qualified to maintain a derivative lawsuit on CTI's behalf. In October 2019, the Mesa Action plaintiffs filed a motion requesting the court appoint a receiver for CTI. *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 5-6 (Cal. Ct. App. Jun. 28, 2021)

26. Summarizing conflicts of interest on May 1, 2019, and implications on disabled Plaintiff:

"Thus, to briefly recap, at this point Catanzarite's concurrent and successive representation of adverse parties included the following: (1) Catanzarite was representing the Roots' elder abuse lawsuit against CTI and some of its Founders (the Probst Faction) as well as a derivative action against MFS; (2) Catanzarite had made a deal with a handful of CTI Founders to dismiss them from the Pinkerton Action [without court approval, which is necessary to prevent collusion under state and federal law, including F.R.Civ.P. 23.1(c)]; (3) it became MFS's counsel of record [after suing the company and taking it over]; (4) Catanzarite filed a derivative shareholder lawsuit for MFS, claiming 100 percent control and ownership of CTI, despite having lawsuits filed by other people claiming to be MFS shareholders; and (5) after filing two *derivative* shareholder lawsuits, Catanzarite filed a third derivative action (the Mesa Action) claiming to represent a different set of outsider shareholders, i.e., a class of derivative shareholders willing to join in the MFS Action but also independently seeking damages from CTI, its current shareholders, and board of directors." *Beck v. Catanzarite Law Corp.*, No. G059766, 17 (Cal. Ct. App. Jul. 13, 2022)

27. For the fourth case, even though an auditor was already engaged as part of a public merger:

(4) The Cooper Action. *Cooper, et al., v. Cultivation Technologies, Inc.*, OCSC No. 30-2019-01072443. On May 23, 2019, Catanzarite filed an action directly against CTI on behalf of two CTI shareholders (Cooper and Mebane), who were members of the O'Connor Faction. The previous day, FinCanna had filed a breach of contract action against CTI and CTI Subsidiaries and requested a receivership. The Cooper Action requested the court direct CTI to (1) hold a shareholder's meeting to elect a board of directors; (2) deliver an annual report; (3) appoint an accountant to conduct an audit; and (4) order CTI to pay the costs for an investigation, audit, and costs of the suit. Winget, on behalf of CTI filed an opposition, asserting a shareholder meeting was scheduled for August 2019. *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 6-7 (Cal. Ct. App. Jun. 28, 2021) [Catanzarite is also suing Ms. Cooper, and "tolling claims," now.]

28. For the fifth case, filed by Mr. Catanzarite corruptly, willfully, and without authority:

(5) The FinCanna Action Cross-complaint. *FinCanna v. Cultivation Technologies, Inc., et al.*, OCSC No. 30-2019-01072088. As mentioned, in May 2019, FinCanna filed a breach of contract action against CTI and CTI Subsidiaries. On July 2, 2019, Catanzarite filed a cross-complaint on behalf of CTI and CTI Subsidiaries against FinCanna and three of its directors. Large sections of the cross-complaint appear to have been cut and pasted from the Mesa Action complaint. Catanzarite purported to represent CTI and its subsidiaries. In Probst's declaration, prepared to oppose the section 709 request in the Mesa Action, he explained Catanzarite's actions in the FinCanna Action created confusion and harm. He noted Catanzarite filed a cross-complaint and propounded discovery against CTI's "primary secured lender" without telling CTI's board "and during a time when FinCanna has not yet served their complaint on CTI due to ongoing settlement negotiations." *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 7 (Cal. Ct. App. Jun. 28, 2021) [CTI is not, and has never been, a *bona fide* client of Catanzarite.]

29. For the sixth case, also filed by Mr. Catanzarite corruptly, willfully, and without authority:

(6) The Scottsdale Action. *Cultivation Technologies, Inc., v. Scottsdale Insurance Company,* OCSC No. 30-2019-01096233. On September 6, 2019, Catanzarite filed this declaratory relief action purporting to represent CTI. In this lawsuit, CTI demanded that its insurance company, Scottsdale, stop providing a defense or indemnity to the Probst Faction defendants in the Mesa Action. The complaint asserted Scottsdale "refused to communicate with the officers and directors elected by the common shareholders of CTI and who are of the position that only they and their elected officers and directors speak for CTI." In the complaint, CTI sought the court's declaration of its rights under the insurance policy and orders forbidding Scottsdale from providing a defense "unless and until the vote of the disinterested common shareholders of CTI [was] obtained." We note that immediately before filing the Scottsdale Action, Catanzarite amended the complaints in the first two derivative actions transforming them into direct actions against individuals who were part of the Probst Faction (the Pinkerton and MFS Actions). Additionally, after filing the Scottsdale Action, Catanzarite dismissed the Cooper Action on September 13, 2019. *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 7-8 (Cal. Ct. App. Jun. 28, 2021) [Catanzarite separately claims MFS is the sole shareholder of CTI].

30. For the seventh case, deliberately concealing 709 trial findings, known facts in violation of California Rules of Professional Conduct 3.3, with ongoing intent to defraud:

(7) The MFS Cross Action. *Justin S. Beck v. Kenneth Catanzarite, et al.*, OCSC No. 30-2020-01145998. On August 12, 2020, Catanzarite purporting to represent the company MFS it sued derivatively September 14, 2018, assumed control over in January 2019, essentially refiled the MFS Action against Plaintiff while concealing the material facts of the 709 Trial on May 1, 2019, in violation of California Rules of Professional Conduct 3.3. Catanzarite also assumed the role of counsel of all defendants, including those it was suing and tolling claims against to "bring later": Amy Cooper, Richard O'Connor, Cliff Higgerson, and the other CTI shareholders that it was expressly disqualified from representing: Mohammed Zakhireh, James Duffy, and others.

DEFENDANT IS WILLFULLY VIOLATING PLAINTIFF'S CIVIL RIGHTS

31. On May 1, 2019, a 709 trial of fact rejected claims filed against Plaintiff with "every fiber of the [Court's] being" citing "overwhelming evidence." Despite this, the same fraudulent claims are redirected at plaintiff, and allowed by Defendant. Plaintiff incorporates **EXHIBIT 1** here.

32. Notably, the 709 trial concluded that O'Connor and Cooper were responsible for the conduct that Catanzarite is using the inanimate shell, MFS, to direct at Plaintiff using Defendant. It should come as no surprise that these individuals are cooperating with Catanzarite in furtherance of the scheme as the claims are tolled against them to "bring later."

33. On June 28, 2021, four disqualification orders against Catanzarite Law Corporation, Kenneth Catanzarite, Brandon Woodward, Tim James O'Keefe, and Nicole Marie Catanzarite Woodward (together "Catanzarite") were upheld by Court of Appeal. Despite this, Catanzarite is still representing CTI shareholders from which it was expressly disqualified from representing.

34. On July 13, 2022, four Anti-SLAPP orders were overturned by Court of Appeal in favor of Plaintiff, who showed a *prima facie* case for malicious prosecution of the Pinkerton Action, MFS Action, and Scottsdale Action as being filed by Catanzarite against Plaintiff in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, without objective probable cause, achieving favorable termination reflecting Plaintiff's innocence, with malice. Despite this, Catanzarite is still maliciously prosecuting Plaintiff, re-trying adjudicated matters filed on behalf of parties it is suing and tolling claims against, in each case to take advantage of Plaintiff's disability and indigent status aided by Defendant to cover up the fraudulent schemes.

35. In October 2022, Catanzarite propounded discovery against Plaintiff on behalf of Kenneth Catanzarite, Catanzarite Law Corporation, Brandon Woodward, Tim James O'Keefe, Amy Jeanette Cooper, Cliff Higgerson, Mohammed Zakhireh, Richard Francis O'Connor, Jr., James Duffy, TGAP Holdings, LLC, and Mobile Farming Systems, Inc. and later moved to compel him to produce responses as it continued to represent adverse parties from which it was disqualified from representing in violation of California Rules of Professional Conduct 1.7(d)(3) and 1.9. Not only is Catanzarite adverse to them directly in the same case for malicious prosecution, but Catanzarite is tolling claims against most from a false derivative action against MFS.

36. On the evening of December 1, 2022, Plaintiff suffered a new onset seizure as a direct and proximate result of ongoing, illegal harassment by Catanzarite in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, contraindication of medication Plaintiff commenced directly caused by intentional infliction of emotional distress against him, and the ongoing fraudulent scheme and due process violations that caused, now exacerbates, his disability protected by Title II of the ADA.

37. Plaintiff has two other cases pending in U.S. Southern District of California, alleging, *inter alia*, violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), federal antitrust laws, and Fourteenth Amendment violations: *Justin S. Beck v. Catanzarite Law Corporation, et al.* 3:22-CV-01616-AGS-DDL which names Orange County Superior Court and Judge John C. Gastelum as defendants, and *Justin S. Beck v. State of California*, 3:23-CV-0164-AGS-DDL.

38. Plaintiff has two pending cases before SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE: *Justin S. Beck v. Kenneth Catanzarite, Esq. et al.* (OCSC 30-2020-01145998) filed May 26, 2020, by counsel, where motions to compel were filed, lying in malicious prosecution and intentional infliction of emotional distress, and *Justin S. Beck v. The State Bar of California, et al.* (OCSC Case No. 30-2021-01237499) lying in negligence, corruption, and fraud.

39. After suing The State Bar of California (which has allegedly coerced various acts of Defendant with malice to conceal public corruption, and whose staff is allegedly bribed by Catanzarite) and State of California (which *refuses* to appear in Superior Court despite service), government employees have engaged in a relentless campaign to oppress Plaintiff and retaliate against him for seeking redress of genuine grievances under Government Claims Act.

40. Plaintiff's genuine claims are supported by overwhelming evidence consisting of court orders related and unrelated to Plaintiff showing Catanzarite's pattern of serial fraud and vexatious litigation inside and outside Defendant walls. Defendant is carrying this on with malice.

41. It strains credulity that judicial officers and staff for Defendant, despite notice, and even after Courts of Appeal have disqualified Catanzarite Law Corporation, Kenneth Catanzarite, Brandon Woodward, Tim James O'Keefe, and Nicole Marie Catanzarite Woodward (together "Catanzarite") for violations of mandatory law – are still enabling Catanzarite to target Plaintiff.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE CONDUCT

42. Plaintiff is unable to cognitively function sufficiently to access government services of Defendant, or protect himself from serial violations of law, without accommodations and relief.

43. Defendant allows Catanzarite to break mandatory law and virtually every rule in the proverbial book, yet Plaintiff is somehow required to conform to minutiae despite Court of Appeal findings.

44. Defendant allows Catanzarite to violate California Rules of Professional Conduct every day but requires the disabled Plaintiff to conform to the most rigorous standards of California Code of Civil Procedure while disregarding Catanzarite's *adjudicated* fraud and disregard of the rules.

45. Facing unlawfully filed motions to compel discovery (Rule 1.7(d)(3) and Rule 1.9) amidst un-waivable conflicts of interest set for May 5, 2023, hearing – the disabled Plaintiff found an ADA advocate to alert Defendant of his needs, acute harm, and federally protected rights.

46. Showing Defendant's malice for Plaintiff separately, Orange County Superior Court Case No. 30-2021-01237499 was remanded to Defendant on January 12, 2023, for lack of removal jurisdiction. Defendant would later comment on March 29, 2023, that Defendant lacked jurisdiction, which was materially false. Plaintiff alleges Defendant is retaliating against Plaintiff for naming Defendant in 3:22-CV-01616-AGS-DDL as an alleged RICO enterprise defendant, and for naming John C. Gastelum, the judicial officer in C11, for allegedly agreeing to violate substantive provisions of RICO with State Bar's Suzanne Grandt. (See Docket #50 in that case).

47. On February 15, 2023, after Orange County Superior Court Case No. 30-2021-01237499 was remanded to Defendant January 12, 2023, Defendant surreptitiously *removed* ROA #101, #103, #107, and #111 from Plaintiff's record (summary judgment papers accepted in July 2022).

48. Facing malicious motions to compel filed amidst directly adverse parties which completely inhibit Plaintiff from achieving fair or neutral hearings, on March 28, 2023, at 9:26 AM, Plaintiff made his first request to ADAinformation@occourts.org : "Please see the attached ADA accommodation requests for: Dept. CX105 – Case No. 30-2020-01145998 (+ Related Cases in CX105)[, and] Dept. C11 – Case No. 30-2021-01237499. I've included evidentiary support of a new onset seizure resulting from my disability. If you require anything else, please let me know. Thank you for your assistance." (Hereinafter, ADA Request #1)

49. Plaintiff identified for the ADA coordinator and court the procedural harassment to which he was subject, the threat to his health, un-waivable conflicts, and the mandatory law violations under which motions to compel were pending and still allowed by Defendant, unequally.
50. On March 28, 2023, at 2:39 PM, Plaintiff received a reply from "Becky Torres, ADA Coordinator" that his "ADA accommodation requests have been received and will be forwarded for judicial review."
51. On March 29, 2023, at 9:02 AM, Plaintiff received a reply from "Becky Torres, ADA Coordinator" that she had "been informed that case 30-2021-01237499 has been removed to Federal Court" and that they "no longer have any jurisdiction over [that] case" which was false.
52. Plaintiff informed Ms. Torres on April 4, 2023, he would be filing expanded accommodation requests under ADA after reviewing Defendant's Title II obligations and his due process rights.
53. For ADA Request #1, Plaintiff was granted nominal accommodation of a court watcher after informing the court he was filing expanded needs. Plaintiff was also directed to file for protective order to restrain the procedural harassment by Catanzarite and discrimination of Defendant.
54. After conferring with his advocate, Plaintiff filed expanded accommodation requests ("ADA Request #2"). He did not know that his protective order would be disregarded maliciously.
55. On April 17, 2023, Plaintiff filed a cross-motion for a protective order and opposition to motions to compel as directed by the court to prevent the procedural harassment, discrimination, and violations of mandatory law to which he is subject by Catanzarite and Defendant.
56. On April 17, 2023, Plaintiff filed an ex parte application for entry of protective order to prevent the procedural harassment, discrimination, and violations of mandatory law to which he is subject by Catanzarite and Defendant.
57. On April 18, 2023, Plaintiff received a discriminatory complete denial of ADA Request #2 on the basis that Plaintiff's "requested accommodations are not reasonable" which Plaintiff alleges to be triable. Plaintiff had a clearly established right to equal access to Defendant services.
58. Also, on April 18, 2023, Plaintiff received a discriminatory order that his "ex parte application [was] denied without a hearing. No good cause to have this matter heard on shortened notice by an Ex Parte Application" which Plaintiff alleges to be triable, malicious, and willful.

59. After April 18, 2023, Plaintiff's advocate repeatedly contacted Ms. Torres of the emergency circumstances, seeking to speak with a supervisor to understand Defendant's conduct toward Plaintiff, and to alert Defendant of the further, irreparable harm that Defendant's refusal to accommodate, discrimination, and retaliation, was causing and would cause Plaintiff.

60. Despite Plaintiff filing for protective order to receive accommodation needed to prevent his harm and due process violations, where Defendant knew of the irreparable harm to which he was subject, Defendant acted with actual malice to Plaintiff, or at least indifference by denying it without a hearing. Defendant repeatedly grants Catanzarite the opportunity to move ex parte, no matter how frivolous. Defendant repeatedly discriminates against Plaintiff due to his disability.

61. On April 21, 2023, Plaintiff filed opposition to motions to compel discovery filed by Catanzarite amidst un-waivable conflicts, after 5-years of fraudulent, vexatious litigation in SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE prefaced by similar patterns since 2005.

62. On May 5, 2023, Plaintiff's advocate once more contacted Ms. Torres, who refused to answer.

63. Ms. Torres and Defendant further refuse to address the manipulation of records in Orange County Superior Court Case No. 30-2021-01237499, or the fact that Defendant refuses to enter defaults against State of California despite the case being remanded on January 12, 2023. State of California was served, will not answer, will not appear, and Defendant will not enter default.

64. On May 5, 2023, without regard of Plaintiff's due process rights, serious disability, ADA needs, known harm, or Catanzarite's fraud, prior vexatious litigation and mandatory disqualification under Rule 1.7(d)(3) and Rule 1.9, Defendant entered four orders compelling Plaintiff to produce: Form Interrogatories, Set One from Kenneth Catanzarite, Esq.; 102 separate Special Interrogatories from "Defendants Kenneth Catanzarite, Catanzarite Law Corporation, Brandon Woodward, Tim James O'Keefe, Amy Jeanette Cooper, Cliff Higgerson, Mohammed Zakhireh, Richard Francis O'Connor, Jr., James Duffy, TGAP Holdings, LLC, and Mobile Farming Systems, Inc." (all of whom 1) Catanzarite is either suing and tolling claims against from a fraudulent derivative action filed without standing on September 14, 2018 that was compromised without Defendant approval, which is required to prevent collusion, 2) Catanzarite was disqualified from representing by Court of Appeal, and/or 3) Catanzarite is barred by mandatory

law from representing); Request for Production of Documents, Set One from Kenneth Catanzarite; and 94 Requests for Production of Documents from "Defendants Kenneth Catanzarite, Catanzarite Law Corporation, Brandon Woodward, Tim James O'Keefe, Amy Jeanette Cooper, Cliff Higgerson, Mohammed Zakhireh, Richard Francis O'Connor, Jr., James Duffy, TGAP Holdings, LLC, and Mobile Farming Systems, Inc." (all of whom 1) Catanzarite is either suing and tolling claims against from a fraudulent derivative action filed without standing on September 14, 2018 that was compromised without Defendant approval, which is required to prevent collusion, 2) Catanzarite was disqualified from representing by Court of Appeal, and/or 3) Catanzarite is barred by mandatory law from representing).

65. On May 5, 2023, in addition to compelling the disabled Plaintiff to produce thousands of documents to his abusers with a well-documented history of fraud, the Court also ordered Plaintiff, who is now indigent as a direct result of Catanzarite's fraudulent scheme with Defendant, *to pay his abusers sanctions* of $310, $1,435, $1,185, and $60 ($2,990 total).

66. On May 9, 2023, more than ten-days after requesting the information, Defendant delivered Plaintiff's advocate (but not Plaintiff) "Confidential Re: ADA Request in Beck v. Catanzarite 30-202[0]-01145998." ("May 9 Letter")

67. The May 9 Letter claimed that Plaintiff's ADA needs were somehow estopped under color of state law or local procedure, and that Plaintiff's ability to challenge Defendant's refusal to accommodate would require "[a] petition for writ review [which] must be filed within 10 days (plus 5 days for mail) of the Court's order on the accommodation request" dated April 18, 2023.

68. Writ relief is extraordinary, and the disabled Plaintiff's ability to petition is purportedly past. Further, Plaintiff is unduly prejudiced in that he was concurrently being compelled to produce information illegally to his abusers as he was concurrently purportedly required to file a writ petition within 10-days that had past, with a debilitating disability.

69. But for Defendant's aiding of Catanzarite and mutual exploitation of Plaintiff's disability, Plaintiff would not lack legal counsel for these matters but for the fraudulent scheme and his indigent status caused thereby.

70. Plaintiff has been denied federally mandated disability accommodations by Defendant under color of law, retaliated against for naming Defendant and one of its judicial officers in 3:22-CV-01616-AGS-DDL, discriminated against due to his disability, discriminated against due to his requests for disability accommodations, and discriminated against for "calling out" the 5-year fraudulent scheme involving Defendant to which he and other innocent people are subject.

71. Plaintiff exhausted all purported procedural remedies in state courts as set forth in the May 9 Letter. Plaintiff brings this action as a last resort where Defendant refuses to protect Plaintiff in overt discrimination with malice. Defendant seeks to oppress and overwhelm Plaintiff by compelling him to produce information to which his abusers are not lawfully entitled, at least not within any neutral forum acting reasonably under the circumstances under ADA, Title II.

72. As direct and proximate cause of Defendant, Catanzarite, and those acting in concert with each, Plaintiff has suffered irreparable harm and now faces further threats to take advantage of his disability. At this point, Defendant is acting in active concert with Catanzarite to exploit Plaintiff.

73. Under the circumstances, in light of the factual record regarding Plaintiff spanning five years with related Court of Appeal rulings, and the cumulative record of Catanzarite's patterns of willful abuse and serial fraud dating back to 2005 by court orders and public records produced to Plaintiff by The State Bar of California, Defendant's conduct against Plaintiff is despicable, outrageous, willful, and no person should reasonably be required to bear it. Defendant's conduct against Plaintiff falls outside what any reasonable person would deem acceptable in a normal, civilized society. Plaintiff demands neutral forum to try Defendant's abuse before a jury of peers.

74. The ADA violations to which Plaintiff was subject and is being subject are reckless, wanton, and clear violations of Plaintiff's due process rights as well as his right to equal protection under the law, each protected by the Fourteenth Amendment.

75. United States Congress explicitly provides the United States and U.S. District Court authority to enforce the Fourteenth Amendment against Defendant to protect and compensate Plaintiff.

76. *United States v. Georgia*, 546 U.S. 151, 126 S. Ct. 877 (2006) "Held: Insofar as Title II creates a private cause of action for damages against State for conduct that actually violates the Fourteenth Amendment, **Title II validly abrogates state sovereign immunity**" at Pp. 157-160.

FIRST CAUSE OF ACTION

DENIAL OF ACCESS UNDER ADA, TITLE II

77. Plaintiff incorporates paragraphs 1 through 76 by reference as if set forth fully here.

78. Plaintiff brings this first cause of action against Defendant for denial of access under the ADA.

79. Under 42 U.S.C. § 12101(a), "[t]he Congress finds that—(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination," and that "(3) discrimination against individuals with disabilities persists in such critical areas as....access to public services," and that "(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination," and that "(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion...and communication barriers, overprotective rules and policies, failure to make modifications to existing...practices, exclusionary qualification standards and criteria...and relegation to lesser services, programs, activities, benefits...or other opportunities."

80. Under 42 U.S.C. § 12101(b), "[i]t is the purpose of this chapter—(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."

81. Under 42 U.S.C. § 12132, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

82. Under federally mandated regulations codified by Title II, § 35.150(a), Defendant "shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities."

83. For all times relevant, Defendant had a duty to the qualified, disabled Plaintiff to provide ready access to Defendant services under ADA, Title II, § 35.150(a).

84. From September 14, 2018, through present, Defendant has knowingly engaged or ratified in a scheme wherein Plaintiff was denied equal access to Defendant services on the basis of Plaintiff's disability. Defendant repeatedly violated Plaintiff's clearly established due process rights and engaged in willful or indifferent abuse of those rights knowing Plaintiff's harm.

85. When viewed in the entirety, Defendant services are virtually unusable and inaccessible by the disabled Plaintiff under the circumstances. Defendant unreasonably denies Plaintiff ready access to Defendant services with knowledge of Plaintiff's disability, actual harm and the malicious scheme to which he has been, and is being, subject, through Defendant's unequal providing of government services to others.

86. ADA, Title II is a mandate of United States Congress for Defendant where ADA, Title II provides implementation instructions for Defendant and mandatory duties to Plaintiff.

87. Under Cal. Gov. Cod. § 815.6, where Defendant "is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."

88. As direct and proximate cause of Defendant's violations of 42 U.S.C. § 12132 and ADA, Title II, § 35.150(a), Plaintiff has suffered severe emotional distress consisting of daily suffering, anxiety, humiliation, and a seizure which now precludes him from taking contraindicating medication to treat his symptoms. Plaintiff is willfully being denied equal access to a neutral court by Defendant to harass and vex him, which is his right as a citizen, free of due process violations. Plaintiff is willfully being denied equal protection under the law, where Defendant nefariously favors the rights of Catanzarite and those working in concert with them, unequally applying the laws of California and the United States, with malice.

89. WHEREFORE, Plaintiff seeks the Court enter judgment in his favor against Defendant for denial of access under 42 U.S.C. § 12132, ADA, Title II, § 35.150(a) with liability for damages arising from ADA, Title II (*United States v. Georgia*, 546 U.S. 151, 126 S. Ct. 877 (2006) or Cal. Gov. Cod. § 815.6. As an alternative, damages in favor of Plaintiff arise from Cal. Gov. Cod. § 815.2 for the conduct of Defendant's staff.

90. WHEREFORE, Plaintiff seeks the Court enter order enjoining Defendant from further restricting Plaintiff's equal access to government services in accordance with his needs; enjoining due process violations by Defendant unlawfully requiring him to produce information to serial abusers associated with Catanzarite while it engages in un-waivable conflicts of interest; enjoining due process violations by Defendant unlawfully enabling un-waivable conflicts of interest to harass and vex the disabled Plaintiff; enjoining equal protection clause violations by Defendant which unreasonably caters to and advances the interests of attorneys engaged in actual fraud on the Court and un-waivable conflicts of interest to the detriment of the disabled Plaintiff, unequally; and awarding Plaintiff economic and non-economic compensatory damages according to proof in trial under ADA, Title II (*United States v. Georgia*, 546 U.S. 151, 126 S. Ct. 877 (2006) or Cal. Gov. Cod. § 815.6. As an alternative, damages in favor of Plaintiff arise from Cal. Gov. Cod. § 815.2 for the conduct of Defendant's staff.

SECOND CAUSE OF ACTION

FAILURE TO ACCOMMODATE UNDER ADA, TITLE II

91. Plaintiff incorporates paragraphs 1 through 90 by reference as if set forth fully here.

92. Plaintiff brings this second cause of action against Defendant for failure to accommodate under the ADA.

93. Under federally mandated regulations codified by Title II, § 35.150(b)(1)(i), Defendant "in providing...service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—deny a qualified individual with a disability an opportunity to participate in or benefit from the...services that is not equal to that afforded others."

94. Under federally mandated regulations codified by Title II, § 35.150(b)(3), Defendant "may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the public entity's program with respect to individuals with disabilities."

95. From March 28, 2023, when noticed of Plaintiff's disability, irreparable harm, special needs, and the extraordinary violations of due process and mandatory law to which he is subject by Defendant, Defendant unreasonably denied Plaintiff an opportunity to participate in Defendant services in a manner unequal to others. Indeed, Catanzarite's due process rights are treated by Defendant as being superior to Plaintiff's even after Defendant was made factually aware of Plaintiff's disability and the serial fraud to which Plaintiff is subject reflected by Court of Appeal, U.S. District Court, and 11th Circuit Court of Appeal rulings among at least five separate fraudulent schemes by Catanzarite.

96. From March 28, 2023, when noticed of Plaintiff's disability, irreparable harm, special needs, and the extraordinary violations of due process and mandatory law to which he is subject by Defendant, Defendant used methods of administration having the effect of subjecting Plaintiff to discrimination based on his disability, or in the alternative, that had the purpose or effect of

defeating or substantially impairing accomplishment of Defendant's program of operating a neutral court with respect to Plaintiff.

97. The foregoing code sections are also mandatory duties imposed on Defendant by United States Congress under Title II of the ADA, and Defendant failed to exercise reasonable diligence to discharge the duty to Plaintiff under Cal. Gov. Cod. § 815.6.

98. As direct and proximate cause of Defendant's violations of 42 U.S.C. § 12132, ADA, Title II, § 35.150(b), Plaintiff has suffered severe emotional distress, anxiety, humiliation, and shame from Defendant's treatment of and discrimination against Plaintiff. Defendant is compelling the disabled Plaintiff to produce yet more information to serial abusers without regard for mandatory law after 5-years of due process violations and equal protection clause violations involving Defendant, even after the Court of Appeal has concluded serial violations of mandatory law against Plaintiff within Defendant's public facilities. Plaintiff experiences horror and anguish at the implications of producing more information that no reasonable Court would order against a disabled person, under the circumstances, in light of the facts and Court of Appeal rulings known to Defendant and un-waivable conflicts of interest that are no fault of Plaintiff. Plaintiff has suffered and will continue to suffer worry and shock after detailing his needs, and those needs being disregarded under color of state law and local procedures by Defendant, with malice.

99. WHEREFORE, Plaintiff seeks the Court enter judgment in his favor against Defendant for failure to accommodate under 42 U.S.C. § 12132, ADA, Title II, § 35.150(b) with liability for damages arising from ADA, Title II (*United States v. Georgia*, 546 U.S. 151, 126 S. Ct. 877 (2006) or Cal. Gov. Cod. § 815.6. As an alternative, damages in favor of Plaintiff arise from Cal. Gov. Cod. § 815.2 for the conduct of Defendant's staff.

100. WHEREFORE, Plaintiff seeks the Court enter order enjoining Defendant from restricting Plaintiff's equal access to Defendant's government services in accordance with his ADA accommodation needs; enjoining due process violations by Defendant mandated under the Fourteenth Amendment; enjoining Defendant from unlawfully compelling the disabled Plaintiff to produce discovery to serial abusers associated with Catanzarite until such time that there exist no un-waivable conflicts of interest and the law is applied equally under California Rules of

Professional Conduct 1.7(d)(3) and 1.9; and awarding Plaintiff economic and non-economic compensatory damages according to proof in trial under ADA, Title II (*United States v. Georgia*, 546 U.S. 151, 126 S. Ct. 877 (2006) or Cal. Gov. Cod. § 815.6. As an alternative, damages in favor of Plaintiff arise from Cal. Gov. Cod. § 815.2 for the conduct of Defendant's staff.

THIRD CAUSE OF ACTION

UNRUH CIVIL RIGHTS ACT

101. Plaintiff incorporates paragraphs 1 through 100 by reference as if set forth fully here.

102. Plaintiff brings this third cause of action against Defendant for violation of Unruh Civil Rights Act under Cal. Cod. Civ. Proc. §§ 51, 52 (incorporating Title II of the ADA) and Cal. Gov. Cod. § 815.6.

103. Where this Court may abstain generally from supplemental jurisdiction, extraordinary circumstances of this case require invocation of supplemental jurisdiction as Plaintiff's harm is caused by a court Defendant which is maliciously violating ADA after Plaintiff's clearly established rights to protection. Plaintiff will not achieve fair adjudication of Unruh Civil Rights Act within Defendant's walls or any other branch of Superior Court.

104. Plaintiff claims that Defendant denied him full and equal advantages, facilities, privileges, or services because of his disability or medical condition.

105. Defendant denied, aided, or incited a denial of, discriminated, or made a distinction that denied full and equal advantages, facilities, privileges, or services to Plaintiff.

106. A substantial or motivating reason for Defendant's conduct was its perception of Plaintiff's disability or medical condition.

107. Plaintiff was harmed.

108. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

109. WHEREFORE, Plaintiff seeks the Court enter judgment in his favor against Defendant for violation of Unruh Civil Rights Act, Cal. Cod. Civ. Proc. §§ 51, 52 with liability for damages arising from Cal. Gov. Cod. § 815.6.

110. WHEREFORE, Plaintiff seeks the Court enter order awarding Plaintiff economic and non-economic compensatory damages against Defendant according to proof in trial under Cal. Gov. Cod. § 815.6, and up to three times the amount of Plaintiff's actual damages according to proof in trial under Cal. Gov. Cod. § 815.6 as a penalty against Defendant (as under CACI 3067). As an alternative, damages in favor of Plaintiff arise from Cal. Gov. Cod. § 815.2 for the conduct of Defendant's staff.

FOURTH CAUSE OF ACTION

EQUITABLE INDEMNIFICATION

111. Plaintiff incorporates paragraphs 1 through 110 by reference as if set forth fully here.

112. Plaintiff brings this fourth cause of action against Defendant for indemnification under Cal. Gov. Cod. § 815.6 and Title II, ADA regulations set forth above which are mandatory duty.

113. Where Plaintiff has failed any procedural requirements set forth by Defendant or California Code of Civil Procedure resulting in compulsion of discovery from the disabled Plaintiff, Defendant is at fault for violating Title II, ADA, with knowledge and privity of illegal conduct by and with Catanzarite, and Plaintiff's federally protected rights under Title II, ADA.

114. Defendant knows Plaintiff is suffering, and that Catanzarite is engaged in serial schemes to defraud using or with Defendant, but Defendant compelled the knowingly disabled Plaintiff to succumb to the fraudulent scheme with malice or at least indifference of the consequences.

115. As direct and proximate cause of Defendant's actions, Defendant has knowingly compelled the disabled Plaintiff as of May 5, 2023 to produce discovery responses to Catanzarite which were unlawfully filed in the first instance with malice through Defendant, which compelled discovery responses were and are unreasonably burdensome and oppressive, and which answers should be private or confidential under the circumstances due to ongoing violations of Plaintiff's due process rights protected by the Fourteenth Amendment, California Rules of Professional Conduct 1.7(d)(3), and California Rules of Professional Conduct 1.9 which are binding under Cal. Bus. & Prof. Cod. § 6077 but disregarded by Defendant unequally and nefariously in favor of Catanzarite's fraudulent schemes shown by court orders.

116. WHEREFORE, Plaintiff seeks the Court enter order awarding Plaintiff indemnification against Defendant for all economic damages and non-economic damages caused to or purportedly by Plaintiff after April 18, 2023, according to proof in trial under ADA, Title II (*United States v. Georgia*, 546 U.S. 151, 126 S. Ct. 877 (2006) or Cal. Gov. Cod. § 815.6, including but not limited to $2,990 in sanctions issued against Plaintiff on May 5, 2023, by Defendant. As an alternative, damages in favor of Plaintiff arise from Cal. Gov. Cod. § 815.2 for the conduct of Defendant's staff.

PLAINTIFF DEMANDS TRIAL BY JURY.

117. For the foregoing reasons, Plaintiff requests the Court order judgment in his favor.

118. Plaintiff seeks compensatory damages according to proof in trial under ADA, Title II, or in accordance with Government Claims Act, Cal. Gov. Cod. § 815.6, declaratory relief that he is entitled ADA accommodations by Defendant irrespective of Defendant's local customs or administrative nuances, injunctive relief to restrain future violations of ADA and indigent Plaintiff's federally protected rights to due process of law and equal protection under the Fourteenth Amendment to the U.S. Constitution, actual damages within the meaning of Unruh Civil Rights Act, treble damages within the meaning of Unruh Civil Rights Act, and any other such relief as may be deemed just by the Court or available to Plaintiff under the law.

119. Plaintiff seeks immediate stay of State court proceedings by temporary restraining order under 28 U.S.C. § 2283 not later than May 24, 2023, in Orange County Superior Court Case No. 30-2020-01145998 as being necessary to aid in this court's jurisdiction under Title II of the ADA as being expressly authorized by Congress. If this Court does not hear or grant such temporary restraining order by May 24, 2023, Plaintiff seeks alternative injunctive relief permanently restraining and enjoining Defendant from permitting or engaging in due process violations under the Fourteenth Amendment against the disabled, indigent Plaintiff under F.R.Civ.P. 65.

120. CERTIFICATION AND CLOSING. Under F.R.Civ.P. 11, by signing below, I certify to the best of my knowledge, information, and belief, that this complaint (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support[]; and (4) the complaint otherwise complies with the requirements of Rule 11.

Respectfully Submitted,

May 15, 2023,

Justin S. Beck, Plaintiff
In Pro Per
Qualified Individual Under ADA, Title II

Compendium of Exhibits in Subsequent Document to Show Due Process Violations against Disabled Plaintiff Occurring on Defendant's Premises with Malice

Description of Evidence Supporting Plaintiff Complaint	Pages	Pages
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Factual Summary with Citations to Sub-Exhibits; Disabled Plaintiff Cannot Obtain Fair Hearings or Due Process	8	13
Catanzarite Tells Superior Court, Count of Orange that Its Own Conflicts of Interest Harm Its Attorneys Due Process Rights	18	18
Showing Catanzarite is Materially Adverse to MFS Before Taking it Over to Harass, Vex, and Defraud Disabled Plaintiff	75	85
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Deliberate Acts of Fraud Induced By Catanzarite to Unwind Millions of Dollars in Securities Transactions	92	93
Catanzarite Threatens Plaintiff He is "Working with Law Enforcement" to Extort Him After Taking Over MFS Illegally	95	96
Showing Catanzarite is Materially Adverse to Higgerson, Too – and Roger Root Was Not a Shareholder of MFS	98	101
Catanzarite is Warned of the Implications of Its Scheme and the Absurdity of False Claims Propounded v. Disabled Plaintiff	103	106
Catanzarite is "Tolling Claims" Against Parties It is Propounding Discovery From v. Disabled Plaintiff	123	124
709 Trial Rejects Fraudulent Claims v. Plaintiff; Catanzarite Just Refiles Them and Conceals Findings v. Disabled Plaintiff	126	182
CTI Shareholder Carlos Calixto Declares Catanzarite Tried to Bribe Him – He Declined; So Calixto's Signature was Forged	184	186
Caption/Sig. for 30-2018-01018922: Catanzarite Adverse to MFS, Cooper, Higgerson, O'Connor in False Derivative Action	196	198
Caption/Sig. Catanzarite Takes Over MFS to Avoid Motion for Security, Assumes "Counsel" for MFS Itself	200	201
Caption/Sig. for 30-2019-01064267 Catanzarite Sues on Behalf of CTI Shareholders it Separately Claims Doesn't Exist	203	204
Catanzarite Amends using Forged Signature of Calixto After Failing 709 Trial Adding Adverse Party Cooper as "Client"	206	208
Catanzarite Assumes "Counsel" Role for CTI Itself without Authority as it Sues CTI Itself using MFS	210	211
Catanzarite Amends MFS Action 30-2019-01046904 Omitting All Factual Conclusions of 709 Trial and Evidence	213	214
Catanzarite Amends Derivative Claims v. MFS in Pinkerton Action 30-2018-0108922 without Court Approval	216	217

EXHIBIT 1
Showing Abuse

Justin S. Beck
3501 Roselle St.,
Oceanside, CA 92056
760-449-2509
justintimesd@gmail.com
In Propria Persona

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

JUSTIN S. BECK,

Plaintiff,

vs.

KENNETH J. CATANZARITE, ESQ., an individual; CATANZARITE LAW CORPORATION, a California corporation; MOBILE FARMING SYSTEMS, INC., a California corporation; BRANDON WOODWARD, ESQ., an individual; TIM JAMES O'KEEFE, an individual; RICHARD FRANCIS O'CONNOR, JR., an individual; AMY JEANETTE COOPER, an individual; CLIFF HIGGERSON, an individual; TONY SCUDDER, an individual; JAMES DUFFY, an individual; MOHAMMED ZAKHIREH, an individual; TGAP HOLDINGS, LLC, a Nevada limited liability corporation; AROHA HOLDINGS, INC., a California corporation; THE STATE OF CALIFORNIA, a public entity; THE STATE BAR OF CALIFORNIA, a public entity; RUBEN DURAN, an individual; SUZANNE GRANDT, an individual; ELI DAVID MORGENSTERN, an individual; NICOLE MARIE CATANZARITE WOODWARD, an individual;

Defendants,

Case No.: 30-2020-01145998-CU-BT-CJC

Judge: Hon. Randall J. Sherman

OMNIBUS OPPOSITION TO MOTIONS TO COMPEL; MEMORANDUM OF POINTS AND AUTHORITIES; OBJECTION TO SANCTIONS; DECLARATION OF JUSTIN S. BECK

Filed concurrently with:

Memorandum of Points and Authorities

Exhibits

Request for Judicial Notice [ROA #998]

Department: CX105

Hearing Date: May 5, 2023

Hearing Time: 10:00AM

Action Filed: May 26, 2020

Trial Date: None Set

TABLE OF AUTHORITIES

State Cases

State Statutes, Rules & Codes

Federal Cases

Federal Statutes, Rules & Codes

I. INTRODUCTION

Kenneth J. Catanzarite and Catanzarite Law Corporation – as attorneys for Defendants Kenneth Catanzarite, Catanzarite Law Corporation, Brandon Woodward, Tim James O'Keefe, Amy Jeanette Cooper, Cliff Higgerson, Mohammed Zakhireh, Richard Francis O'Connor, Jr., James Duffy, Tony Scudder, Aroha Holdings, Inc., TGAP Holdings, LLC, Nicole Marie Catanzarite Woodward and Defendant/Cross-Complainant Mobile Farming Systems, Inc. (together the "Conflicted Parties") – have an illegal and prejudicial unity of interests in this case with parties they are suing, tolling claims against, or representing at various times in this case and related cases as set forth within the statement of facts and declaration of Beck ("Decl."). Conflicted Parties seek to compel Beck's production of: Request for Production of Documents (Set One); Request for Production of Documents (Set Two); Special Interrogatories; Form Interrogatories (together the "Conflicted Discovery" at ROA #798, ROA #799, ROA #800, ROA #801). Plaintiff Justin S. Beck ("Beck") hereby opposes the Conflicted Discovery.

It is against the law for Kenneth J. Catanzarite, Catanzarite Law Corporation, Nicole Marie Catanzarite Woodward, Tim James O'Keefe, or Eric V. Anderton (together "Catanzarite") to represent any party to this case, or obtain, or use the Conflicted Discovery. Rule 1.9 holds "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person* in the same or a substantially related matter in which that person's* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.*." Cultivation Technologies, Inc. ("CTI") has provided no such consent, nor can any among Conflicted Parties provide such consent.

Catanzarite will assert Beck lacks standing. "The problem with Catanzarite's lack-of-standing argument is that it ignores the fact CTI [or MFS] is not an individual, but rather an inanimate corporate entity having a board of directors with authority to hire corporate counsel." *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 22 (Cal. Ct. App. Jun. 28, 2021) Such authority cannot come from the exculpation of conflict waivers of parties Catanzarite are also suing and tolling claims against. Decl. Ex. 28, 29. Beck has a due process right to be free of material conflicts which are now manifesting as expected. Per U.S. Supreme Court, in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), when Congress authorizes private parties to challenge procedural wrongs, as here, Beck must show a concrete and imminent injury to establish standing, which Beck does. Decl. ¶¶ 1-44. ROA #773, p. 3, ¶ 4 (19:22).

II. STATEMENT OF FACTS

Beck met O'Connor, Cooper, and Probst after April 7, 2015. Decl., ¶ 1. Beck has never been an officer, director, employee, consultant, or manager of Mobile Farming Systems, Inc. ("MFS"). Id. ¶ 2. O'Connor and Cooper each admitted to Beck they paid $340,000 in illegal commissions to a Joseph Porche out of an investment of approximately $450,000 in Mobile Farming Systems, Inc. made by Jolly Roger, Inc. or Jolly Rogers Investments, Inc. Id. ¶ 3. O'Connor, Cooper, and Probst each executed the amended acts of organization of Cultivation Technologies, Inc. ("CTI") on June 15, 2015, and it was their express intention that MFS not receive shares of CTI. Id. ¶ 4, 5, Ex. 1. Every shareholder of MFS was offered shares of CTI, and each knew that MFS would be wound down or dissolve. Id. ¶ 6. Jolly Roger, Inc., or Jolly Rogers Investments, Inc., was offered shares of CTI but declined. Id. ¶ 7, Ex. 2. O'Connor, Cooper, and Probst communicated about winding down or bankrupting MFS. Id. ¶ 8.

O'Connor participated in 158 separate securities transactions involving the sale or transfer of CTI shares between June 15, 2015, to January 23, 2019. Id. ¶ 9, Ex. 3. O'Connor never disclosed or asserted MFS to own shares of CTI during that period. Id. ¶ 10. O'Connor, in his duly authorized capacity, authorized the first private placements for the company. ¶ 11. O'Connor was CEO of CTI when it made its first share issuances, which did not include shares to MFS as per his express intent in his duly authorized capacity. Id. ¶ 12, Ex. 4. According to the representations of O'Connor and Cooper who were majority of the CTI board acting in a duly authorized capacity, to the transfer agent and every shareholder buying stock in the company thereafter, MFS was not to be issued shares of CTI and any issuance that may have been authorized but unissued was expressly cancelled. Id. ¶¶ 5, 12.

Zakhireh and Duffy bought shares from CTI directly. Id. ¶ 13. Zakhireh and Duffy acquired CTI shares from O'Connor or the entity TGAP Holdings, LLC privately. Id. ¶ 14. No securities agreement involving the sale or transfer of shares of CTI reflected ownership of CTI shares by MFS until January 23, 2019, under coercion. Id. ¶ 10. O'Connor resigned from CTI and held a grudge against Beck for all times relevant after resigning. Id. ¶ 16. Zakhireh and O'Connor sued Beck in April 2017 based on their standing as CTI shareholders after CTI announced a $14 million funding agreement. Id. ¶ 15.

Because of O'Connor's harbored grudge, O'Connor and Zakhireh complained to the United States Securities & Exchange Commission ("SEC") of purportedly illegal conduct by CTI and Beck

involving CTI shares. Id. ¶ 16. The SEC reviewed approximately 25,000 pages of securities documents, many of which were signed by O'Connor. Ibid. The SEC concluded its investigation in January 2018 finding no cause for enforcement. Ibid., Ex. 5. The 25,000 pages of securities documents, including those signed by O'Connor, did not disclose any ownership by MFS of CTI shares as per the express intent of O'Connor and Cooper. Id. ¶¶ 4-14.

On September 14, 2018, Catanzarite Law Corporation for a "Denise Pinkerton" as "attorney-in-fact" for a non-shareholder of MFS (Roger Root, not Jolly Roger) filed a derivative action against MFS, Beck, O'Connor, Cooper, Higgerson, Scudder, and Aroha Holdings, Inc. without standing and a direct action against Cooper and O'Connor for securities fraud and elder abuse. Id. ¶¶ 17-18. On October 4, 2018, Kenneth Catanzarite emailed Beck demanding 10,000,000 shares of CTI from its founders while separately claiming those shares did not exist. Id. ¶ 19. On December 21, 2018, Ken Watnick, actual legal counsel for MFS, was served or notified of over 5,000 discovery requests from Kenneth Catanzarite and Catanzarite Law Corporation against MFS (more than 500 requests) and others including Beck, O'Connor, Cooper, Higgerson. Id. ¶ 20, Ex. 6. See also Ex. 10 for motion from Higgerson.

Cliff Higgerson demurred to the derivative MFS action, asserting Roger Root was not a shareholder of MFS and that Catanzarite Law Corporation had no standing to pursue derivative claims. Id. ¶ 21. After that, MFS counsel Ken Watnick filed a motion for security on January 7, 2019. In response to cover up a lack of standing, Catanzarite Law Corporation took over MFS through a series of non-judicial acts in January 2019 and started acting as its counsel without legal authority. Ibid., Ex. 6.

On January 23, 2019, Amy Jeanette Cooper's legal counsel resigned after learning the derivative action against MFS had been compromised or settled without court approval – they were not involved in any negotiation or discussion with Catanzarite Law Corporation. Id. ¶¶ 22, 23., Ex. 7. (It is unknown how Ms. Cooper was contacted directly or indirectly by Catanzarite; she was represented by counsel).

On January 23, 2019, Richard Francis O'Connor, Jr. signed a knowingly fraudulent shareholder consent of CTI asserting MFS was its sole shareholder which purported to unwind three years of securities transactions for millions of dollars, many for which he acted principal within. Id. ¶ 24. Ex. 8. The fraudulent shareholder consent purported to place Richard Francis O'Connor, Jr., Mohammed Zakhireh, and James Duffy as officers and directors of CTI on the basis that MFS was its "sole

shareholder" – but each O'Connor, Zakhireh, and Duffy were actually CTI shareholders. Id. ¶ 25. Kenneth Catanzarite sent Beck a threatening letter January 25, 2019, that he was "working with law enforcement" and to turn over all operations of CTI to him and his "clients" – he knew this letter was false. Id. ¶ 26, Ex. 9. After taking over MFS under the threat of "working with law enforcement," Catanzarite Law Corporation filed a direct lawsuit while it was suing MFS derivatively, and after serving MFS with 500 discovery requests and over 5,000 discovery requests on other defendants including O'Connor, Cooper, and Higgerson. Id. ¶ 27. In doing so, Catanzarite Law Corporation relied upon purported exculpation of conflict waivers from parties defendant from the false derivative action as it was tolling claims to "bring later." Id. ¶ 32, Ex. 13.

CTI received valuation guidance and entered into a merger transaction with Western Troy Capital Resources between January and February 2019 with an estimated value of $261 million. Id. ¶¶ 28, 29, Ex. 12. Beck informed Conflicted Parties on February 5, 2019, with specificity of the amount of direct damages that could be caused if they continued their campaign of non-judicial and judicial fraud. Id. ¶ 29, Ex. 11. They continued anyway. Ibid. Catanzarite Law Corporation filed a declaration of Richard Francis O'Connor on or around March 19, 2019, and obtained a temporary restraining order under false pretenses, which it used to obtain a list of all CTI shareholders. Id., ¶ 30. Using this information, Catanzarite Law Corporation filed a direct and derivative action for CTI shareholders on April 16, 2019, as it was separately preparing for a trial of fact under Section 709 in which the firm sought to cancel or unwind all shares of CTI on April 30, 2019. Id. ¶ 31.

During the 709 trial, the Court reviewed private placement memorandums signed by O'Connor, the transfer agent declaration signed by O'Connor and Cooper, transfer agent retention agreement signed by O'Connor and Cooper, initial share issuances from July 2015 approved by CTI's board. Id. ¶ 33. The Court concluded that laches supports Mobile Farming Systems, Inc. had been of the belief that it was not a shareholder of Cultivation Technologies, Inc. Whether or not this was captured in the Court order following that trial, Mr. Catanzarite knows that Mobile Farming Systems, Inc. is not and has never been a shareholder of Cultivation Technologies and that he is defrauding this Court and innocent people. Id. ¶ 34. Concluding the trial as verified by Beck as his own testimony here, the Court stated "every fiber

of [its] being" concluded the facts were "overwhelming" against the contention that Mobile Farming Systems, Inc. was a shareholder of Cultivation Technologies, Inc. Id. ¶ 33-35.

The Court stated that Cooper and O'Connor would be "violating their fiduciary duties up the ying yang" if Mobile Farming Systems, Inc. had been a shareholder of Cultivation Technologies, Inc. all along – having participated in so many securities transactions without disclosing it. Id. ¶ 35, Ex. 14.

Convinced Beck could finally complete the Western Troy transaction valued at $261 million for CTI shareholders after confirming the lack of merit to Catanzarite Law Corporation's false claims in the 709 trial, Beck travelled to Italy after May 1, 2019, for a vacation as he negotiated the final merger agreement. Id. ¶¶ 33-36. During that trip, he spoke with Carlos Calixto who had received calls, texts, and voicemails from Tony Scudder on behalf of Kenneth J. Catanzarite, who ultimately filed a shareholder proxy containing Carlos Calixto's forged signature. Ex. 15. Beck resigned from Cultivation Technologies, Inc. on May 14, 2019, when it became clear that Catanzarite Law Corporation's fraudulent scheme would destroy the merger with Western Troy Capital Resources. Decl. ¶ 36. Calixto informed Beck that Mr. Catanzarite tried to bribe him for his Cultivation Technologies, Inc. shareholder vote for $5,000. Calixto declares his signature on the proxy was forged anyway when he declined Mr. Catanzarite's bribe. Id. ¶ 36, Ex. 15. Tony Scudder later confirmed to Beck that Mr. Catanzarite bribes witnesses and extorts litigants as a practice to support manufactured claims and fraudulent litigation – and that he even intended to bring witnesses during the 709 trial that were bribed to provide false testimony in support of his manufactured claims (including a former CTI consultant, Nick Fleig). Id. ¶ 37. Mr. Scudder informed Beck that he was afraid of Mr. Catanzarite, calling him a "powerful criminal." Ibid. Beck alleges Mr. Catanzarite also bribes State Bar staff (subject of racketeering claims). Id. ¶ 44.

. Catanzarite Law Corporation commenced the scheme on September 14, 2018, for a non-shareholder of MFS, and has propounded thousands of discovery requests against parties without standing, factual, or legal probable cause to do so amidst material conflicts of interests. Id. ¶¶ 17-18. Conflicted Parties have previously received, and subsequently abused production of discovery to file more fraudulent litigation even after material facts are adjudicated and concealed from this Court. Id. ¶¶ 1-35, Ex. 14. See also Ex.18-26. Beck has never received, to his knowledge through any counsel or in pro per, any discovery production from Conflicted Parties. Id. ¶ 39.

Catanzarite Law Corporation has access to most discovery of which it requests because Cultivation Technologies, Inc. was financed by a public issuer, and the other company destroyed indirectly Contakt World Technologies Corp. was also a public issuer. Id. ¶¶ 40-41.

Beck is unemployed and suffers from severe hardship and now a disability as direct and proximate cause of the schemes continuing inside and outside this Court. Id. ¶ 42. Catanzarite Law Corporation filed motions to compel production for information it has, or was directly provided, during the fraudulent scheme or through filings in U.S. Southern District of California concerning his damages with specificity. Id. ¶ 40. Catanzarite also has a duty of candor to this Court:

"The Court: So we have got this written consent of directors of CTI signed on 06/15/15 [by O'Connor, Cooper, and Probst]...[MFS] failed to provide any consideration as required, and so it wasn't issued the stock. The board deems it to be in the best interest to sell to its founders listed there. Other people." Decl. ¶ 35, Ex. 14, pp. 10-11. "The Court: "[] I don't really care about, you know, what somebody declares under penalty of perjury. I want the underlying document." Id. p. 18 (21:23). "The Court: So this is dated 7/30/15, checklist reminder. And you are saying this lists the initial shareholders [of CTI]? Id. p. 19 (17:19)...So page 3 lists eight shareholders...none of which are the plaintiff [MFS]." Ibid. (23, 25). "Mr. Catanzarite: It is undisputed [O'Connor, Cooper, and Probst] are the same three people [who authorized all the transactions], but they did not act formally to acknowledge that MFS was never a shareholder." Id. p. 22 (3:5). "The Court: You say O'Connor also signed over 50 subscription agreements to sell CTI stock directly to MFS shareholders." Id. p. 21 (21:23). "The Court: O'Connor represented and warranted to the CTI transfer agent that MFS was not a shareholder of CTI." Id. p. 22 (17:19). "[O'Connor] was bound under 1E...to give a complete list of all shares issued...MFS was not listed." Id. p. 24 (9:11). "The Court: So basically the documents support the position that CTI has taken the position that MFS doesn't own stock. CTI has done that through its three directors as of 2015: Probst, Cooper, and O'Connor, and those are the three directors of Mobile Farming Systems. So even though Mobile Farming Systems didn't per se itself adopt this position that it didn't own stock, then the three people did so, which for lack of a better term constitutes an admission against interest. If it wasn't true, they would be violating their fiduciary duties up the ying yang to sign documents on behalf of CTI saying that MFS is no longer a stockholder if, in fact, MFS was a stockholder."

"So let's assume for argument sake that all three of these modes of consideration were conveyed from the plaintiff [MFS] to the defendant [CTI], then you have got this resolution repudiating the shareholder signed off on by the three individuals in their representative capacity for CTI." Ex. 1.

"The Court: Mr. Catanzarite, every fiber of my being says that the facts are overwhelming against your position in this case...We have repudiation of the agreement by people who were the same principals in the plaintiff [MFS]. We have actions – repeated actions taken subsequently consistent with the notion that plaintiff [MFS] was not a stockholder. The delay in bringing this action [January 28, 2019] is consistent with that conclusion, that plaintiff [MFS] has been of the view they are not a shareholder....So the Court concludes that the challenge director election is denied, and the Court concludes that plaintiff [MFS] is not a stockholder in CTI." Ex. 14. See Cal. Rul. Prof. Cond. 4.1.

III. ARGUMENT

The instant case arises from Catanzarite's serial fraud, malicious prosecution and unwaivable conflicts of interest which continue to contaminate this proceeding and related cases, deny Beck's due process rights, and impede Beck's right to access to government services free of such conflicts and attorney fraud under the Americans with Disabilities Act, Title II ("ADA"). ROA #2. Importantly, after Catanzarite Law Corporation's filing a false derivative action against MFS September 14, 2018, for a non-shareholder, dismissing parties Cooper, Higgerson, Scudder, and O'Connor who are somehow among Conflicted Parties producing evidence, the Court never approved any compromise or settlement, which is required under California law to prevent collusion. *Kennedy v. Kennedy*, 235 Cal. App. 4th 1474, 1485 (2015) ("Dismissal of a derivative claim requires court approval.") See F.R.Civ.P. 23.1(c).

Nor can Catanzarite take any act against CTI or obtain Conflicted Discovery harming CTI interests under California Rules of Professional Conduct 1.9, or otherwise under 1.7(d)(3).

A. Governing Law Precedes and Supersedes Motions to Compel from Conflicted Parties

1. California Rules of Professional Conduct 1.7 Bars Catanzarite's Appearance

> Rule 1.7 Conflict of Interest: Current Clients holds: "Representation [of Conflicted Parties seeking Conflicted Discovery] is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and: (1) the lawyer reasonably believes* that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; and (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal."

By May 1, 2019, "Catanzarite's concurrent and successive representation of adverse parties included the following: (1) Catanzarite was representing the Roots' elder abuse lawsuit **against CTI** and some of its Founders (the Probst Faction) as well as a derivative action **against MFS**; (2) Catanzarite had made a deal with a handful of CTI Founders to dismiss them from the Pinkerton Action [without court approval as it tolls claims against them to "bring later," Ex. 13]; (3) it became MFS's counsel of record; (4) Catanzarite filed a derivative shareholder lawsuit for MFS, claiming 100 percent control and ownership of CTI, despite having lawsuits filed by other people claiming to be MFS shareholders; and (5) after filing two *derivative* shareholder lawsuits, Catanzarite filed a third derivative action (the Mesa Action) claiming to represent a different set of outsider shareholders, i.e., a class of derivative shareholders willing to join in the MFS Action but also independently seeking damages from CTI, its current shareholders, and board of directors. *Beck v. Catanzarite Law Corp.*, No. G059766, 17 (Cal. Ct. App. Jul. 13, 2022) At the end of May 2019, Catanzarite filed a lawsuit on behalf of Cooper and Mebane against CTI. The Cooper Action requested the court direct CTI to (1) hold a shareholder's meeting to elect a board of directors; (2) deliver an annual report; (3) appoint an accountant to conduct an audit; and (4) order CTI to pay the costs for an investigation, audit, and costs of the suit. CTI's corporate counsel filed an opposition, asserting a shareholder meeting was scheduled for August 2019. (See *FinCanna, supra,* G058700 [description of Catanzarite's six lawsuits].) In July 2019, Catanzarite filed first amended complaints (FAC) in the Pinkerton Action and the MFS Action. It removed all derivative action claims made on behalf of MFS and CTI. Catanzarite claimed to be MFS's and CTI's corporate counsel. Catanzarite next filed two lawsuits as CTI's corporate counsel (the FinCanna Action and Scottsdale Action). The Scottsdale Action is noteworthy in that Catanzarite demanded that CTI's insurance company stop providing a defense or indemnify Beck and other Probst Faction defendants in the Mesa Action. (See *FinCanna, supra,* G058700 [description of Catanzarite's six lawsuits].) *Beck v. Catanzarite Law Corp.*, No. G059766, 17-18 (Cal. Ct. App. Jul. 13, 2022) "[T] the record shows that when Catanzarite learned MFS lacked standing to bring a derivative suit on CTI's behalf, it did not dismiss the lawsuits. Catanzarite filed FACs instead." *Beck v. Catanzarite Law Corp.*, No. G059766, 33 (Cal. Ct. App. Jul. 13, 2022) [Catanzarite is concealing all material facts from the May 1, 2019, trial of fact, no matter what the subsequent Court order detailed]. See Cal. Rul. Prof. Conduct 4.1.

Flatt v. Superior Court, 9 Cal.4th 275, 36 Cal. Rptr. 2d 537, 885 P.2d 950 (Cal. 1994) is instructive. (Holding that where the requisite substantial relationship exists, "access to confidential information by the attorney in the course of the first representation (relevant, by definition, to the second representation) is presumed and disqualification of the attorney's representation of the second client is **mandatory**; indeed, the disqualification extends vicariously to the **entire firm**." Beck shows evidence of this proving the conflicts cannot continue, here. Decl. ¶¶ 1-44, Ex. 14. Ex. 18-26 for captions and signature pages of lawsuits filed for and against adversaries in the same or substantially related matters.

Klemm v. Superior Court, 75 Cal.App.3d 893 (1977) is also instructive as to why the Conflicted Discovery is frivolous, and why Catanzarite cannot be provided the Conflicted Discovery. "Though an informed consent be obtained, no case we have been able to find sanctions dual representation of conflicting interests if that representation is in conjunction with a trial or hearing where there is an actual, present, existing conflict and the discharge of duty to one client conflicts with the duty to another. (See *Anderson* v. *Eaton* (1930) 211 Cal. 113 [293 P. 788]; *Hammett* v. *McIntyre* (1952) 114 Cal. App.2d 148, 153-154 [249 P.2d 885]; *McClure* v. *Donovan* (1947) 82 Cal. App.2d 664, 666 [186 P.2d 718].) (1) As a matter of law a purported consent to dual representation of litigants with adverse interests at a contested hearing would be neither intelligent nor informed. Such representation would be per se inconsistent with the adversary position of an attorney in litigation, and common sense dictates that it would be **unthinkable to permit [Catanzarite] to assume a position at a trial or hearing where he could not advocate the interests of one client without adversely injuring those of the other**."

Before filing the Conflicted Discovery, Catanzarite was subject to mandatory disqualification in this action and all related cases as a matter of mandatory law. Beck cannot be compelled to produce information on motions that were illegally filed without authority at threshold. Beck has standing to challenge this illegal conduct under *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

2. California Rules of Professional Conduct 1.9 Bars Conflicted Discovery Production

> Rule 1.9 Duties to Former Clients holds: "(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person* in the same or a substantially related matter in which that person's* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.* (b) A lawyer shall not knowingly* represent a person* in the same or a substantially related matter in which a firm* with which the lawyer formerly was associated had previously represented a client (1) whose interests are materially adverse to that person;*

> and (2) about whom the lawyer had acquired information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed written consent.* (c) A lawyer who has formerly represented a client in a matter or whose present or former firm* has formerly represented a client in a matter shall not thereafter: (1) use information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules or the State Bar Act would permit with respect to a current client, or when the information has become generally known;* or (2) reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client except as these rules or the State Bar Act permit with respect to a current client."

"These three consolidated appeals concern Cultivation Technologies, Inc.'s (CTI) motion to disqualify its own legal counsel, the Catanzarite Law Corporation (Catanzarite), in related cases. The trial court granted CTI's disqualification motion relating to two lawsuits, deciding Catanzarite could not represent the following parties (1) CTI; (2) three CTI subsidiaries (Coachella Manufacturing, LLC, Coachella Distributors, LLC, and DS Gen, LLC, hereafter collectively referred to as CTI Subsidiaries); and (3) a group of CTI shareholders bringing a derivative lawsuit. We conclude the trial court was correct and we affirm its disqualification orders." *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 1 (Cal. Ct. App. Jun. 28, 2021) See Rule 8.1115(b) for reliance upon unpublished opinions, and Ex. 22 and 25 for complaints filed on behalf of CTI before the attorney-client relationship was terminated and upheld by Court of Appeal. The Conflicted Discovery all relates to CTI in some manner.

Cal. Rul. Prof. Conduct 1.9 fn. Holds "[1] After termination of a lawyer-client relationship [as above], the lawyer owes two duties to a former client [CTI]. The lawyer may not (i) do anything that will injuriously affect the former client [CTI] in any matter in which the lawyer represented the former client [CTI], or (ii) at any time use against the former client knowledge or information acquired by virtue of the previous relationship [Conflicted Discovery]. (See *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811 [124 Cal.Rptr.3d 256]; *Wutchumna Water Co. v. Bailey* (1932) 216 Cal. 564 [15 P.2d 505].) For example, (i) a lawyer [Catanzarite] could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client and (ii) a lawyer who has prosecuted an accused person* could not represent the accused in a subsequent civil action against the government concerning the same matter. (See also Bus. & Prof. Code, § 6131; 18 U.S.C. § 207(a).)"

3. Court's Inherent Powers to Disqualify Catanzarite, Deny Motions to Compel

The Court has the power to deny the Conflicted Discovery motions to compel because it has inherent power to control its proceedings. If the Court were to grant the motions, it would be disregarding mandatory law for the benefit of Catanzarite, to the concrete and particularized injury of Beck.

Cal. Cod. Civ. Proc. § 128 holds: (a) Every court shall have the power to do all of the following: (1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it, or its officers. (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein. (5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto. (6) To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this code. (7) To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties. (8) To amend and control its process and orders so as to make them conform to law and justice...if an order of contempt is made affecting an attorney, his or her agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of any action or proceeding, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt except for the conduct as may be proscribed by subdivision (b) of **Section 6068** of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.

Beck filed a motion for protective order at ROA #1003. If the Court does not act to disqualify Catanzarite on its own from this case under the foregoing law, the Court has authority to deny the illegal Conflicted Discovery filings under Cal. Cod. Civ. Proc. § 128 and deny the associated, illegal requests for sanctions which were also filed without authority under Cal. Bus. & Prof. Cod. § 6104.

B. Catanzarite's Purported Harm to Attorneys' Due Process Rights

According to Conflicted Parties' Demurrer to Beck's Complaint at ROA #2 supplemented at ROA #742, as Conflicted Parties seek to compel Beck to produce Conflicted Discovery, they contend:

"The Second Cause of Action for Unfair Business Practices fails because Defendants Kenneth Catanzarite, Catanzarite Law Corporation, Brandon Woodward, Tim James O'Keefe's due process rights to present a defense would be violated by inability to disclose their client's confidential information." ROA #773, p. 3, ¶ 4 (19:22). The same frivolous assertion – that their own conflicts are somehow harming them but not Beck – is re-asserted for Slander of Title. Id. p. 4, ¶ 4 (12:14). It is also asserted for Intentional Infliction of Emotional Distress. Id. p. 5, ¶ 3 (1:4). See RJN, Ex. 3 ROA #998.

This proves Beck does not have equal access to government services under ADA and that Catanzarite is using its own conflicts for an illegal strategic advantage (concrete injury). As set forth within *Klemm*, *supra*, 75 Cal.App. 3d 901 (1977) 142 Cal.Rptr. 509: "(5) Finally, as a caveat, we hasten to sound a note of warning. Attorneys who undertake to represent parties with divergent interests owe the highest duty to each to make a full disclosure of all facts and circumstances which are necessary to enable the parties to make a fully informed decision regarding the subject matter of the litigation, including the areas of potential conflict and the possibility and desirability of seeking independent legal advice. (*Ishmael* v. *Millington* (1966) 241 Cal. App.2d 520 [50 Cal. Rptr. 592].) (6) Failing such disclosure, the attorney is civilly liable to the client who suffers loss caused by lack of disclosure. (*Lysick* v. *Walcom, supra,* 258 Cal. App.2d 136.) In addition, the lawyer lays himself open to charges, whether well founded or not, of unethical and unprofessional conduct. (*Arden* v. *State Bar, supra,* 52 Cal.2d 310.) Moreover, the validity of any agreement negotiated without independent representation of each of the parties is vulnerable to easy attack as having been procured by misrepresentation, fraud and overreaching. (*Gregory* v. *Gregory* (1949) 92 Cal. App.2d 343 [206 P.2d 1122].) It thus behooves counsel to cogitate carefully and proceed cautiously before placing himself/herself in such a position."

Here, Catanzarite is telling the Court that Beck's claims are barred because they chose to engage in illegal conduct and conflicts, and with disregard of Beck and their own clients – purport that the illegal conduct and conflicts in which they have chosen to engage are somehow harmful to them but not to Beck. "Due to the undisputed contentious nature of [Beck's] dispute, it would be absurd to suggest [Catanzarite] could simultaneously represent [any among Conflicted Parties in this proceeding]." *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700, 23 (Cal. Ct. App. Jun. 28, 2021) See Rule 8.1115(b) for reliance on unpublished opinions, and Ex. 21-26 for material conflicts.

IV. CONCLUSION

When one purports to have loyalty to everyone, one has loyalty to nobody but themselves. Catanzarite is subject to mandatory disqualification in this case – whether they continue this illegal representation or not, Beck can no longer be prejudiced as this is purely discriminatory and it threatens Beck's health and his case by the admission of Catanzarite on demurrer. *Flatt v. Superior Court*, 9 Cal.4th 275, 36 Cal. Rptr. 2d 537, 885 P.2d 950 (Cal. 1994). See also Cal. Rul. Prof. Cond. 1.7(d)(3) and Cal. Bus. & Prof. Cod. § 6077. In other words, because Catanzarite now contends its own conflicts bar its own defense and somehow Beck's claims, so Beck's imminent injury is concrete and particularized under *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

Catanzarite will invariably point to a prior failed joinder from Beck to disqualify the firm [from MFS only] in December 2019 when circumstances were different, but Catanzarite was not yet playing every side of the fence or defending this action, nor had it been disqualified by this Court and upheld by Court of Appeal. Nor was Catanzarite asserting on demurrer its own conflicts were somehow harming its own attorneys (without regard for due process of others or their oath). Ex. 18-26. ROA #773. See also RJN, Ex. 3 ROA #998. Further, whether Catanzarite was or is disqualified under mandatory law, Catanzarite cannot obtain information adverse to CTI, use it, or any of its other clients (and the conduct is tortious under *Klemm*). *Fincanna Capital Corp. v. Cultivation Tech.*, No. G058700 (Cal. Ct. App. Jun. 28, 2021) Whether it is disqualified is disjunctive of Beck's rights to access government services.

For the foregoing reasons, Beck respectfully requests the Court deny each of the motions to compel the Conflicted Discovery, and disqualify Catanzarite and each of its attorneys Kenneth J. Catanzarite, Brandon Woodward, Tim James O'Keefe, Eric V. Anderton, and Nicole Marie Catanzarite Woodward of Catanzarite Law Corporation, under its inherent powers. Beck cannot be compelled to produce information that would breach Catanzarite's duty of loyalty to CTI or Conflicted Parties, and the very filing of the motions to compel was without authority due to mandatory disqualification.

Respectfully Submitted,

April 21, 2023 ,

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Justin S. Beck, Moving Party

Plaintiff, *In Pro Per*

Opposing Party to Motions to Compel

DECLARATION OF JUSTIN S. BECK IN OPPOSITION OF DEFENDANTS' MOTIONS TO COMPEL DISCOVERY

I, Justin S. Beck, declare as follows under penalty of perjury under the laws of the United States and State of California. I am over the age of 18. I have personal knowledge, could, and would competently testify as to the truth and authenticity of each statement to which I declare. For those statements I make on information and belief, I believe them to be true. I have personal knowledge as to the authenticity of each exhibit filed with this declaration.

1. I met Richard Francis O'Connor, Jr., Amy Jeanette Cooper, and Richard Probst after April 7, 2015.
2. I have never been officer, director, employee, consultant, or manager for Mobile Farming Systems, Inc.
3. Richard Francis O'Connor, Jr. and Amy Jeanette Cooper each admitted to me that they visited Roger Root at his home in Florida in or around 2012 or 2013, and that they paid $340,000 in illegal commissions to a Joseph Porche out of a ~$450,000 investment in Mobile Farming Systems, Inc. through a company called Jolly Rogers Investments, Inc. or Jolly Roger, Inc. Those transactions have nothing to do with me, and never did.
4. It was the express intent of Richard Francis O'Connor, Jr., Amy Jeanette Cooper, and Richard Probst – as officers and directors of Mobile Farming Systems, Inc. – that Mobile Farming Systems, Inc. never receive shares of Cultivation Technologies, Inc. to avoid successor liability issues of the failed company, a balance sheet with almost $700,000 in loans owed by O'Connor to MFS, and the illegal commissions paid by Mobile Farming Systems, Inc. to Joseph Porche at the direction of O'Connor and Cooper.
5. Richard Francis O'Connor, Jr., Amy Jeanette Cooper, and Richard Probst, in their duly authorized capacities for Cultivation Technologies, Inc. and Mobile Farming Systems, Inc., each executed the "Unanimous Written Consent of Directors of Cultivation Technologies, Inc." on June 15, 2015, which constituted the "Amended Organizational Acts & Resolutions" of Cultivation Technologies, Inc.

6. Richard Francis O'Connor, Jr., Amy Jeanette Cooper, and Richard Probst, in their duly authorized capacities for Cultivation Technologies, Inc. and Mobile Farming Systems, Inc., offered every Mobile Farming Systems, Inc. shareholder shares in Cultivation Technologies, Inc. Approximately fifty-three of fifty-eight accepted the offer recognizing Mobile Farming Systems, Inc. failed to execute its business strategy and would be unwound or dissolved. Each agreed to buy shares of Cultivation Technologies, Inc. I later issued 65,000 shares to two shareholders that could not be reached (50,000 and 15,000 shares, respectively).
7. Roger Root, on behalf of the entity Jolly Rogers Investments, Inc. or Jolly Roger, Inc., was offered shares of Cultivation Technologies, Inc. in August 2015 but declined. Mr. Root told Tony Scudder, who performed investor relations services, that he supported what Cultivation Technologies, Inc. was doing.
8. From June 15, 2015, through September 14, 2018, no person ever claimed Mobile Farming Systems, Inc. to own shares or rights to any interests of Cultivation Technologies, Inc. Richard Francis O'Connor, Amy Jeanette Cooper, and Richard Probst communicated about bankrupting or unwinding the company.
9. Richard Francis O'Connor, Jr. participated in approximately 158 separate securities transactions from June 15, 2015, through January 23, 2019, involving the sale or transfer of Cultivation Technologies, Inc. shares on behalf of the issuer in an authorized capacity, or privately for personal benefit. I believe he personally made more than $2,000,000 from these transactions before January 23, 2019, when he would claim the shares didn't exist for Catanzarite's scheme.
10. No securities sale or transfer agreement from June 15, 2015, through January 23, 2019, reflected ownership by Mobile Farming Systems, Inc. of Cultivation Technologies, Inc. shares because Mobile Farming Systems, Inc. was never issued shares of Cultivation Technologies, Inc. as a matter of fact.
11. The first private placement memorandums (PPM) of Cultivation Technologies, Inc. were approved by Richard Francis O'Connor, Jr. and did not reflect ownership by Mobile Farming Systems, Inc. of Cultivation Technologies, Inc. shares. No subsequent PPM disclosed them because Mobile Farming Systems, Inc. was not a shareholder according to O'Connor, Cooper.

12. Richard Francis O'Connor, Jr., Amy Jeanette Cooper, and Richard Probst retained a transfer agent in July 2015 to issue the first shares of Cultivation Technologies, Inc. No shares were issued then to Mobile Farming Systems, Inc., and no shares were ever issued after that to Mobile Farming Systems, Inc. (except for the acts of January 23, 2019 outlined herein).
13. Mohammed Zakhireh and James Duffy each purchased shares of Cultivation Technologies, Inc. through the issuer via private placement memorandums authorized by the board of directors. Those PPMs did not reflect any Cultivation Technologies, Inc. shares owned by Mobile Farming Systems, Inc. – which were required to list any shareholder having more than 5% of stock.
14. Mohammed Zakhireh and James Duffy each purchased shares of Cultivation Technologies, Inc. through Richard Francis O'Connor, Jr. in private transactions from him or TGAP Holdings, LLC.
15. In April 2017 after Cultivation Technologies, Inc. executed a $14 million funding agreement, Mohammed Zakhireh and Richard Francis O'Connor, Jr. each sued me and Cultivation Technologies, Inc. with standing based on their ownership of Cultivation Technologies, Inc. shares. They settled those claims in June 2017 with James Duffy also agreeing to the settlement and signing it. They would later agree those shares did not exist for Catanzarite's scheme.
16. In July 2017, Mohammed Zakhireh and Richard Francis O'Connor, Jr. complained to the United States Securities Exchange Commission about Cultivation Technologies, Inc. and me due to a grudge harbored by Richard Francis O'Connor, Jr. following his resignation in 2016. The SEC investigated and reviewed approximately 25,000 pages of securities documents. None of those documents reflected any ownership by Mobile Farming Systems, Inc. of shares of Cultivation Technologies, Inc. That investigation concluded in January 2018 with the SEC finding no wrongdoing for enforcement by me or CTI. Those documents reviewed by the SEC included the purportedly "undisclosed" Preferred Series A shares. (Investigation #LA-4837).
17. On September 14, 2018, Catanzarite Law Corporation sued Mobile Farming Systems, Inc, Richard Francis O'Connor, Amy Jeanette Cooper, Cliff Higgerson, and others directly and/or derivatively. At no point did a Court authorize compromise or settlement of that derivative action.

18. Catanzarite Law Corporation's allegations filed on September 14, 2018, for a "Denise Pinkerton" as "attorney-in-fact" for "Roger Root" included securities fraud and abuse of the elderly charges against Amy Jeanette Cooper and Richard Francis O'Connor, Jr. This would later form the basis of Mr. Catanzarite extorting them to produce evidence while defrauding this Court and innocent people, including me, with false evidence produced by O'Connor and Cooper.
19. On October 4, 2018, Kenneth Catanzarite emailed my counsel demanding 10,000,000 shares of Cultivation Technologies, Inc. be issued Roger Root without regard for the derivative interests of Mobile Farming Systems, Inc. Roger Root was never a shareholder of Mobile Farming Systems, Inc., either. It is unclear if Mr. Root's "attorney-in-fact" Denise Pinkerton even knows him beyond the factual representations of Kenneth J. Catanzarite.
20. On December 21, 2018, Kenneth Catanzarite served approximately 5,000 total discovery requests upon Mobile Farming Systems, Inc., Amy Jeanette Cooper, Richard Francis O'Connor, Jr., me, and others.
21. Cliff Higgerson demurred to the derivative MFS action January 3, 2019, asserting Roger Root was not a shareholder of MFS and that Catanzarite Law Corporation had no standing to pursue derivative claims. After that, MFS counsel Ken Watnick filed a motion for security on January 7, 2019. In response to cover up a lack of standing, Catanzarite Law Corporation took over MFS in January 2019 and started acting as its counsel.
22. On January 23, 2019, Amy Jeanette Cooper's insurance-assigned counsel resigned and later declared under penalty of perjury they were not involved in any compromise of the derivative action against MFS.
23. O'Connor, Cooper, Higgerson, and TGAP Holdings, LLC were each dismissed from the false derivative action against MFS between January 22, 2019, and January 23, 2019, without court approval.
24. On January 23, 2019, Richard Francis O'Connor, Jr. signed a fraudulent shareholder consent of "sole shareholder" of Cultivation Technologies, Inc. being Mobile Farming Systems, Inc. purporting to unwind three years of securities transactions. O'Connor was principal in many of these transactions for millions of dollars.

25. The fraudulent January 23, 2019, shareholder consent appointed Richard Francis O'Connor, Jr., Mohammed Zakhireh, and James Duffy as officers and directors of Cultivation Technologies, Inc. on the knowingly false basis that Mobile Farming Systems, Inc. was a shareholder. Each were shareholders of Cultivation Technologies, Inc. through transactions with the issuer and with O'Connor himself as set forth above.
26. On January 25, 2019, Kenneth Catanzarite sent a letter that he was "working with law enforcement" and that I was to turn over all operations of Cultivation Technologies, Inc. on the basis that Mobile Farming Systems, Inc. was its sole shareholder. Catanzarite knew this letter was false. I believe Mr. Catanzarite bribes local law enforcement to enable these schemes.
27. On January 28, 2019, Catanzarite Law Corporation filed a direct lawsuit on behalf of Mobile Farming Systems, Inc. while he and his firm were concurrently suing Mobile Farming Systems, Inc. derivatively about a month after serving more than 500 discovery requests on Mobile Farming Systems, Inc.
28. On February 5, 2019, Catanzarite Law Corporation received details on the merger transaction valued at $261 million that was at risk of failing if the knowingly false claims filed, and non-judicial fraud supporting those claims, were continued. The scheme continued anyway with knowledge of damages.
29. On February 6, 2019, Cultivation Technologies, Inc. entered a letter of intent to complete the merger with Western Troy Capital Resources. Rex Loesby later confirmed the causation of the merger's failure.
30. On March 19, 2019, Catanzarite Law Corporation suborned and then filed a declaration from O'Connor which contained materially false statements of fact to obtain a temporary restraining order and steal more information on CTI shareholders. Conflicted Parties are now seeking the same information again from me.
31. On April 16, 2019, Catanzarite Law Corporation filed a competing, direct and derivative lawsuit on behalf of Cultivation Technologies, Inc. shareholders that the firm was concurrently and separately claiming did not exist which would be tried on April 30, 2019, before Honorable Randall J. Sherman in CX105 of Orange County Superior Court through a 709 hearing. The

factual findings of that trial were ignored and concealed. After the firm as disqualified, former associate of Catanzarite Law Corporation and proxy Jim Travis Tice is now "counsel."

32. On April 19, 2019, "Kenneth J. Catanzarite for Richard O'Connor" emailed MFS shareholders that "neither I, Richard O'Connor, Tony Scudder, nor anyone else sued in the Root Case or the Mobile Farming Case have settled any claims with Root or anyone else. All we did was agree to toll the statute of limitations to allow claims to be brought against us later. No conflict."
33. Between April 30, 2019, and May 1, 2019, I participated in the trial of fact wherein the Court reviewed evidence and concluded that Mobile Farming Systems, Inc. was not a shareholder of Cultivation Technologies, Inc. The hearing sought to cancel all shares of CTI in favor of MFS under false pretenses.
34. During the 709 trial the Court reviewed private placement memorandums signed by O'Connor. It reviewed the transfer agent declaration signed by O'Connor and Cooper. It reviewed the transfer agent retention agreement signed by O'Connor and Cooper. It reviewed the initial share issuances from July 2015. The Court concluded that laches supports Mobile Farming Systems, Inc. had been of the belief that it was not a shareholder of Cultivation Technologies, Inc. Whether or not this was captured in the Court order following that trial, Mr. Catanzarite knows that Mobile Farming Systems, Inc. is not and has never been a shareholder of Cultivation Technologies and that he is defrauding this Court and innocent people. Those claims are just re-filed and somehow allowed again in this Court to defraud litigants and Scottsdale Insurance Company further.
35. Concluding the trial, the Court stated "every fiber of [its] being" concluded the facts were "overwhelming" against the contention that Mobile Farming Systems, Inc. was a shareholder of Cultivation Technologies, Inc. The Court stated that Cooper and O'Connor would be "violating their fiduciary duties up the ying yang" if Mobile Farming Systems, Inc. had been a shareholder of Cultivation Technologies, Inc. all along – having participated in many securities transactions without disclosing it.
36. I resigned from Cultivation Technologies, Inc. on May 14, 2019, when it became clear that Catanzarite Law Corporation's fraudulent scheme would destroy the merger with Western Troy Capital Resources. I spoke with Carlos Calixto while I was on vacation in Italy around that date,

who informed me Mr. Catanzarite contacted him and tried to bribe him for his Cultivation Technologies, Inc. shareholder vote for $5,000.

37. I agreed to settle federal racketeering and conspiracy allegations against Anthony B. Scudder over the Summer 2022. During our discussions, Mr. Scudder informed me that Mr. Catanzarite had bribed several witnesses who were to attend the 709 trial on April 30, 2019 and May 1, 2019 (including a "Nick Fleig") – and that Mr. Catanzarite was a "powerful criminal."
38. Mr. Scudder confirmed by phone my suspicion that Mr. Catanzarite engages in bribery and extortion of witnesses and litigants as a practice to suit false narratives and fraudulent litigation such as the cases I have faced since September 14, 2018.
39. I do not believe any party has received discovery from Conflicted Parties in this case or related cases despite formal requests for the same, although others have provided discovery production in good faith that was used to file more knowingly false claims against innocent people without objective probable cause.
40. Catanzarite Law Corporation has in its possession the answers to virtually all material discovery of which it seeks to compel me to produce. My damages were noticed before CTI and the merger were destroyed with malice. I have provided extensive details to Mr. Catanzarite in Federal Court, too but it is ignored just as with the material facts that estop all of his false claims.
41. Catanzarite Law Corporation has in its possession information from two public issuers – FinCanna Capital detailing Cultivation Technologies, Inc., and Contakt World Technologies Corp. detailing that company which was indirectly destroyed by the conduct at issue in this case. The information is public and readily available to anyone with internet access.
42. As direct and proximate cause of non-judicial fraud leading to fraudulent litigation in this Court, I am now unemployed and suffer from a new onset seizure disorder commencing in December 2022. Catanzarite Law Corporation is aware of this and is harassing me with knowledge of my injuries.
43. I do not understand how or why Catanzarite Law Corporation is enabled by Courts to conduct serial fraud on innocent litigants, yet I am compelled to produce more material to perpetuate the schemes where I have never received discovery. Nor do I understand how Catanzarite Law

Corporation is representing its adversaries who are producing evidence as it tolls claims against them in a fraudulent derivative action that was compromised without Court approval.

44. I believe Kenneth Catanzarite is bribing Eli David Morgenstern of The State Bar of California to protect him, so there are no other avenues of recourse for me or the public but for the Court to exercise its inherent powers. The State Bar of California recently admitted to its own bribery and corruption schemes by press release on March 10, 2023, in two published, heavily redacted investigative reports.

45. I delivered a request to meet and confer on Thursday, April 13, 2023, but did not hear back. I proposed to informally resolve the list of Conflicted Discovery requests and reminded Conflicted Parties that they have most of the information they seek to compel.

46. I provided documentation for my damages in U.S. Southern District of California Court and filed a statement of damages in this Court. I do not intend to make any other showings due to the conflicts of interest that prevent me from fair hearings and provide unfair advantage to attorneys engaged in fraud and concealment of evidence.

47. The discovery requests filed against me – and motions to compel me to produce them – are harassing, oppressive, and duplicative and make the Court process seem illegitimate. They acutely threaten my health.

48. I do not have the time or resources to re-produce thousands of documents that are already in possession of Catanzarite Law Corporation.

49. I do not expect to obtain discovery from Conflicted Parties because Catanzarite Law Corporation confessed that their conflicts are not curable and that it will restrict production to me and harm their "due process rights." I intend to rely upon the proof I have in jury trial and expect Conflicted Parties to do the same after 5-years of discovery efforts and fraudulent litigation.

50. Attached as EXHIBIT 1 is a true and correct copy of the June 15, 2015, Amended Acts of Organization of Cultivation Technologies, Inc. signed by Richard Francis O'Connor, Jr. and Amy Jeanette Cooper in their duly authorized capacities. This is part of the bona fide corporate records of Cultivation Technologies, Inc. upon which I relied as CEO in raising capital after 2016.

51. Attached as EXHIBIT 2 is a true and correct copy of an email confirming Tony Scudder's conversation with Roger Root declining to purchase CTI shares. I received this email in the normal course of business as a consultant to Cultivation Technologies, Inc.
52. Attached as EXHIBIT 3 is a true and correct copy of a list of 158 transactions involving the sale or transfer of Cultivation Technologies, Inc. shares by Richard Francis O'Connor, Jr. I prepared this list with assistance from company counsel for the 709 trial on April 30, 2019 and May 1, 2019. I am readily familiar with the securities transactions of Cultivation Technologies, Inc.
53. Attached as EXHIBIT 4 is a true and correct copy of the transfer agent agreement for Cultivation Technologies, Inc. signed by Richard Francis O'Connor and Amy Jeanette Cooper, and a declaration from the transfer agent. The Court reviewed this agreement and the share issuance list in the 709 trial leading to its findings May 1, 2019 as set forth below. I am readily familiar with the issuances of stock by Cultivation Technologies, Inc. reflected therein.
54. Attached as EXHIBIT 5 is a true and correct copy of a letter I received from the SEC concluding its investigation of CTI's securities transactions. I received this in the normal course of business.
55. Attached as EXHIBIT 6 is a true and correct copy of a January 7, 2019, motion for security from Mobile Farming Systems, Inc. actual counsel. I received this as a defendant.
56. Attached as EXHIBIT 7 is a true and correct copy of a declaration from Amy Jeanette Cooper's former counsel Stephen Erigero, Esq. who resigned from that role January 23, 2019. I received this in the normal course of defending claims.
57. Attached as EXHIBIT 8 is a true and correct copy of a shareholder consent of Cultivation Technologies, Inc. dated January 23, 2019, signed by Richard Francis O'Connor, Jr. I received this from Catanzarite Law Corporation.
58. Attached as EXHIBIT 9 is a true and correct copy of a letter I received from Catanzarite Law Corporation dated January 25, 2019, signed by Kenneth Catanzarite.
59. Attached as EXHIBIT 10 is a true and correct copy of a motion filed by Cliff Higgerson dated January 3, 2019, in Orange County Superior Court Case No. 30-2018-0108922.
60. Attached as EXHIBIT 11 is a true and correct copy of a letter delivered to Catanzarite Law Corporation dated February 5, 2019. I am readily familiar with its contents.

61. Attached as EXHIBIT 12 is a true and correct copy of a declaration from Rex Loesby dated September 27, 2021. I am readily familiar with its contents and the matters to which he declares.
62. Attached as EXHIBIT 13 is a true and correct copy of an email I received from Richard Probst from Han Le of Catanzarite Law Corporation. I spoke with Richard Probst after this was received, who confirmed its authenticity. I am readily familiar with its contents.
63. Attached as EXHIBIT 14 is a true and correct copy of a trial transcript dated May 1, 2019, which I hereby certify as being true and correct. I further swear the factual findings of the Court to be true and correct, and that Catanzarite Law Corporation is concealing material facts from this Court. I have intimate knowledge of the facts and evidence the Court reviewed.
64. Attached as EXHIBIT 15 is a true and correct copy of a declaration from Carlos Calixto dated May 17, 2019, filed in Orange County Superior Court Case No. 30-2019-01046904. I am readily familiar with its contents.
65. Attached as EXHIBIT 16 is a true and correct copy of my letter to Mr. Catanzarite for all Conflicted Parties is attached hereto. I delivered this to Mr. Catanzarite on April 13, 2023.
66. Attached as EXHIBIT 18 is a true and correct copy of the caption and signature page in Case No. 30-2018-01018922 filed against Mobile Farming Systems, Inc. and Cultivation Technologies, Inc. September 14, 2018, in Orange County Superior Court.
67. Attached as EXHIBIT 19 is a true and correct copy of the caption and signature page in Case No. 30-2019-01046904 filed on behalf of Mobile Farming Systems, Inc. against Cultivation Technologies, Inc. January 28, 2019, in Orange County Superior Court.
68. Attached as EXHIBIT 20 is a true and correct copy of the caption and signature page in Case No. 30-2019-01064267 filed April 16, 2019, in Orange County Superior Court.
69. Attached as EXHIBIT 21 is a true and correct copy of the caption and signature page in the first amended complaint for Case No. 30-2019-01064267 filed May 15, 2019, in Orange County Superior Court.
70. Attached as EXHIBIT 22 is a true and correct copy of the caption and signature page in a cross complaint filed on behalf of Cultivation Technologies, Inc. by Catanzarite Law Corporation in Case No. 30-2019-01072088-CU-BC-CJC on July 2, 2019, in Orange County Superior Court.

71. Attached as EXHIBIT 23 is a true and correct copy of the caption and signature page in Case No. 30-2019-01046904 signed July 22, 2019, and filed in Orange County Superior Court.

72. Attached as EXHIBIT 24 is a true and correct copy of the caption and signature page in the first amended complaint for Case No. 30-2018-01018922 signed July 22, 2019, and filed in Orange County Superior Court. Settlement of this derivative action was never approved by the Court.

73. Attached as EXHIBIT 25 is a true and correct copy of the complaint in Case No. 30-2019-01096233 filed on behalf of Cultivation Technologies, Inc. by Catanzarite Law Corporation filed September 11, 2019, in Orange County Superior Court before it was removed by defendant Scottsdale Insurance Company October 19, 2019, in U.S. Central District, Southern Division Case No. 8:19-cv-01993.

74. Attached as EXHIBIT 26 is a true and correct copy of the caption and signature page in the cross complaint for Case No. 30-2020-01145998 filed on behalf of Mobile Farming Systems, Inc. by Catanzarite Law Corporation on August 10, 2020, in Orange County Superior Court.

75. Attached as EXHIBIT 28 is a true and correct copy of Mobile Farming Systems, Inc. Statement of Information dated 12/22/2022 showing a street address of Catanzarite Law Corporation 2331 West Lincoln Avenue, Anaheim, CA 92801 with officers Richard F. O'Connor II and James Duffy and directors James A. Duffy, Amy J. Cooper, and Richard F. O'Connor II with the agent name Kenneth J. Catanzarite. I obtained this from California Secretary of State's website on April 17, 2022.

76. Attached as EXHIBIT 29 is a true and correct copy of Mobile Farming Systems, Inc. Statement of Information dated 11/17/2020 showing a street address of Catanzarite Law Corporation 2331 West Lincoln Avenue, Anaheim, CA 92801 with officers Richard F. O'Connor II and James Duffy and directors James A. Duffy, Amy J. Cooper, and Richard F. O'Connor II with the agent name Kenneth J. Catanzarite. I obtained this from California Secretary of State's website on April 17, 2022.

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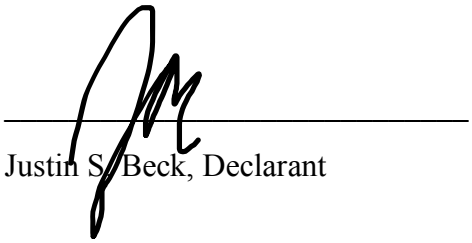
[SIGNATURE PAGE FOLLOWS]

I DECLARE THE FOREGOING TO BE TRUE UNDER PENALTY OF PERJURY, SIGNED TODAY, APRIL 21, 2023, FROM OCEANSIDE CALIFORNIA



Justin S. Beck, Declarant

PROOF OF SERVICE

I, Brian Bargabus, hereby declare: that I am over 18 years of age and I am not a party to this action, and that my address is 3501 Roselle St., Oceanside, CA 92056 and my email address is bbargabus@yahoo.com

On April 21, 2023, I scheduled for service one copy of the following documents using a computer connected to the internet.

OMNIBUS OPPOSITION TO MOTIONS TO COMPEL; MEMORANDUM OF POINTS AND AUTHORITIES; OBJECTION TO SANCTIONS; DECLARATION OF JUSTIN S. BECK

On the parties listed below:

Catanzarite Law Corporation	kcatanzarite@catanzarite.com

Attorneys for Kenneth Catanzarite, Catanzarite Law Corporation, Brandon Woodward, Tim James O'Keefe, Amy Jeanette Cooper, Cliff Higgerson, Mohammed Zakhireh, Richard Francis O'Connor, Jr. James Duffy, TGAP Holdings, LLC, Nicole Marie Catanzarite Woodward, and Mobile Farming Systems, Inc.

State of California	AGElectronicService@doj.ca.gov
The State Bar of California	serviceofprocess@calbar.ca.gov
Eli David Morgenstern	serviceofprocess@calbar.ca.gov
Suzanne Grandt	serviceofprocess@calbar.ca.gov
Ruben Duran	serviceofprocess@calbar.ca.gov

Attorneys for Cross-Defendants Justin Beck, I'm Rad, LLC, EM2 Strategies, LLC, Robert A. Bernheimer and Robert A. Bernheimer, Inc.:
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Rosely George, Esq.
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Wendy M. Thomas
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Culver City, CA 90230
wendyt@ttelawgroup.com
jessicak@ttelawgroup.com

Attorneys for Cross-Defendants Horwitz + Armstrong, a Professional Law Corporation, Lawrence W. Horwitz, and John R. Armstrong II:
John R. Armstrong, Esq.
Ryan Thomason, Esq.
Lawrence Horwitz, Esq.
Lockett + Horwitz, APLC
2 South Pointe, Ste. 275
Lake Forest, CA 92630
Fax: (949) 540-6578
jarmstrong@horwitzarmstrong.com
rthomason@lhlawpc.com
lhorwitz@lhlawpc.com

By electronic mail by personally transmitting a true copy thereof via an electronic email service connected to the internet, addressed to the email addresses listed above. [X]

I swear the foregoing to be true under penalty of perjury under the laws of the State of California. I'm signing this April 21, 2023

Brian Bargabus

EXHIBIT 1

UNANIMOUS WRITTEN CONSENT OF DIRECTORS OF CULTIVATION TECHNOLOGIES, INC., a California corporation

AMENDED ORGANIZATIONAL ACTS & RESOLUTIONS

Pursuant to the authority granted to the directors to take action by unanimous written consent without a meeting pursuant to Section 307(b) of the California General Corporation Law, the Directors of **CULTIVATION TECHNOLOGIES, INC.**, a California corporation (the "Corporation") do hereby consent to, adopt, ratify, confirm and approve, as of the date indicated below, the following recitals and resolutions, as evidenced by their signatures hereunder:

AMENDMENT OF ORIGINAL ORGANIZATIONAL ACTS & RESOLUTIONS

WHEREAS, pursuant to a unanimous written consent (the "Organizational Consent") of the Board of Directors (the "Board") of the Corporation dated March 30, 2015, the Corporation enacted certain initial organizational acts on behalf of the Corporation;

WHEREAS, certain aspects of the Organizational Consent were made in error and need to be amended;

WHEREAS, the Board believes it is in the best interests of the Corporation to amend the Organizational Consent to correct the errors made therein; and

NOW THEREFORE, IT IS HEREBY RESOLVED that the Organizational Consent previously approved by the Board is hereby amended as set forth in this "Amended Organizational Consent." Resolutions previously approved in the Organizational Consent and not otherwise amended herein will remain in full force and effect.

ISSUANCE OF SECURITIES

WHEREAS, the Organizational Consent purported to authorize the issuance of 28,000,000 shares of common stock of the Corporation to Mobile Farming Systems, Inc. in exchange for the contribution of certain assets and cash consideration;

WHEREAS, Mobile Farming Systems, Inc. failed to provide any consideration as required pursuant to the Organizational Consent and, as a result, was not issued the common stock set forth in the Organizational Consent;

WHEREAS, the Board deems it in the best interests of the Corporation to issue and sell shares of its common stock to its founding shareholders (the "Founders") pursuant to that certain Common Stock Purchase Agreement (a form of which is attached hereto as Exhibit A) in the amounts and for the consideration set forth below:

NAME OF FOUNDER	NUMBER AND CLASS OF SHARES	CONSIDERATION
Richard O'Connor	2,500,000 shares of Common Stock	$2,500.00
Richard Probst	5,000,000 shares of Common Stock	$5,000.00
Amy Cooper	2,500,000 shares of Common Stock	$2,500.00
TGAP Holdings, LLC	5,500,000 shares of Common Stock	$5,500.00
EM2 Strategies LLC	2,000,000 shares of Common Stock	$2,000.00
I'm Rad LLC	3,000,000 shares of Common Stock	$3,000.00
Cliff Higgerson	1,000,000 shares of Common Stock	$1,000.00
Aroha Holdings Inc.	1,000,000 shares of Common Stock	$1,000.00
Scott Unfug	500,000 shares of Common Stock	$500.00

WHEREAS, the Board deems it to be in the best interest of the Corporation that 23,000,000 shares of its common stock be issued and sold as set forth above; and

NOW THEREFORE, IT IS HEREBY RESOLVED, that the officers of the Corporation is hereby authorized and instructed to issue and sell the shares of stock of the Corporation for the consideration above stated and in compliance with all the terms and conditions of Section 25102(f) of the California Corporations Code; and

RESOLVED FURTHER, that each of the officers of the Corporation is authorized, directed, and empowered on behalf of the Corporation and in its name to execute any other applications, certificates, agreements or any other instruments or documents, or amendments or supplements thereto, or to do and to cause to be done any and all other acts and things such officers may in their discretion deem necessary or appropriate to carry out the purposes of the foregoing resolutions; and

RESOLVED FURTHER, the prior authorization of issuance of common stock to Mobile Farming Systems, Inc. is hereby null and void in its entirety.

INCENTIVE STOCK PLAN

WHEREAS, the Organizational Consent purported to authorize the adoption of an Incentive Stock Plan of up to 5,000,000 shares of common stock which shares were thereby reserved for future issuance to employees, officers, directors and/or consultants of the Corporation;

WHEREAS, no such Incentive Stock Plan has been formally adopted and the Board deems it in the best interest of the Corporation to cancel the Incentive Stock Plan; and

NOW THEREFORE, IT IS HEREBY RESOLVED that the Incentive Stock Plan is hereby canceled in its entirety.

COMPENSATION OF DIRECTORS

WHEREAS, the Organizational Consent purported to grant 30,000 options to purchase common stock of the Corporation to the directors of the Corporation for services provided as directors;

WHEREAS, the Incentive Stock Plan has been canceled by the above resolution of the Board and no such option grants were formally made by the Corporation and the Board deems it in the best interest of the Corporation to cancel any option grants purportedly made thereby;

RESOLVED, that the Corporation hereby cancels any options granted under the Incentive Stock Plan, including any such options granted to the directors of the Corporation.

OMNIBUS RESOLUTIONS

RESOLVED, that any of the officers of the Corporation be, and each of them hereby is, authorized (i) to prepare, execute, deliver and perform, as the case may be, such agreements, amendments, applications, approvals, certificates, communications, consents, demands, directions, documents, further assurances, instruments, notices, orders, requests, resolutions, supplements or undertaking, (ii) to pay or cause to be paid on behalf of the Corporation any related costs and expenses and (iii) to take such other actions, in the name and on behalf of the Corporation, as each such officer, in such officer's discretion, shall deem necessary and advisable to complete and effect the foregoing resolutions or to carry out the intent and purposes of the foregoing resolutions;

RESOLVED FURTHER, that all actions heretofore taken by the officers and directors of the Corporation with respect to the foregoing resolutions and all other matters contemplated thereby are hereby approved, adopted, ratified and confirmed.

COUNTERPARTS

RESOLVED, that this Unanimous Written Consent may be signed in as many counterparts as may be necessary, each of which so signed shall be deemed to be an original (and each signed copy sent by electronic facsimile transmission shall be deemed to be an original) and such counterparts together shall constitute one and the same instrument and notwithstanding the date of the execution shall be deemed to bear the date as set forth below.

IN WITNESS WHEREOF, the undersigned have set forth their hand as of this 15th day of June, 2015.

DIRECTORS:

RICHARD O'CONNOR

RICHARD PROBST

AMY COOPER

EXHIBIT "A"

CULTIVATION TECHNOLOGIES, INC.

COMMON STOCK PURCHASE AGREEMENT

This Common Stock Purchase Agreement (this "Agreement") is made as of June 15, 2015 by and between Cultivation Technologies, Inc., a California corporation (the "Company"), and _____ ("Purchaser").

1. **Sale of Stock.** Subject to the terms and conditions of this Agreement, simultaneously with the execution and delivery of this Agreement by the parties or on such other date as the Company and Purchaser shall agree (the "Purchase Date"), the Company will issue and sell to Purchaser, and Purchaser agrees to purchase from the Company, _____ shares of the Company's Common Stock (the "Shares") at a purchase price of $0.001 per share for a total purchase price of $_____ (the "Aggregate Purchase Price"). On the Purchase Date, Purchaser will deliver the Aggregate Purchase Price to the Company and the Company will enter the Shares in Purchaser's name as of such date in the books and records of the Company or, if applicable, a duly authorized transfer agent of the Company. The Company will deliver to Purchaser a stock certificate representing the Shares as soon as practicable following such date. As used elsewhere herein, the term "Shares" refers to all of the Shares purchased hereunder and all securities received in connection with the Shares pursuant to stock dividends or splits, all securities received in replacement of the Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other property to which Purchaser is entitled by reason of Purchaser's ownership of the Shares.

2. **Consideration for Shares.** As consideration for the Shares, Purchaser will deliver the Aggregate Purchase Price by a check or wire transfer made out to the Company as payment in full of the Aggregate Purchase Price.

3. **Investment and Taxation Representations.** In connection with the purchase of the Shares, Purchaser represents to the Company the following:

(a) Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Purchaser is purchasing the Shares for investment for Purchaser's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act or under any applicable provision of state law. Purchaser does not have any present intention to transfer the Shares to any other person or entity.

(b) Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

(c) Purchaser further acknowledges and understands that the securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the Company is under no obligation to register the securities.

(d) Purchaser is familiar with the provisions of Rule 144, promulgated under

the Securities Act, which, in substance, permits limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer of the securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Purchaser understands that the Company provides no assurances as to whether he or she will be able to resell any or all of the Shares pursuant to Rule 144, which rule requires, among other things, that the Company be subject to the reporting requirements of the Exchange Act, that resales of securities take place only after the holder of the Shares has held the Shares for certain specified time periods, and under certain circumstances, that resales of securities be limited in volume and take place only pursuant to brokered transactions. Notwithstanding this Section 3(d), Purchaser acknowledges and agrees to the restrictions set forth in Section 3(e) below.

(e) Purchaser further understands that in the event all of the applicable requirements of Rule 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rule 144 is not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 will have a burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(f) Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

4. **Restricted Legend; Selling Restrictions.**

(a) **Restricted Legend.** Any stock certificate or, in the case of uncertificated securities, notice of issuance, for the Shares, shall bear the following legend (as well as any legends required by applicable state and federal corporate and securities laws):

"THE SECURITIES REFERENCED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933."

(b) **Selling Restrictions.** Commencing upon the date the Company begins publicly trading, and ending twelve (12) months after (the "Trading Restriction End Date"), the undersigned Purchaser will be restricted to selling, pledging or otherwise disposing of no more than five percent (5%) of the Shares per calendar month, either directly or indirectly until the Trading Restriction End Date. Following the Trading Restriction End Date, no further contractual trading or lock-up restrictions will remain, subject to state and federal securities laws.

5. **No Employment Rights.** Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a parent, subsidiary or affiliate of the Company, to terminate Purchaser's employment or consulting relationship (if any), for any reason, with or without cause.

6. **Certain Defined Terms.**

(a) **"Affiliate"** means an entity other than a Subsidiary which, together with the Company, is under common control of a third person or entity.

(b) **"Consultant"** means any person, including an advisor but not an Employee, who is engaged by the Company, or any Parent, Subsidiary or Affiliate, to render services (other than capital-raising services) and is compensated for such services, and any Director whether compensated for such services or not.

(c) **"Director"** means a member of the Board of Directors of the Company.

(d) **"Employee"** means any person employed by the Company, or any Parent, Subsidiary or Affiliate, with the status of employment determined pursuant to such factors as are deemed appropriate by the Board of Directors of the Company in its sole discretion, subject to any requirements of applicable laws, including the Code. The payment by the Company of a director's fee shall not be sufficient to constitute "employment" of such director by the Company or any Parent, Subsidiary or Affiliate.

(e) **"Parent"** means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(f) **"Subsidiary"** means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

7. **Miscellaneous.**

(a) **Governing Law.** The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the state of California, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from this Agreement, the parties hereby submit and consent to the exclusive jurisdiction of the state of California and agree that any such litigation shall be conducted only in the courts of California or the federal courts of the United States located in California and no other courts.

(b) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written, between them relating to the subject matter hereof.

(c) **Amendments and Waivers.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. No delay or failure to require performance of

any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance.

(d) **Successors and Assigns.** Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. The Company may assign any of its rights and obligations under this Agreement. No other party to this Agreement may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of the Company.

(e) **Notices.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company's books and records.

(f) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(g) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement.

(i) **Electronic Delivery.** The Company may, in its sole discretion, decide to deliver any documents related to this Agreement or any notices required by applicable law or the Company's Certificate of Incorporation or Bylaws by email or any other electronic means. Purchaser hereby consents to receive such documents and notices by such electronic delivery and agrees to participate through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

(j) **California Corporate Securities Law.** THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF THE SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO THE QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON THE QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

The parties have executed this Common Stock Purchase Agreement as of the date first set forth above.

THE COMPANY:

CULTIVATION TECHNOLOGIES, INC.

By:_____
(Signature)

Name:_____
Title:_____

Address:

_____
_____

PURCHASER:

_____
(PRINT NAME)

By:_____
(Signature)

Name:_____
Title:_____

Address:

_____
_____
Email:

_____

EXHIBIT 2

CULTIVATION TECHNOLOGIES, INC WE HELP YOU GROW

Richard Probst <rick@cultivationtech.com>

Roger Root - Jolly Roger Bus Opportunity

Tony Scudder <tony@cultivationtech.com> Fri, Aug 21, 2015 at 10:58 AM
To: Richard O'Connor <richard@cultivationtech.com>, Justin Beck <justin@cultivationtech.com>, Richard Probst <rick@cultivationtech.com>, Amy Cooper <amy@cultivationtech.com>
Cc: Christopher Tinen <ctinen@horwitzarmstrong.com>, Rana Foroughi <rana@cultivationtech.com>

Roger is excited about what we are doing. Is trying to figure out a way to come up with funds for his shares.

He has a son who has a dispensary in Aberdeen Washington.
His sons Name is Brent Rothwell
360.591.9732 Cell
360.627.9421 Dispensary

Roger said we could use his name to see if we could connect with his son for a Washington presence.

We need to have someone from our team call to explore.

Best Regards,

Tony Scudder
Executive Vice President of Client Relations
Cultivations Technologies Inc.
3 Park Plaza
Irvine, CA 92614
Cell 714.728.3123
Office (888) 851-9802
tony@cultivationtech.com
https://www.linkedin.com/in/tonyscudder1

EXHIBIT 3

(158) Separate Securities Transactions Effected by Richard O'Connor

Stock Documents Executed and or Authorized by Richard O'Connor as Officer/Director of CTI

- **June 2015** (8) founder share subscription agreements for 22M shares
- **June 2015/July 2015** Board resolutions authorizing 22M share issuance
- **July 2015** Retention of transfer agent, Quicksilver Stock Transfer
- **July 2015/August 2015** (53) subscription agreements for 4,587,500 shares
- **2015/2016** (28) subscription agreements for 932,119 shares
- **2015/2016** Associated Reg. D and state blue sky exemptions

Stock Documents Executed by Richard O'Connor Individually or as TGAP Holdings LLC Member

- **June 2015 to Present** (69) private sales or transfers of CTI shares
- Multiple settlement and release agreements

SUBSCRIPTION AGREEMENTS AUTHORIZED BY BOD INCLUDING O'CONNOR

PRIVATE SALE OR TRANSFER OF SHARES BY O'CONNOR OR ENTITY HE CONTROLS

Approximately 69 private transactions conducted by O'Connor or TGAP since 2015.

Richard O'Connor (Founder Shares @ Par)	2,200,000
- Unknown RFO Breakout	300,000
Richard Probst (Founder Shares @ Par)	5,000,000
Amy Cooper (Founder Shares @ Par)	2,500,000
TGAP Holdings LLC (Founder Shares @ Par)	520,900
- Amy Cooper (breakout)	2,400,000
- Charles G. Oxford Family Trust (breakout)	100,000
- Marc Ranpour (breakout)	10,000
- Norva Jalayne Johnson (Breakout)	50,000
- Jared & Gloria Tietjen (Breakout)	5,000
- Duffy Revocable Living Trust (Breakout)	100,000
- Michael R. Duffy (Breakout)	25,000
- Katherin M. Duffy (Breakout)	25,000
- Rylan Reynolds (Breakout)	10,000
- Lisa Elbert Pulver (Breakout)	20,000
- Chris Cummings (Breakout)	140,000
- Jeff Ray Schunk IRA (Breakout)	220,000
- Rodney M. Mebane (Breakout)	250,000
- Grisha R. Ovanesian (Breakout)	4,000
- Gevark Gharbi (Breakout)	20,000
- Meghedi Hagnazarian (Breakout)	2,000
- GRISHA R. OVANESIAN (Breakout)	20,000
- GRISHA R. OVANESIAN (Breakout)	6,000
- ALEN MIRZIAN (Breakout)	10,000
- ALEN MIRZIAN (Breakout)	10,000
- RICHARD MESA (Breakout)	15,000
- CHASE HOIBERG (Breakout)	20,000
- MOHAMMED ZAKHIREH (Breakout)	35,000
- ENTRUST GROUP INC FBO MAGNUS (Breakout)	160,000
- CAROLE A RENFROW (Breakout)	100,000
- CHRIS CUMMINGS (Breakout)	100,000
- NELL CLARK (Breakout)	50,000
- LUIS ELIAS (Breakout)	50,000
- CARLOS CALIXTO (Breakout)	50,000
- ODAY AL HALASA (Breakout)	10,000
- ODAY AL HALASA (Breakout)	4,000
- KIMBERLY KNAPP LEITER (Breakout)	2,000
- NELL CLARK (Breakout)	50,000
- HERB ALCORN (Breakout)	10,000
- WALLACE HUFF (Breakout)	100,000

- ANOUSHEH ASHOURI MD (Breakout)	20,000
- ELG FAMILY TRUST (Breakout)	70,000
- FARIDA ZOHOURI (Breakout)	106,000
- DIANA JULIA GEVEN (Breakout)	10,000
- GRISHA R. OVANESIAN (Breakout)	5,000
- ALAN MIRZIAN (Breakout)	10,000
- KIMBERLY KNAPP LEITTER (Breakout)	2,000
- JOHNNY YBARRA (Breakout)	100,000
- THE JF GILBERT LIVING TRUST (Breakout)	25,000
- GARY GUSEWITCH (Breakout)	20,000
- ANOUSHEH ASHOURI MD (Breakout)	20,000
- KAREN ROCHE (Breakout)	20,000
- Edward Lindsay (Breakout)	12,500
- Wendy Pontious (Breakout)	5,000
- Jose Rodriquez Jr. (Breakout)	20,000
- Johnny Ybarra (Breakout)	2,000
- Johnny Ybarra (Breakout)	100,000
- Johnny Ybarra (Breakout)	50,000
- Sandra Scudder (Breakout)	20,000
- ANOUSHEH ASHOURI MD (Breakout)	3,000
- Jose Rodriquez Jr (Breakout)	4,000
- Shawdi Rahbar (Breakout)	5,000
- Shawyan Rahbar (Breakout)	5,000
- Soharb Rahbar (Breakout)	10,000
- Mina Katani (Breakout)	10,000
- Richard Lopez (Breakout)	40,000
- Fred Elg (Breakout)	20,000
- Jeremiah Cartwe (Breakout)	3,000
- Annabelle Pontious (Breakout)	2,000
- Shauna Gudnich (Breakout)	6,000
- Jeff Ray Schunk (Breakout)	60,000
- Duffy Revocable Living Trust (Breakout)	10,000
- Jeremiah Carter (Breakout)	600
I'm Rad LLC (Founder Shares @ Par)	3,000,000
Justin Beck (Founder Shares @ Par)	1,935,000
F&F Straggler (Founder Shares @ Par)	65,000
Cliff Higgerson (Founder Shares @ Par)	1,000,000
Scott Unfug (Founder Shares @ Par)	500,000
Total Founders	**22,000,000**

SUBSCRIPTION AGREEMENTS AUTHORIZED BY BOD INCLUDING O'CONNOR

Exemption Under 506(b) and State Blue Sky Laws

Approximately 28 Subscription Agreements with Registration Exemption

PPM 506(b) Offering	Shares
Duffy Revoc. Living Trust	50,000
Duffy Revoc. Living Trust	25,000
Kirk Duffy	25,000
Richard Duffy	25,000
Everett J. and Linda K. Lindholm	25,000
Everett J. and Linda K. Lindholm	25,000
Grisha Ovanesian	5,000
Oday Al-Halasa	10,000
Katherine M. Duffy	25,000
Michael R. Duffy	25,000
Mountain West IRA, Inc. (Jordan Berry)	50,000
Mike Blair	25,000
Gilbert Keshish	10,000
Kirk Duffy	25,000
Richard Duffy	25,000
Michael R. Duffy	37,500
Katherine M.Duffy	37,500
Duffy Revoc. Living Trust (EXE James Duffy)	150,000
Jordan Berry	50,000
James Stokos	5,000
Duffy Revocable Living Trust	25,000
Dorothy Ann Piazza	50,000
Dr. Mo Zakhireh	20,000
Dr. Klaus Yi	20,000
Bronwen J. Waggoner	11,249
Magnus Lakovics SEP IRA	111,768
F. Mitchell	11,271
Michael Blair	27,831
TOTAL PPM 506(b) -- Closed 3/2/16	932,119

SUBSCRIPTION AGREEMENTS SIGNED BY O'CONNOR & AUTHORIZED BY BOD

Primarily MFS Shareholders @ $.01 Per Share

Approximately 53 Subscription Agreements with Board Resolutions

Frank and Brenda Pestano	5,000
Coleen Quinn	10,000
Natalia Panzarini	10,000
Grisha R. Ovanesian	20,000
Luis Elias	100,000
Mayra Elias	30,000
Luis Maxemin	5,000
Oday Al Halasa	15,000
Mario and Emilio Gutierrez	5,000
Monty and Suzanne Goodman	20,000
Steven L. Creps	10,000
Michael Gora	5,000
Wadid & Nelly Fattouch	5,000
Carlos Calixto	30,000
Carlos A. Calixto	5,000
Dennis and Tina Norheim	10,000
Chris Cummings	5,000
Kaswit, Inc.	15,000
Richard Mesa	30,000
The Kloenne Family Trust dated 5/30/07	50,000
John Broders	50,000
Joseph Miano	50,000
James Probst	50,000
Richard Caruso	50,000
The Janell Christiansen Beck Trust Estate	70,000
Gordon & Betty Overbey Trust	75,000
Robert J. Brongo	12,500
Kenneth Miller IRA	40,000
Ronald Beck	10,000
Kyle J. Gerber	20,000
Samuel J. Gerber	20,000
Dr. Tom Mebane	660,000
Tom S Mebane IRA	400,000
Nell M. Clark	150,000
Nell Clark IRA	100,000
Christopher Rod	20,000
Douglas A & Janet R. Hunt	25,000
The J.F. Gilbert Living Trust	50,000
Jeff Ray Schunk	800,000
Charles G. Oxford Family Trust	70,000

Brian L. and Sally J Broderius	25,000
Harvey W. Stern IRA	50,000
Elg Family Trust	25,000
Curtis Sparks IRA	50,000
Gary A. Gusewitch and Rebecca A.Gusewitch JTROS	50,000
Herbert R Alcorn	100,000
Daniel G Phelps	25,000
Jeff Ray Schunk IRA	400,000
Joseph Hughes	25,000
Douglas Scott	670,000
Thomas A. Nilsen	50,000
Joseph and Susan Funkey	5,000
Mike and Annette Bonetti	5,000
TOTAL Shares Issued in 2015	**4,587,500**

EXHIBIT 4

O'HAGAN MEYER, LLC
SAMUEL Y. EDGERTON, III (CA Bar No. 127156)
sedgerton@ohaganmeyer.com
JOHNNY L. ANTWILER (CA Bar No. 288772)
jantwiler@ohaganmeyer.com
4695 MacArthur Court, Suite 210
Newport Beach, California 92660
Tel: (949) 942-8500 | Fax: (949) 942-8510

Attorneys for Defendants Cultivation Technologies, Inc., Justin Beck, Robert Kamm, Robert Bernheimer, Irving Einhorn, and Miguel Motta

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MOBILE FARMING SYSTEMS, INC., et al.

Plaintiffs,

v.

RICHARD JOSEPH PROBST, et al.

Defendants,

-and-

CULTIVATION TECHNOLOGIES, INC.,

Nominal Defendant.

Case No.: 30-2019-01046904-CU-BT-CJC

DECLARATION OF ALAN SHINDERMAN

Assigned for All Purposes to
Honorable James L. Crandall
Dept. C33

Complaint Filed: January 29, 2019
Trial Date: None Set

I, Alan Shinderman, declare:

1. I am over the age of 18, and I currently reside in Las Vegas, Nevada. The following facts are personally known to me and if called upon as a witness, I can and will competently testify thereto.

2. I have been the president and sole owner of Quicksilver Stock Transfer, LLC, a Nevada limited liability company, ("Quicksilver") since 2008.

3. Quicksilver is headquartered in Las Vegas, Nevada.

4. Quicksilver has been registered as a transfer agent with the United States Securities and Exchange Commission since August 8, 2007.

5. Since July 2015, Quicksilver has acted as the transfer agent for Cultivation Technologies, Inc. ("CTI"). On or around July 22, 2015, CTI retained Quicksilver pursuant to a Client Securities Agreement ("Agreement"). Attached as **"Exhibit 1"** is a true and correct copy of the executed Client Securities Agreement I received from CTI and executed on or around July 22, 2015.

6. On or around July 22, 2015, the Agreement was executed and delivered to Quicksilver by Richard O'Connor ("O'Connor") in his represented capacity as the Chief Executive Officer of CTI.

7. As CTI represented that it had not previously engaged a transfer agent, O'Connor agreed to deliver to Quicksilver, among other things, a complete list of issued and outstanding securities of CTI and the capitalization of CTI pursuant to the Agreement. *See* **Ex. 1**, p. 1.

8. Neither O'Connor nor CTI represented that Mobile Farming Systems, Inc. was a shareholder of CTI. O'Connor never produced or delivered any list of issued and outstanding securities of CTI, and it was represented that CTI had no outstanding shares prior to the initial issuance processed by Quicksilver.

9. On July 30, 2015, Quicksilver processed the initial issuance of CTI common stock. This initial issuance was referenced as Batch 10645.

10. The initial issuance of CTI common stock, Batch 10645, consisted of 22 million certificated shares of common stock to eight different shareholders effective as of June 15, 2015, which includes the first ever stock certificate of CTI being issued to Richard O'Connor for 2,500,000 shares, represented by certificate number 1000. The initial issuance was pursuant to the Amended

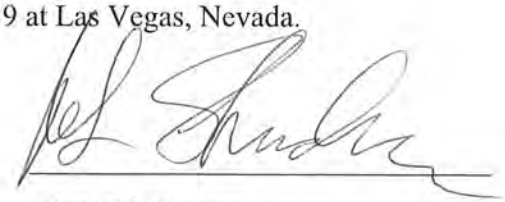
Organizational Acts & Resolutions by the Unanimous Written Consent of Directors of Cultivation Technologies, Inc., a California Corporation.

11. Batch 10645 serves as the initial shareholder register of CTI based solely on information provided by CTI and O'Connor.

12. I have reviewed the register of CTI shareholders from the engagement of Quicksilver in July 2015 through the date of this declaration, and at no time was Mobile Farming Systems, Inc. designated a shareholder of CTI.

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

Executed this 11th day of April 2019 at Las Vegas, Nevada.



Alan Shinderman

CLIENT SECURITIES AGREEMENT

This Transfer Agent Agreement ("Agreement") is made and entered into as of the date set forth herein below by and between Cultivation Technologies, Inc. the Appointing Company, herein also referred to as ("Issuer"). **CUSIP Number:** _____, **TAX ID#** 47-3677191 and Quicksilver Stock Transfer, a Nevada Corporation. Herein also referred to as ("QST") for the considerations named agree to the following:

WHEREAS, QST, is a transfer agent in the business of maintaining Stock ownership and transfer records for companies.

WHEREAS, Issuer wishes to utilize the service of QST as its transfer agent under the term of this agreement as follows.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto hereby agree as follows.

Documents to be filled with appointment if "Issuer" has not had a prior Transfer Agent:

Documents to be delivered -

The Issuer must provide to QST the following documents, certified as required:

a.) Filed Stamped copy of Articles of Incorporation including all amendments
b.) True and correct copy of by-laws as presently in force
c.) Resolution of Board of Directors appointing Quicksilver Stock Transfer
d.) Current copy of filed list of Officers, including signatures of officers to be used for the purpose of certificate printing
e.) Complete list of issued and outstanding securities of the Issuer, Including but not limited to:
    a. Date of issue, certificate number and share denomination for each outstanding certificate
    b. Registered owner name, address and taxpayer identification number
    c. Document certifying that the list is true and correct
    d. List of shares subject to restrictions conspicuously noticed
    e. If provided via electronic media, physical copy is also required
f.) Capitalization history of the company
g.) Certificate of Secretary
h.) Stop transfer orders against any certificate due to:
    1. Loss of certificate
    2. "Investment Stock"
    3. "Control Stock"
    4. Litigation
i) Copy of the Federal/State Form D

Documents to be filed with appointment if "Issuer" has a Transfer Agent:

Documents to be delivered

The Issuer must provide to QST the following documents, certified as required:

a.) Resolution of Board of Directors appointing Quicksilver Stock Transfer

Recapitalization or Readjustment

In the event of any recapitalization or readjustment, involving increase or decrease in the number of the shares/ amount which QST as Transfer Agent or registrar is authorized to issue, transfer or register, including shares issued as Stock dividend or any change in the classes of Stock, there shall be filed the following:

A. A filed Stamped copy of the relative amendment, if necessary, to the Articles of Incorporation
B. A copy of the authorizing resolution of the Board of Directors and shareholders (if required) of the Issuer, certified as provided in paragraph 7.
C. An opinion of counsel as to the validity of such recapitalization or readjustment and as to the compliance with federal and state securities laws of any issue of Stock pursuant to such recapitalization or readjustment.

Change of Officers of an Issuer

In the event that the Officers of an Issuer change due to death, termination or resignation, The Issuer shall promptly furnish to QST a resolution showing the appointment of the new officers, as well as any resignation letters from the prior Officers.

Future Amendment of Charter and By-Laws

The Issuer shall file promptly with QST a filed stamped copy of all amendments to it Articles of Incorporation or By-Laws affected after the date of this agreement within 30 days of the Amendment.

Instructions from the Appointing Company and Opinion of Counsel

QST at any time may apply to any Officer of the Issuer for instructions, and may seek advice from the counsel of record of the Issuer or its own legal counsel, at the expense of the Issuer, with respect to any matter relating to the agency. QST shall not be held liable for its actions, and shall be indemnified and held harmless by the Issuer if said actions were performed in good faith in accordance with the instructions from opinion of either counsel. In the event of litigation, QST has the right to obtain their own counsel to review the case and Documentation. QST reserves the right to independent counsel and the Issuer is responsible for any and all fees incurred for consultation and/or representation of independent counsel.

Signatures

QST shall be protected and held harmless by the company in action upon or recognizing any paper or document believed by it to be genuine and believed by it to have been signed by the person or persons by

whom it purports to be signed. It shall also be protected and held harmless by the Issuer in acting upon or recognizing such certificates, which it reasonably believes to bear the genuine or facsimile seal thereof and the genuine counter signature of the Transfer Agent or Registrar of any Co-Transfer Agent or CoRegistrar.

Successor Transfer Agent

QST may rely on the accuracy of any existing records provided to it by or from any prior transfer agent for the Issuer. Issuer will hold harmless and save QST from any and all liability, cost or expense it may incur for acting in reliance of those or any other records provided to QST.

Records

QST may retain all records which it deems proper or necessary in connection with its agency during and upon termination of the agency.

Resignation

QST may resign at any time by giving the written notice of such resignation to the Issuer as its last known address of record on file with QST, and thereupon its duties as Transfer Agent and Registrar shall cease.

Compensation

QST shall be entitled to reasonable compensation for all services rendered or expenses incurred in connection with this agency. **QST does not offer any credit terms: all transactions are due and payable upon receipt.** QST reserves the right to discontinue processing transactions requested by the company on their behalf should their account status become past due, until satisfactory payment arrangements can be made. QST may, at any time, amend its fees for services with written notice to the Issuer's last known address of record with QST. The current fee schedule in effect is incorporated into this Agreement as Attachment A.

Non-Responsibility

Anything herein to the contrary notwithstanding, QST shall in no event be held liable for any damage resulting from any action taken, omitted or suffered by it in connection with any of the foregoing agencies, unless resulting from its gross negligence or willful misconduct. In no event shall QST be liable for any consequential or incidental damages of the Issuer.

Indemnity

Issuer assumes the full responsibility and agrees to indemnify and save harmless QST from and against all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every kind, nature and character, which QST may incur as a result of action as Issuer's Transfer Agent, or as a result of any actions of any predecessor transfer agent.

The responsibility of the Issuer to indemnify, hold harmless and contribute as herein provided is limited to acts, which were conducted by QST in good faith.

QST may request Issuer to post collateral which is sufficient in the opinion of QST or its counsel to secure this indemnity agreement. QST shall not be under any obligation to prosecute or to defend any action or suit in relation to the Transfer Agent relationship between QST and the Issuer which, in the opinion of QST or its counsel may involve an expense or liability on behalf or against QST, unless the Issuer shall, when such occasion arises, furnish QST with satisfactory security for expense or liability.

Additionally, the Issuer grants QST the following rights and remedies:

1.) Right of contribution to QST by Issuer for amounts paid to third parties, based on an act or acts of QST as the transfer agent for the Issuer.
2.) QST may request opinion of counsel when relative to any matter that may arise in the performance of QST duties as Issuers transfer agent, which opinion shall be at the expense of the Issuer.
3.) A security interest in any books, records or memoranda that are required by QST in defense of any claims, which may arise in the performance of QST's duties as transfer agent.

Certificates

The Issuer shall furnish QST with a sufficient supply of unissued certificates if requested and from time to time shall renew such supply upon request of QST. Unissued certificates shall be signed by the Officers authorized to sign certificates and shall bear the corporate seal, or shall bear, to the extent permitted by law, the facsimile signature of each officer and or corporate seal.

Original Issue of Shares of Stock

QST will make original issue of shares of Stock upon the written instruction of any Officer of the Issuer whose name and specimen signature appears of the Certificate of Authority filed with QST. QST shall be furnished with a certificate of the Treasurer or other proper Officer of the Issuer stating that it has received full consideration for the shares which are to be issued and a certified copy of the resolutions authorizing the original issuance of the shares if Stock and authorizing such action by QST. All new issuances will bear restrictive legends in the absence of an opinion of counsel demonstrating compliance with applicable securities laws for the issuance of non-legended shares

Transfer of Stock

Transfer of shares will be registered and

a.) new certificates issued upon surrender of old certificates properly endorsed for transfer or
b.) uncertificated shares issued upon submission of an Internal Transfer Instruction; with all necessary endorsers' signature guaranteed in such manner and such form as QST may require, by a guarantor reasonably believed to be responsible by QST; accompanied by such assurances as QST shall deem necessary or appropriate to evidence that genuineness and effectiveness of each necessary endorsement; and accompanied by satisfactory transfers. QST may rely upon the Uniform Commercial Code or any other statutes, which complete documentation, in registering transfer without inquiry, or in refusing registration where in its judgment an adverse claim requires such refusal. QST reserves the right at all times to require a medallion signature guarantee.

Withholding

The Issuer shall notify QST of any and all amounts to be withheld from holders subject to withholding by the Internal Revenue Service or other regulatory agencies. The Issuer indemnifies and holds QST harmless against any expenses, losses, claims, damages or liabilities to which QST may become liable by virtue of the Issuer's failure to notify QST of any such withholdings.

Shareholders lists/reports

QST will furnish a shareholders list or any other reports to the Issuer at any time upon receiving a written request, duly signed by a duly authorized Officer of the Issuer.

Notice, Proxy Issuance and Tabulation

QST upon receiving written instructions signed by a duly authorized officer of the Issuer, and upon being provided with the sufficient number of proxies prior to the announced record date, will address and mail said proxies to all shareholders as of the given record date. QST shall also, if requested, examine and tabulate said proxies, and report that result of said tabulation to the Issuer provided QST is provided with the necessary signed instructions which will include directions as to the acceptance and rejection of proxies.

Reliance upon Representation

The Issuer assigns QST and, and in connection with the performance of its duties, QST may rely on any and all representation, warranties or guarantees, statutory or otherwise, made to the Issuer by or on behalf of presenters or endorsers of certificates or instructions or otherwise in connection with the transfer or registration process or the issuance of the Issuer's securities.

Sole Agent

QST shall act solely as agent for the Issuer under this Agreement and owes no duties hereunder to any other person or entity, QST undertakes to perform its duties and only the duties that are specifically set forth herein, and no implied covenants or obligations shall be read into this Agreement against it. Issuer will not contract with any other Transfer Agent to perform, or the Issuer itself performs any issuance, rescission or corporate action on behalf of the Issuer.

Complete Agreement

This Agreement constitutes the complete, exclusive, and final expression of the agreement between the parties with respect to the subject matter herein, and replaces and supersedes all prior written and oral agreements, discussions, understanding and statements by and between parties hereto. This agreement, or any provision thereof, may only be amended or waived in writing and signed by an authorized person representing both parties.

Termination

This agreement may be terminated by either party upon giving written notice to the other party at its last known address of record, but no termination shall effect the obligation of the Issuer to pay for services rendered prior to the effective date of such termination. QST will surrender to the Issuer or its designee, all records and documents of the Issuer upon receipt of a corporate resolution termination QST dated no earlier than the Close of Business of the date the resolution is received by QST, instructions to facilitate the transfer of books and records and any payment of all fees owed to QST. If less than 10 (ten) days' notice is given, all pending transfer requests will be completed by QST; If more the 10 (ten) days' notice is given, the company may request that any pending transfers be rejected back to the persons who submitted them with instructions to resubmit the transfer to the succeeding Transfer agent. The Issuer herein grants to QST a lien on any and security interest in the books and records of the Issuer which are in possession of QST. In the event of a termination of the Agreement, QST shall be entitle to retain all books and records of the Issuer in its possession until all monies due, including any termination fee, is paid in full.

Jurisdiction

QST services shall be performed in the State of Nevada; this agreement shall be construed and enforced in accordance with the laws of the State of Nevada and in the executive jurisdiction of the State and Federal courts of Nevada for the resolution of disputes. This agreement shall be binding upon and inure to the benefits of the parties, their transferees, successors, and assignees. In the event any legal action is brought to collect any sums due hereunder, or to enforce any of the provisions of this agreement, the prevailing party shall be entitled to collect such reasonable attorney fees and costs as may be awarded by the court upon any trial or appeal.

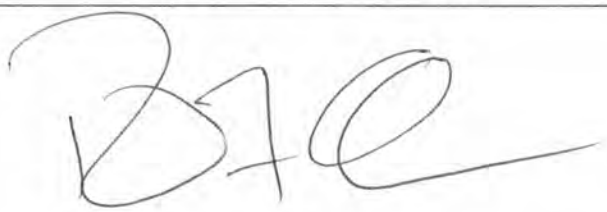
IN WITNESS WHEREOF, the parties have executed this agreement on the 22 day of July 20 15.

BY: Quicksilver Stock Transfer	BY: Cultivation Technologies, Inc. (Appointing Company)
Signature	Signature
AL SHINDEMAN	Richard O'Connor
Print Name	Print Name
PRESIDENT	CEO
Title	Title
7/22/15	July 22, 2015
Date	Date

QUICK SILVER STOCK TRANSFER

SIGNATURE PAGE

(Please sign in the center of the box)

CEO ~~President~~ Signature


Secretary Signature


QUICK SILVER STOCK TRANSFER

Please complete all information in case we need to notify your company of any situation or occurrence:

ISSUER NAME: Cultivation Technologies, Inc.

MAILING ADDRESS: 3 Park Plaza Suite #490, Irvine, CA 92614

CONTACT NAME: Rick Probst

OFFICE NUMBER: 888-851-9802 ext. 101

ALTERNATE NUMBER: 626-367-6628

FAX NUMBER: 877-678-8009

EMAIL ADDRESS: rick@cultivationtech.com

Alternate contact:

CONTACT NAME: Rana Foroughi

OFFICE NUMBER: 888-851-9802 ext. 105

ALTERNATE NUMBER:

EMAIL ADDRESS: rana@cultivationtech.com

Email Address to send Invoices:

Corporate Counsel:

Company Name: Horwitz & Armstrong, LLP

Contact Name: Christopher L. Tinen

Company Address: 26475 Rancho Parkway South, Lake Forest, CA 92630

Number: 949-540-6540

Email Address: ctinen@horwitzarmstrong.com

QUICK SILVER STOCK TRANSFER

AUTHORIZATION FOR CERTIFICATE REPLACEMENT

Company Name: Cultivation Technologies, Inc.

Company Address: 3 Park Plaza Suite #490

Irvine, CA 92614

RESOLVED, that QST, as Transfer Agent and Registrar is hereby authorized to issue and register such new certificates for the Stock offering of this Company as many from to time to time be requested. To replace lost, stolen or destroyed certificates, each such replacement to be made (a) upon being furnished with an affidavit as to the loss, theft or destruction of such certificates and (b) upon being properly indemnified against any and all loss that the Company, its Transfer Agents and Registrars may incur by reason of the replacement. Such indemnification shall consist of an open penalty lost instruments bond.

IT IS FURTHER RESOLVED, that since QST is covered by an Insurance Surety Company Indemnity Bond, with said coverage including indemnification for any Registrar, co-registrar, or co-transfer agent, this Company will approve this bond for use in replacing any of our lost, stolen or destroyed securities as being consistent with our corporate requirements and the Transfer Agent is authorized to issue said securities with no further Corporate approval required.

I, Amy Cooper Secretary of Cultivation Technologies, Inc., do hereby certify the foregoing to be a full, true and correct copy of a resolution duly adopted at a regular meeting of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company on this 22 day of July, 2015.

By: Amy Cooper

Title: President / Secretary

QUICK SILVER STOCK TRANSFER

CERTIFICATE OF SECRETARY

I, Amy Cooper, Secretary of Cultivation Technologies, Inc., a corporation duly organized and existing under the laws of the State of CA.

DO HEREBY CERTIFY:

A. That the foregoing is a true copy of a certain Resolution duly adopted, in accordance with the by-laws, by the Board of Directors of the said Company, at, and recorded in the minutes of a meeting of the said Board duly held on _____, and of the whole of the said Resolution, and that the said Resolution has not been rescinded or modified. B. That accompanying this certificate are:

a. A copy of the Charter or Certificate of Incorporation of the said Company, with all amendments to date, duly certified under official seal by the state officer having custody of the original thereof.
b. A true and complete copy of the by-laws of the said Company, as at present in force:
c. A signature card bearing the names and specimen signatures of all the officers of said Company.
d. Specimens of certificates of each denomination and class of Stock of the Company in the form adopted by the said Company; and
e. An opinion by counsel for the Company covering validity of the outstanding total offering referred to in the above-mentioned Resolution and their registration or exemption from registration under the Securities Act of 1933 as amended.

C. That the total authorized Stock of said Company is: _____ Shares, divided into:

	Auth Shares	common	Stock Of		Par Value Each
	Auth Shares		Stock Of		Par Value Each

That of the said authorized Stock, there are now issued:

	Shares of the Said		Stock

That such issue has been duly authorized and that all of the said shares are fully paid.

D. That the following are true and correct with respect to the said Company:

Title	Name	Address
President	Amy Cooper	3 Park Plaza Suite #490, Irvine, CA 92614
V. President		
Secretary	Amy Cooper	3 Park Plaza Suite #490, Irvine, CA 92614
Officer	Richard O'Connor	3 Park Plaza Suite #490, Irvine, CA 92614

Company Address: 3 Park Plaza Suite #490, Irvine, CA 92614

CUSIP Number: _____ Company Phone: 888-851-9802

State of Incorporation: California

(Corporate Seal) July 22, 2015 (Date) Amy Cooper (Secretary)

QUICK SILVER STOCK TRANSFER

CERTIFICATE OF AUTHORITY OF OFFICERS

To: Quicksilver Stock Transfer, LLC

The undersigned, Secretary of the above Company, hereby certifies that by resolution duly adopted by the Board of Directors of said Company, the officers named upon this certificate have been duly elected, are now acting and are qualified to sign written instructions, consents, Stock certificates of said Company, that the specimen signatures appearing opposite the names and titles are genuine signatures of such officers and that said resolutions electing these officers are now in full force and effect. You are further authorized to recognize these signatures until you receive our written instructions to the contrary.

Name	Title	Signature
Richard O'Connor	CEO	
Amy Cooper	President / Secretary	
Rick Probst	CFO / COO	

Corporation Name: Cultivation Technologies, Inc.

Address: 3 Park Plaza Suite #490

Irvine, CA 92614

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company on this 22 day of July, 20 15.

By: _____

Title: ~~CEO~~ CFO

QUICK SILVER STOCK TRANSFER

CERTIFICATE OF AUTHORITY OF OFFICERS

To: Quicksilver Stock Transfer, LLC

The undersigned, Secretary of the above Company, hereby certifies that by resolution duly adopted by the Board of Directors of said Company, the officers named upon this certificate have been duly elected, are now acting and are qualified to sign written instructions, consents, Stock certificates of said Company, that the specimen signatures appearing opposite the names and titles are genuine signatures of such officers and that said resolutions electing these officers are now in full force and effect. You are further authorized to recognize these signatures until you receive our written instructions to the contrary.

Name	Title	Signature
Richard O'Connor	CEO	
Amy Cooper	President / Secretary	
Rick Probst	CFO / COO	

Corporation Name: Cultivation Technologies, Inc.

Address: 3 Park Plaza Suite #490

Irvine, CA 92614

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company on this 22 day of July, 20 15.

By: _____

Title: CEO

QUICK SILVER STOCK TRANSFER

ADDENDUM 1

NOTARY IN LIEU OF SIGNATURE/MEDALLION GUARUNTEE AUTHORIZATION

This addendum will become a part of the original contract between the Transfer Agent and ("Issuer")

Cultivation Technologies, Inc.

Whereas Cultivation Technologies, Inc. ("Issuer") authorizes the Transfer Agent to accept a Notarized signature on the back of the certificate or a separate Stock Power on lieu of the Signature/Medallion Guarantee from any shareholder who does not reside on the United States and is not able to obtain the Signature/Medallion Guarantee.

Authorized Signature

July 22, 2015
Date

CEO
Title

Quick Silver Stock Transfer Fee Schedule		
Fee Description	Price	Fee Period
Account Setup less than 500 shareholders	$ 500.00	One time fee
Account Setup more than 500 shareholders	$ 0.75	Per shareholder, one time fee
Initial Stock Certificate Design & Printing	Quote	Please Call
Private Company Maintenance Fee	$ 75.00	Per month
Public Company Maintenance Fee	$ 150.00	Per month
Storage Access/Special Requests	$ 150.00	Per hour (1 hr min)
DTC Fast Set Up	$ 400.00	One time fee
DTC FAST Account Management (12mo commitment)	$ 350.00	Per month
Shareholder FAST/DWAC Transfer Fee	$ 200.00	Per Transaction
Issuer Initiated FAST/DWAC Transfer/Broker Desposit	$ 100.00	Per Transaction
Shareholder Book Entry (no certificate)	$ 50.00	Per Transaction
Issuer Book Entry (no certificate)	$ 35.00	Per Transaction
Issuer Initiated Warrants/Treasury Issuances	$ 35.00	Per Transaction
Routine Transfer/New Certificate Fee	$ 50.00	Per Certificate
Shipping Fee	$45/$85	Domestic/International
Rejection Fee	$ 75.00	Per Transaction (plus shipping)
Special Legend Fee	$ 75.00	Per Special Legend
Lost Certificate Replacement (w/ bond waiver)	$ 100.00	Per Certificate (plus shipping & cert)
Non-Routine Transfer: Legend Removal, Warrants, Options, Rescissions, Legal Deposits	$ 100.00	Per Certificate (plus shipping & cert)
Cancellation Fee	$ 35.00	Per Transaction (plus shipping)
Reports: Holder List, Stock History, Auth Issue, Reg Control	$ 35.00	Per Report
Shareholder Mailing Labels	$ 1.00	Per Shareholder ($25 minimum)
Proxy Service: NOBO List, postage, mailing supplies, voting tabulation, reporting, labor costs	Quote	Please Call
Stock Splits	$ 3.50	Per Shareholder
Dividends/Interest Payments (excluding postage)	$ 2.50	Per Shareholder
CUSIP Request for Corporate Actions	$ 250.00	Regular
CUSIP Request for Corporate Actions	$ 750.00	EXPEDITED
FINRA Attestation Form for Corporate Action	$ 500.00	Per Corporate action
1099 Preparation	$ 2.50	Per Shareholder
CPA Requested Audit Confirmation	$ 75.00	Per Request
Eschreatment Services	$ 2.50	Per Account
EDGAR Work	$ 2,000.00	Per year
XBRL Shell Company	$ 3,500.00	3 Q's and a 10K
XBRL Operating Company	$ 6,500.00	3 Q's and a 10K
Termintation Fee - outstanding balance must be paid in full in adition to termination fee. Includes final processing, packing/shipping of all records & stock certificates. Frowarding of electronic shareholder file & notifying the securities dealers & depositories of change in transfer agent	$ 3,500.00	Plus shipping fee

Officer Signature

Cultivation Technologies, Inc.
Company Name (Issuer)

Richard O'Connor / CEO
Print Name & Title

22-Jul-15
Date

EXHIBIT 5

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
LOS ANGELES REGIONAL OFFICE
444 SOUTH FLOWER STREET, SUITE 900
LOS ANGELES, CALIFORNIA 90071

DIRECT DIAL: (323) 965-3975
FAX NUMBER: (213) 443-1905

January 23, 2018

Via email

Sam Y. Edgerton, III, Esq.
Freeman Mathis & Gary, LLP
2615 Pacific Coast Highway, Suite 300
Hermosa Beach, CA 90254
sedgerton@fmglaw.com

Re: In the Matter of Cultivation Technologies, Inc. (LA-4837)

Dear Mr. Edgerton:

We have concluded the investigation as to Cultivation Technologies, Inc. Based on the information we have as of this date, we do not intend to recommend an enforcement action by the Commission against Cultivation Technologies, Inc. We are providing this notice under the guidelines set out in the final paragraph of Securities Act Release No. 5310, which states in part that the notice "must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation." (The full text of Release No. 5310 can be found at: http://www.sec.gov/divisions/enforce/wells-release.pdf.)

Very truly yours,

Marc J. Blau
Assistant Regional Director

EXHIBIT 6

KENNETH D. WATNICK (Bar No. 150936)
kdw@amclaw.com
ANDERSON, McPHARLIN & CONNERS LLP
707 Wilshire Boulevard
Suite 4000
Los Angeles, California 90017-3623
TELEPHONE: (213) 688-0080 ♦ FACSIMILE: (213) 622-7594

Attorneys for Nominal Defendant MOBILE FARMING SYSTEMS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DENISE PINKERTON, an individual as attorney in fact for ROGER D. ROOT, individually and as successor in interest to the claims of his deceased Spouse Sharon K. Root, and derivatively on behalf of MOBILE FARMING SYSTEMS, INC., a California corporation,

Plaintiffs,

vs.

CULTIVATION TECHNOLOGIES, INC., a California corporation; RICHARD JOSEPH PROBST, an individual; RICHARD FRANCIS O'CONNOR II, an individual; AMY JEANETTE COOPER, an individual; JOSEPH R. PORCHE, an individual; JUSTIN S. BECK, an individual; TGAP HOLDINGS, LLC, a limited liability company; EM2 STRATEGIES, LLC, a limited liability company; I'M RAD, LLC, a limited liability company; CLIFF HIGGERSON, an individual; AROHA HOLDINGS INC., a California corporation; ANTHONY SCUDDER, a.k.a. TONY SCUDDER, an individual; SCOTT UNFUG, an individual; RANA FOROUGHI MOBIN, an individual; ROBERT KAMM, an individual; ROBERT A. BERNHEIMER, an individual; IRVING MARK EINHORN, an individual; MIGUEL MOTTA, an individual; and Does 1-150,

Defendants.

Nominal Defendant: MOBILE FARMING SYSTEMS, INC., a California corporation,

Case No. 30-2018-01018922-CU-FR-CJC

Hon. James Crandall, Dept. C33

Action Filed: September 14, 2018

NOTICE OF MOTION AND MOTION FOR SECURITY; MEMORANDUM OF POINTS AND AUTHORITIES

[Declarations of Richard Probst and Kenneth D. Watnick Filed Concurrently Herewith]

DATE: March 7, 2019
TIME: 1:30 p.m.
DEPT.: C33

Trial Date: None

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 7, 2019, at 1:30 p.m., or as soon thereafter as the matter may be heard in Department 33 of the above-entitled Court, located at 700 Civic Center Drive West, Santa Ana, California, Nominal Defendant MOBILE FARMING SYSTEMS, INC. ("MFS") will, and hereby does, move for an order requiring Plaintiff DENISE PINKERTON, an individual as attorney in fact for ROGER D. ROOT, individually and as successor in interest to the claims of his deceased Spouse Sharon K. Root, and derivatively on behalf of MOBILE FARMING SYSTEMS, INC., a California corporation ("Plaintiff") to furnish a bond to secure reimbursement of reasonable litigation expenses incurred by MFS in this shareholder derivative action.

This Motion is based on Corporations Code §800(c), *et. seq.* and specifically requests that Plaintiff be required to post a bond in the amount of no less than Fifty Thousand Dollars ($50,000.00) in accordance with Corporations Code §800 (d).

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Kenneth D. Watnick and Richard Probst, all of the pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial notice, and any argument or evidence that may be presented to or considered by the Court at the hearing prior to its ruling.

DATED: January 7, 2019

ANDERSON, McPHARLIN & CONNERS LLP

By: _____
Kenneth D. Watnick
Attorneys for Nominal Defendant MOBILE FARMING SYSTEMS, INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Denise Pinkerton, an individual as attorney in fact for Roger D. Root ("Plaintiff") filed a derivative action "on behalf of Nominal Defendant MFS" (Complaint, ¶¶1 and 2) and against MOBILE FARMING SYSTEMS, INC. ("MFS"); against management defendants Richard Joseph Probst, Richard Francis O'Connor II, and Amy Jeanette Cooper (collectively "Management Defendants") and other defendants. In accordance with Corporations Code §800(c) and (d), MFS requests that the Court require Plaintiff to furnish a bond of not less than $50,000.00 to secure reimbursement of reasonable litigation expenses incurred by MFS with respect to this action.

MFS is entitled to security to cover their reasonable litigation expenses if "there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the corporation or its shareholders." (Corp. Code. §800 (c)(1).) To properly assess "whether there is no reasonable possibility the action will benefit the corporation, the court 'must evaluate the possible defenses which the plaintiffs would have to overcome before they could prevail at trial.'" (*Donner Management Co. v. Schaffer* (2006) 142 Cal.App.4th 1296, 1304.)

Lack of standing is a clear defense in this action. The plaintiff in a derivative action must be "a shareholder, of record or beneficially, or the holder of voting trust certificates." (Corp. Code §800 (b)(1).) Section 800 "prohibits an individual from bringing a derivative action unless he was a shareholder both at the time he filed the derivative action and at the time of the transaction of which he complains." (*Pacific Lumber Co. v. Sup. Ct.* (1990) 226 Cal.App.3d 371, 376.) According to the available information, Roger D. Root ("Root") has never been "a shareholder, of record or beneficially, or the holder of trust certificates" of MFS. (Declaration of Richard Probst ("Probst Decl."), at ¶3.) Instead, it appears that Plaintiff is alleging claims by a third-party not named in the operative complaint – Jolly Roger, Inc., a Washington Corporation. (*Id.*)

Even if Root has standing, a shareholder must prosecute a derivative action to "benefit the corporation or its shareholders." (Corp. Code. §800(c)(1).) Here, Plaintiff has already served over

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500 separate discovery requests upon MFS, including Requests for Admission that ask MFS to admit that it has no defenses to the different causes of action in the Complaint and Form Interrogatories seeking the facts, witnesses, and documents supporting each denial. MFS has no insurance for this action and will incur substantial expense in responding to this initial set of 500 discovery requests. Accordingly, MFS believes that this derivative action will not benefit MFS; it likely will damage MFS in direct contradiction to the express purpose of a derivative action.

MFS is filing this Motion as a last resort. Prior to filing this action, MFS requested that Plaintiff narrow or focus the discovery directed to MFS. Plaintiff declined this request.

II. FACTUAL BACKGROUND

Plaintiff filed her Complaint on September 14, 2018. Plaintiff's Complaint alleges she "sues derivatively on behalf of Nominal Defendant MFS." (Complaint, ¶1.) Paragraph 2 of the Complaint alleges that "Plaintiffs" means "ROOT and MFS." (*Id.*, ¶2.) It also alleges that it would have been futile to make a demand for relief on the MFS Board of Directors because the Board is comprised of Management Defendants "who will not bring suit against themselves [or] their co-conspirators and aiders and abetters." (Complaint, ¶29.)

MFS was not aware it had been served with the Complaint. (Probst Decl., ¶¶4 and 5.) MFS is informed and believes that during a Case Management Conference on December 18, 2018 Plaintiff's counsel advised, for the first time, that the Court that MFS was allegedly served by substitute service on October 11, 2018. Prior to the conference, Plaintiff filed a Case Management Conference Statement which described the status of service on defendants, but did not reflect that MFS had been served. (Attachment 4a to CMC Statement, Ex. 6 to Declaration of Kenneth D. Watnick ("Watnick Decl.").)

On December 21, MFS retained counsel. (Watnick Decl., at ¶3.) Upon being retained, MFS's counsel contacted Plaintiff's counsel to introduce himself and request a service list. (Watnick Decl., ¶4.) In response, Plaintiff's counsel advised that he had or was serving discovery on MFS. (*Id.*) Specifically, on December 21, Plaintiff served discovery which contained over 500 separate requests for testimony, documents, and information. Plaintiff propounded the following discovery on MFS:

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- Amended Notice of Deposition of MFS with 90 categories of examination, 207 requests for production of documents and 11 requests for production of "things",
- Amended First Request for Production containing 207 requests for production of documents and 11 requests for production of "things",
- First Set of Special Interrogatories containing 70 special interrogatories,
- First Set of Request for Admissions with 69 requests for admission, and
- First Set of Form Interrogatories, with 28 form interrogatories, including Form Interrogatory No. 17.1.

(Exs. 1 through 5 to Watnick Decl.)

MFS understands that Plaintiff has propounded similar discovery requests upon Defendants Probst, O'Connor, Cooper, and all other named defendants. In total, Plaintiff has propounded approximately **two thousand (2,000)** separate written discovery requests upon just MFS and the Management Defendants. (Watnick Decl., ¶5.) MFS understands that when combined with the other named defendants, plaintiff has served in excess of **five thousand (5,000)** separate written discovery requests. (*Id.*)

After receiving the voluminous discovery, MFS contacted Plaintiff regarding the discovery directed to MFS. (*Id.*, at ¶6.) MFS explained that it did not have insurance, would incur substantial expense in responding to over 500 discovery requests, and did not believe that such expensive discovery was consistent with the purpose of a derivative action. (*Id.*) MFS proposed that Plaintiff: (a) narrow the scope of discovery to MFS or (b) post security of $50,000.00 pursuant to Corporations Code §800. (*Id.*) Plaintiff declined to narrow the discovery. (*Id.*) It also stated that Plaintiff was not in a financial position to post security. (*Id.*)

III. PLAINTIFF SHOULD BE REQUIRED TO POST SECURITY IN THIS DERIVATIVE ACTION

A. Legal Standards Governing a Motion for Security

Corporation Code §800(c) provides as follows:

> (c) In any action referred to in subdivision (b), at any time within 30 days after service of summons upon the corporation or upon any defendant who is an officer or director of the corporation, or held

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> such office at the time of the acts complained of, the corporation or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish a bond as hereinafter provided. The motion shall be based upon one or both of the following grounds:
>
> > (1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the corporation or its shareholders.
> >
> > (2) That the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.
>
> The court on application of the corporation or any defendant may, for good cause shown, extend the 30-day period for an additional period or periods not exceeding 60 days.

Corporations Code Section 800(d) provides:

> (d) At the hearing upon any motion pursuant to subdivision (c), the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground or grounds upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the corporation and the moving party which will be incurred in the defense of the action. If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the amount of the bond, not to exceed fifty thousand dollars ($50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, which may be incurred by the moving party and the corporation in connection with the action, including expenses for which the corporation may become liable pursuant to Section 317. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. If the court, upon the motion, makes a determination that a bond shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the bond required by the court has been furnished within such reasonable time as may be fixed by the court.

The purpose of the §800 security provision is to prevent unwarranted shareholder derivative lawsuits. (*Donner Management Co. v. Schaffer* (2006) 142 Cal.App.4th 1296, 1305.) As explained by the California Supreme Court: "[E]very stockholder who ... is unable to induce the corporation, through its board of directors, to institute a particular action on its own behalf, and who undertakes as its volunteer representative to sue on the cause asserted by him, may be required to furnish security." (*Beyerbach v. Juno Oil Co.* (1954) 42 Cal.2d 11, 21.) "In these

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circumstances the Legislature, for the protection of third persons who have dealt with the corporation, as well as for the protection of the corporation and its officers and employe[e]s, can constitutionally require that the stockholder who would act as in the nature of a guardian ad litem must, as a condition of prosecuting the action on behalf of the corporation, either show a reasonable probability that the suit will be successful or secure the payment of the defendants' expenses should they prevail." (*Donner Management Co., supra*, 142 Cal.App.4th at 1305.)

Plaintiff must post sufficient security to cover MFS's reasonable legal fees if she cannot establish the reasonable probability that her suit will be successful. (*Id.*, at 1303; Corp. Code §800(c)(1).) Here, Plaintiff cannot establish the reasonable probability that her suit will succeed because MFS is not aware of information showing that Root was a shareholder of record of MFS, a condition precedent to initiating a derivative claim. (Probst Dec., ¶3; *Pacific Lumber Co. v. Sup. Ct.*, *supra*, 226 Cal.App.3d at 377; Corp. Code §800(b)(1).) Also, security is appropriate because Plaintiff does not appear to be pursuing this derivative action to benefit the corporation, MFS. It has propounded expensive discovery that will require MFS to incur over $30,000 in legal fees in order to respond to the initial sets of discovery. (Watnick Decl., ¶7.)

B. <u>Plaintiff Cannot Establish A Reasonable Probability Of Success</u>

As a condition precedent to initiating a derivative claim, the plaintiff must be "a shareholder, of record or beneficially, or the holder of voting trust certificates." (Corp. Code § 800 (b) (1).) Section 800 "prohibits an individual from bringing a derivative action unless he was a shareholder both at the time he filed the derivative action and at the time of the transaction of which he complains." (*Pacific Lumber Co.*, supra (1990) 226 Cal.App.3d at 377.) Failure to comply to with the requirements of section 800 "deprives a litigant of standing." (*Shields v. Singelton* (1993) 15 Cal.App.4th 1611, 1618.)

As reflected in the Declaration of Richard Probst, MFS does not have any information showing that Root is or was a shareholder. (Probst Decl., at ¶3.) Although it may be speculation, Plaintiff may have some connection to Jolly Roger, Inc., a Washington Corporation, which is a shareholder of MFS. (Probst Decl.,¶ 3.) However, a derivative action must be prosecuted

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by a shareholder, not an individual with some connection to a shareholder. (Corp. Code §800(b)(1).)

Because Plaintiff does not appear to have standing, she should be required, at a minimum to post security pursuant to §800(c)(1) to protect MFS against litigation costs should she be unable to establish that Root was a shareholder of record of MFS.

C. Plaintiff Is Causing MFS To Incur Substantial Expense In Complying With Over 500 Discovery Requests

The plaintiff shareholder in a derivative action is a nominal plaintiff. Even though the corporation is joined as the nominal defendant, it is the real party in interest to which any recovery usually belongs. (*Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1108.)

As a general rule, a shareholder cannot initiate a derivative action on behalf of a corporation without informing the directors about the action and making a reasonable effort to induce them to commence suit otherwise secure relief. (Corp. Code §800(b)(2).) However, a plaintiff is excused from this demand requirement if he can show that such demand would be futile. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 789-790.) Plaintiff alleges that a demand would have been futile in this circumstance because the directors are defendants, co-conspirators and aiders and abetters. (Complaint, ¶29.)

Even if a demand would have been futile in this circumstance, Plaintiff must pursue this derivative action in a manner that will benefit the corporation. (Corp. Code. § 800(c)(1).) Here, Plaintiff has aggressively propounded an initial round of discovery on MFS that contains over 500 separate requests. (Exs. 1 to 5 to Watnick Decl.) MFS is informed and believes that these requests are largely duplicative of requests served on the Management Defendants. (Watnick Decl., ¶5.) More importantly, MFS estimates it will incur approximately $30,000 in legal expense in responding to this initial set of discovery requests. (Watnick Decl., ¶6.) It is difficult to understand how such expense benefits, rather than harms, the corporation.

Many of the discovery requests exceed the acceptable bound of discovery in a shareholder derivative action. In a derivative action, a corporation is a nominal defendant with limited, procedural defenses. (*See*, *generally*, 2 California Practice Guide: Corporations, §6:611.1 (Rutter

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Group February 2018). The corporation may not oppose the derivative action on the merits. (*Id.*; *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1004-1010.) Notwithstanding the foregoing, Plaintiff's First Set of Requests for Admission asks MFS to admit that it does not have any defenses to Causes of Action 1 through 10. (Request Nos. 56-64 of First Set of Requests for Admission, Ex. 4 to Watnick Decl.) Plaintiff's First Set of Form Interrogatories requests that MFS state the facts and identify the witnesses and documents supporting MFS's failure to provide an unqualified admission. (Form Interrogatory No. 17.1, Ex. 5 to Watnick Decl.) Plaintiff's Form Interrogatories also request that MFS state whether there has been a breach of a contract, whether any agreement alleged in the pleadings was excused or terminated, and whether there has been an oral modification of any contract. (Form Interrogatory Nos. 50.1-50.5, Ex. 5 to Watnick Decl.) Thus, Plaintiff appears to request that MFS address the merits of the dispute and provide substantive responses to extremely broad discovery requests.

Plaintiff's Amended Notice of Deposition also broadly demands that MFS produce a designee to testify about its entire operations, including, for example, all "MATTERS REGARDING ROOT. . .[,] PINKERTON[,]. . . MUIRHEAD[,] . . . [and] SCOTT" as well as corporate filings, trade credit applications, loan applications, lease applications, sales of products, sales of services, and legal opinions regarding the issuance of common stock. (Category Nos. 14, 16, 20-23, and 51-58 of Amended Notice of Deposition, Ex. 1 to Watnick Decl.) Plaintiff's Amended First Request for Production contain over 200 requests for production that arguably demand that MFS search for and produce every document relating to MFS, including electronic documents and e-mails. (Ex. 2 to Watnick Decl.)

MFS believes that compliance with Plaintiff's initial discovery requests will substantially burden MFS and cause it to incur approximately $30,000 in legal expense. (Watnick Decl., ¶7.) MFS does not have insurance in this action. (Probst Decl., ¶6.) Moreover, the volume of the initial discovery requests creates concern given the questions as to whether Plaintiff has legal standing to pursue this action.

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D. MFS's Motion For Security Is Timely

A motion for security pursuant to section 800 must be filed "at any time within 30 days after service of summons upon the corporation." (Corp. Code §800(c).) This deadline may be extended by the Court upon a showing of good cause. (*Id.)*

MFS was unaware that it had been served until the December 18, 2018 Case Management Conference. (Probst Decl., ¶5.) MFS retained counsel immediately thereafter. (Watnick Decl., ¶3) MFS's counsel met and conferred with Plaintiff's counsel and only filed this Motion after Plaintiff declined to limit the scope of discovery. (Watnick Decl., ¶4.) Regardless, there is good cause for the Court to extend any potentially applicable deadline since MFS promptly filed this Motion after appearing in the action.

IV. IN THE ALTERNATIVE, ALL DISCOVERY SHOULD BE STAYED UNTIL PLAINTIFF ESTABLISHES THAT SHE HAS STANDING

If the Court is not inclined to require Plaintiff to post the requested security, MFS respectfully request that the Court should stay all discovery until Plaintiff can establish to the Court's satisfaction that Root was an actual shareholder of record of MFS. Corporation Code §800(f) mandates that "no pleadings need be filed by the corporation or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion is disposed of." (*Id.*.)

Written discovery and taking depositions have been held to be part and parcel to "prosecution of the action." (*Barber v. Lewis & Kaufman* (1954) 125 Cal.App.2d 95, 98 ["To permit the taking of depositions before the determination by the court as to whether the security provided for by. . . the Corporations Code should be furnished would defeat the purpose of that section"]; 2 California Practice Guide: Corporations, ¶ 6:648 (The Rutter Guide Group February 2018) ["The filing of such a motion. . .stays all further proceedings (including discovery) until 10 days after the motion is disposed of. No further pleadings need be filed by the corporation or any other defendant (including third parties) until the stay expires."].)

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V. CONCLUSION

The Court should require Plaintiff to post security of not less than $50,000 as a condition of prosecuting this action. At minimum, the Court should stay discovery until and unless Plaintiff presents prima facie evidence that she has legal standing to pursue this derivative action.

DATED: January 7, 2019

ANDERSON, McPHARLIN & CONNERS LLP

By: _____
Kenneth D. Watnick
Attorneys for Nominal Defendant MOBILE FARMING SYSTEMS, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 707 Wilshire Boulevard, Suite 4000, Los Angeles, California 90017-3623.

On January 7, 2019, I sent/transmitted the following document(s) described as **NOTICE OF MOTION AND MOTION FOR SECURITY; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties as follows:

SEE ATTACHED LIST

BY ELECTRONIC TRANSMISSION TO ONE LEGAL: I electronically served the above-referenced document(s) through One Legal. E-service in this action was completed on all parties listed on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 7, 2019, at Los Angeles, California.

Maureen Allen

Maureen Allen

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SERVICE LIST
Denise Pinkerton, etc., et al. v. Cultivation Technologies, Inc., et al.
OCSC - 30-2018-01018922-CU-FR-CJC

Kenneth J. Catanzarite, Esq. Catanzarite Law Corporation 2331 West Lincoln Avenue Anaheim, CA 92801 Telephone: (714) 520-5544 Facsimile: (714) 520-0680 E-Mail: kcatanzarite@catanzarite.com	Attorneys for Plaintiff DENISE PINKERTON, an individual as attorney in fact for ROGER D. ROOT, individually and as successor in interest to the claims of his deceased Spouse Sharon K. Root, and derivatively on behalf of MOBILE FARMING SYSTEMS, INC., a California corporation
Ivan L. Tjoe, Esq. Ropers, Majeski, Kohn & Bentley 445 S. Figueroa St., Suite 3000 Los Angeles, CA 90071 Telephone: (213) 312-2000 Facsimile: (213) 312-2001 E-Mail: ivan.tjoe@rmkb.com	Attorneys for Defendant Richard Joseph Probst, Rana Foroughi Mobin and Amy Jeanette Cooper
Samuel Y. Edgerton, III, Esq. O'Hagan Meyer, LLC 4695 MacArthur Court, Suite 210 Newport Beach, CA 92660 Telephone: (949) 942-8500 Facsimile: (949) 942-8510 E-Mail: sedgerton@ohaganmeyer.com	Attorneys for Defendants Cultivation Technologies, Inc., Justin Beck, Robert Kamm, Robert Bernheimer, Irving Einhorn, Miguel Motta, and I'm Rad, LLC
David M. Friedman, Esq. Ogloza Fortney LLP 535 Pacific Avenue, Suite 201 San Francisco, CA 94133 Telephone: (415) 912-1850 Facsimile: (415) 887-5349 E-Mail: dfriedman@oglozafortney.com	Attorneys for Defendant Cliff Higgerson
Richard L. Charnley Esq. Charnley Rian LLP 12121 Wilshire Boulevard, Suite 6000 Los Angeles, CA 90025 Telephone: (310) 321-4300 Facsimile: (310) 893-0273 E-Mail: rlc@charnleyrian.com	Attorneys for Defendant Richard Francis O'Connor II

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Attorneys for Defendant, Scott Unfug

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EXHIBIT 7

DECLARATION OF STEPHEN J. ERIGERO

I, Stephen J. Erigero, declare as follows:

1. I am an attorney-at-law duly licensed to practice before all courts in the State of California and am a partner with the law firm of Ropers, Majeski, Kohn & Bentley, former attorneys of record for defendant Richard J. Probst in this action. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

2. I represented Amy Cooper from October 18, 2018 to January 23, 2019.

3. Neither I, nor our firm, were involved with any settlement discussions in connection with her dismissal from the [Root Case].

4. When Ms. Cooper filed suit against Richard Probst as plaintiff, we substituted out of the case and ended our representation of Richard Probst.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 25, 2019.

Stephen J. Erigero

EXHIBIT 8

UNANIMOUS WRITTEN CONSENT
OF
THE SOLE SHAREHOLDER
OF
CULTIVATION TECHNOLOGIES, INC.

The undersigned, being the sole shareholder of CULTIVATION TECHNOLOGIES, INC., a California corporation (the "Corporation"), acting by unanimous written consent without a meeting pursuant to Section 603 of the California Corporations Code, hereby adopts the following resolutions.

WHEREAS, the person signing this consent is the Chief Executive Officer of the sole shareholder of the Corporation, namely MOBILE FARMING SYSTEMS, INC. ("MFS");

WHEREAS, the undersigned desires to execute this Written Consent in lieu of formally holding a shareholder meeting;

WHEREAS, MFS is the sole shareholder of Corporation having acquired and fully paid for its 28,000,000 of common stock on March 30, 2015;

WHEREAS, the purported action on June 15, 2015 falsely contending that MFS, as the sole shareholder of Corporation, had not fully paid for all of its stock was false having been facilitated by the wrongful and self-serving conduct of RICHARD JOSEPH PROBST and JUSTIN S. BECK; and

WHEREAS, all actions by Corporation that resulted in the issuance of shares of Corporation stock and/or promissory notes on and after March 30, 2015 are a nullity, void or voidable acts.

NOW THEREFORE LET IT BE:

RESOLVED, that the entire Board of Directors of Corporation, wrongly elected by shareholders other than MFS, are hereby immediately removed and they individually and collectively shall no longer have any power to act on behalf of Corporation.

RESOLVED, that all of the Officers of Corporation are hereby immediately removed.

RESOLVED, that all CORPORATION stock, options, warrants, convertible debt, convertible notes and/or promissory notes are hereby rescinded for want of authority to have issued the same.

RESOLVED, that the Board of Directors shall have three members who shall immediately act on behalf of Corporation, effective immediately, as follows:

RICHARD FRANCIS O'CONNOR II

DR. MO ZAKHIREH

JAMES DUFFY

RESOLVED, that the officers of the Corporation shall, effective immediately, be as follows:

President and Chief Executive Officer	RICHARD FRANCIS O'CONNOR II
Treasurer and Chief Financial Officer	DR. MO ZAKHIREH
Secretary	JAMES DUFFY

RESOLVED, that all signature cards for all bank accounts shall be immediately changed to be signed by both the President and Treasurer; and

RESOLVED, that all legal counsel engaged by the Corporation are hereby terminated.

RESOLVED, that the auditor for the Corporation is hereby terminated.

The undersigned directs that the Secretary of the Corporation file an executed copy of this Unanimous Written Consent with the minutes of the proceedings of the shareholders of the Corporation.

IN WITNESS WHEREOF, the undersigned shareholder has duly executed this Unanimous Written Consent as of January23, 2019.

MOBILE FARMING SYSTEMS, INC.

By: _____
RICHARD FRANCIS O'CONNOR II

EXHIBIT 9

CATANZARITE LAW CORPORATION
ATTORNEYS & COUNSELORS AT LAW
2331 WEST LINCOLN AVENUE
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KENNETH J. CATANZARITE
ATTORNEY AT LAW
DIRECT DIAL:
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E-MAIL ADDRESS:
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DIRECT FAX:
(714) 399-0577

January 25, 2019

Via U.S. Mail & Email:

Samuel Y. Egerton, III
Jonnny L. Antwiler
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Stephen J. Erigero, Esq.
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Email: ivan.tjoe@rmkb.com
Email: alan.hart@rmkb.com

Re: ***Denise Pinkerton v. Cultivation Technologies, Inc., et al.,*** **Case No. 30-2018-01018922: Meet & Confer Re CTI's Discovery Responses.**

Notice by Mobile Farming Systems, Inc. ("MFS") as sole shareholder of Cultivation Technologies, Inc. ("CTI") of Actions

Notice of MFS Shareholders that Board of Directors is Removed

Counsel,

I write this letter to provide notice of the enclosed actions. We would like to immediately take control of the assets and operations of CTI for the benefit of the sole shareholder MFS. We have confirmation now that the share issuance on March 30, 2015 was in fact fully paid and that the shares were issued and due to MFS which is therefore the sole shareholder.

MFS will now assert all claims directly not derivatively and this firm will serve as counsel. An amended complaint is being prepared and will be circulated for possible stipulation or motion if necessary.

We would like to avoid any unnecessary disruption of corporate activity and therefore notify you that we will defer notice to all third parties until Monday January 28 in the hope that your clients will handle the transition in the interests of the shareholders. All shares issued after March 30, 2015 are a nullity, including the highly dilutive unauthorized shares issued to Messrs.

Probst and Beck. It is our intention to offer those persons who purchased CTI shares, MFS shares after a determination of amounts of money actually invested. The new directors and officers will require turnover of:

1. All books and records
2. Probst and Beck to leave offices and turnover records and keys
3. Bank accounts to be turned over
4. Cash control to be turned over to new board
5. Hand off of operative contracts
6. Inventory of subsidiaries
7. Personnel lists
8. Office security codes and systems
9. All computer pass codes to computer and security systems
10. All office pass codes and security systems

This is also notice that law enforcement is looking at both MFS and CTI. We are fully cooperating with them and expect that your clients will do the same.

After you review the above please call me.

Very truly yours,

CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite

EXHIBIT 10

OGLOZA FORTNEY LLP
David M. Friedman (SBN 209214)
dfriedman@oglozafortney.com
Michelle L. Covington (SBN 312642)
mcovington@oglozafortney.com
535 Pacific Avenue, Suite 201
San Francisco, California 94133
Telephone: (415) 912-1850
Facsimile: (415) 887-5349

Attorneys for Plaintiff
CLIFF HIGGERSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

DENISE PINKERTON, an individual as attorney in fact for ROGER D. ROOT, individually and as successor in interest to the claims of his deceased Spouse Sharon K. Root, and derivatively on behalf of MOBILE FARMING SYSTEMS, INC., a California corporation,

Plaintiffs,

v.

CULTIVATION TECHNOLOGIES, INC. a California corporation; RICHARD JOSEPH PROBST, an individual; RICHARD FRANCIS O'CONNOR II, an individual; AMY JEANETTE COOPER, an individual; JOSEPH R. PORCHE, an individual; JUSTIN S. BECK, an individual; TGAP HOLDINGS, LLC, a limited liability company; EM2 STRATEGIES, LLC, a limited liability company; I'M RAD, LLC, a limited liability company; CLIFF HIGGERSON, an individual, AROHA HOLDINGS INC., a California corporation; ANTHONY SCUDDER, a.k.a. TONY SCUDDER, an individual; SCOTT UNFUG, an individual; RANA FOROUGHI MOBIN, an individual; ROBERT KAMM, an individual; ROBERT A. BERNHEIMER, an individual; IRVING MARK EINHORN, an individual; MIGUEL MOTTA, an individual; and DOES 1-150,

Defendants,

Nominal Defendant: MOBILE FARMING SYSTEMS INC., a California Corporation.

CASE NO. 30-2018-01018922-CU-FR-CJC

DEFENDANT CLIFF HIGGERSON'S STATEMENT IN SUPPORT OF COMPLEX CASE DESIGNATION AND REPLY TO PLAINTIFF'S OPPOSITION THERETO

Defendant Cliff Higgerson respectfully submits this statement in support of the complex case counter-designation made by the Nominal Defendant, Mobile Farming Systems, Inc. ("MFS"), and agrees with, and requests, that this matter be deemed complex pursuant to Rule 3.400 et seq.[1] Plaintiff's opposition to the complex case designation is replete with half-truths, misleading statements about the nature of the case, and is belied by Plaintiff's own initial discovery conduct.

As Plaintiff rightly describes, a "complex case" is an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court the parties and counsel." Cal. R. 3.400(a). This is such an action.

First, contrary to Plaintiff's attestations, this is indeed a securities action, with the gravamen of the case, sounding in, and relating to, securities. The bulk of Plaintiff's allegations relate to alleged breaches of fiduciary duties by directors, officers, and investors of two companies, MFS, and defendant Cultivation Technologies, Inc. In addition to breach of fiduciary duty claims, Plaintiff alleges claims for aiding and abetting these purported breaches and conspiracy to breach fiduciary duties. These claims, and several others, are alleged derivatively. That is, the claims belong to the Nominal Defendant, MFS, and as a result, the case has unique procedural and substantive requirements. In short, these claims all relate to the internal affairs of the corporation, and are not, despite Plaintiff's attestations, ordinary torts.

Second, there will be, and are significant pre-trial motions raising difficult legal issues. Two individual defendants have demurred to the complaint, and there is a separate motion to strike pending. The nominal defendant has yet to respond to the complaint, but it is possible that the nominal defendant may file a motion to require Plaintiff to furnish a bond pursuant to Cal. Corp. Code § 800. If such a motion is filed, the Court will be asked to consider evidence, at the initial stages of the case, and make a determination as to whether there is "no reasonable possibility that the prosecution of the cause[s] of action alleged in the complaint" will benefit the corporation. *Id.*

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[1] This is defendant Higgerson's first substantive appearance. Otherwise, Higgerson would have requested the case be designated complex earlier.

In addition to the motion for bond, Higgerson anticipates there will be several discovery motions filed, including a motion to bifurcate or stage discovery. As this case involves derivative claims, a gating issue is whether Plaintiff Root was an MFS shareholder at the time of the alleged wrongdoing, and whether he has owned such shares continuously and through today. Cal. Corp. Code § 800(b)(1). If Root did not hold shares continuously, his derivative claims must be dismissed. This issue of derivative standing should come before defendants are forced to respond to comply with the voluminous amounts of discovery Plaintiff has already served (see below), and that will no doubt increase. Finally, if a settlement is reached with one or more of the defendants, the Court will be required to determine whether such a settlement was fair to the corporation. *See, e.g., Kennedy v. Kennedy*, 235 Cal. App. 4th 1474, 1485 (2015); *Whitten v. Dabney*, 171 Cal. 623, 631 (1915). Simply put, this is not a run-of-the-mill case, with run-of-the-mill motion practice, as Plaintiff attempts to argue.[2]

Third, this case involves a substantial amount of documentary evidence and discovery, contrary to Plaintiff's claims. *See* Cal. R. 3.400(b) (court shall consider whether action is likely to involve the management of a large number of witnesses or a substantial amount of documentary evidence). Indeed, prior to all of the parties responding to the Complaint, Plaintiff has already served at least 12 sets of document requests, 11 sets of requests for admission, eight deposition notices (some with document requests attached thereto), two deposition subpoenas (directed towards counsel), and 10 sets of special interrogatories. The document requests directed to the Nominal Defendant, on whose behalf this action is supposedly brought, number more than 400. Some of the individual defendants have been served with more than 100 individual discovery requests, not including subparts. Plaintiff's claim that discovery is "manageable" is disingenuous.

Finally, Plaintiff alleges that the case does not involve a large number of separately represented parties, apparently because two law firms represent multiple defendants. It is indeed

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[2] Plaintiff has also alleged, albeit not derivatively and not against Higgerson, a cause of action for trade secret misappropriation. It is possible that the defendants to that cause of action may file a motion for protective order pursuant to the California Uniform Trade Secret Act, Cal. Civ. Proc. Code § 2019.210, which requires that before commencing discovery relating to the trade secret, the party alleging the misappropriation to identify the trade secret with reasonable particularity.

true that two law firms represent multiple parties. However, there are, to date, five law firms representing the defendants, not including the law firm representing the nominal defendant. Thus, the Court and counsel will need to coordinate with seven separate law firms.

In sum, this case fits the definition of "complex" under Cal. R 3.400(a) and 3.400(b), and defendant Higgerson requests the Court designate it as such.

Dated: January 3, 2019

OGLOZA FORTNEY LLP

By: _____

David M. Friedman

Attorneys for Defendant Cliff Higgerson

EXHIBIT 11

O'HAGAN MEYER

ATTORNEYS ▲ ADVISORS

VIA EMAIL:

Kenneth J. Catanzarite, Esq. kcatanzarite@catanzarite.com
Catanzarite Law Corporation
2331 W Lincoln Avenue
Anaheim, California 92801

Mr. Catanzarite:

We are in receipt of your letter and the attempted "consents" pertaining to Cultivation Technologies, Inc. ("CTI") from Friday, January 25, 2019 ("Letter") and the subsequent complaint ("New Lawsuit") in which you purport that a majority of former officers and directors ("Controlling Parties") of both CTI and Mobile Farming Systems, Inc. ("MFS") have agreed to void their previous actions conducted in their capacities as officers and directors from the period March 30, 2015 to January 25, 2019, and "renounce" their shares in CTI for which CTI received good and valuable consideration and subsequently issued stock certificates through CTI's transfer agent of record.

To summarize the two complaints filed by the Catanzarite Law Corporation, the relevant facts are as follows:

- In March 2015, the boards of MFS and CTI were both comprised of O'Connor, Cooper, and Probst at the time of CTI's formation. O'Connor, Cooper, and Probst authorized all corporate actions of MFS and CTI in 2015 on behalf of each company;

- CTI has operated since 2015 and continues to do so. MFS shareholders account for more than 50 shareholders of CTI shareholders, who purchased shares in CTI for consideration of $.01 per share;

- Ms. Pinkerton, on behalf of Mr. Root, sued O'Connor, Cooper, and Probst for abuse of the elderly and payment of illegal commissions in violation of section 15(b) of the Securities Exchange Act of 1934;

- CTI began operating in June 2015 under the direction of O'Connor, Cooper, and Probst, who, with full knowledge by MFS shareholders restructured the plan to make CTI a wholly owned subsidiary and offered CTI shares to MFS shareholders based upon their MFS positions at $.01 a share;

- Shareholders who have executed the MFS consents sent by your law firm are, in fact, bona fide shareholders of CTI, have acted on behalf of the company in voting in many instances, and have signed agreements with the company for their shares;

- In January 2019, your firm filed a new legal Complaint, in which O'Connor and Cooper, in signing the "consents," attempt to "renounce" their shares and "undo" all activities of CTI from the period of 2015 to 2019 in favor of MFS;

- The New Lawsuit suggests that MFS should benefit from all good and valuable consideration furnished by every party subsequent to June 2015, which includes, but is not limited to:

    - $932,119 in 506(b) private placement shares sold by CTI in subscription agreements executed by O'Connor, which also represent the cap table of CTI (without any shares owned by MFS);

    - $527,000 in 506(c) private placement shares sold by CTI through subscription agreements, many of which are executed by O'Connor, which also represent the cap table of CTI (without any shares owned by MFS);

    - $1,645,000 in convertible notes; and

    - $5,959,251 provided by FinCanna Capital Corp. pursuant to multiple agreements executed between CTI and FinCanna

This letter serves as formal notice ("Notice") to Catanzarite Law Corporation and others listed above of the potential damages inflicted against CTI and its shareholders caused by the Letter, New Lawsuit and the "consents" and attempted "renouncements" as set forth above ("Direct Damages"), which includes the very same shareholders that you are either representing or soliciting for signature.

The following transactions are in process ("Transactions"), all of which are now at imminent, material risk of failing due to your actions along with other shareholders who executed the shareholder consents.

CTI is preparing disclosure documents related to the parties of these agreements so that they are not consummated without full disclosure of the additional risks now attributed by your capricious actions.

- FinCanna Letter of Agreement. Necessitates a payment of no less than $3,000,000 to FinCanna on or before March 31, 2019, after which FinCanna may elect to force dissolution pursuant to their General Security Agreement.

- Sale of the Coachella Property for $4,000,000. The proceeds from this sale go to FinCanna to reduce more than $8,000,000 in outstanding payment obligations with FinCanna. This transaction was approved by CTI shareholders in November 2018 and is presently in escrow, with a closing date slated for February 2019. This property and any proceeds are subject to a blanket security agreement with FinCanna.

- Sale of the Colusa Property for $300,000. A majority of the proceeds from this sale go to FinCanna to reduce more than $8,000,000 in outstanding payment obligations outstanding with FinCanna. This property and any proceeds are subject to a blanket security agreement with FinCanna.

- Sale – Leaseback of Palm Desert Property for $1,575,000. If CTI is unable to transition its manufacturing operations from Coachella to Palm Desert before June 30, 2019 – the company will be unable to operate or sustain itself beyond that date. CTI is in escrow pursuant to a build-to-suit, sale-leaseback which affords CTI an opportunity to transition commercial operations from Coachella to Palm Desert, but the timing is absolutely critical. This property and any proceeds are subject to a blanket security agreement with FinCanna.

- Reverse Takeover Transaction with Public Issuer in Canada ("RTO"). CTI has been working on a transaction which may afford liquidity to CTI shareholders, but it requires significant effort and necessitates cooperation and satisfaction of numerous conditions precedent. We have attached a valuation summary detailing other public issuers in the cannabis industry which was prepared by DelMorgan & Co. of Santa Monica, California from October 2018. Note that, according to this information provided to CTI by DelMorgan & Co., comparison companies with $3M in revenue resulting from the "LTM" or last twelve months imputes a potential valuation range of $175,000,000 to $261,000,000 for CTI.

CTI makes no warranties nor representations of its ability to close the foregoing transactions, to provide shareholder liquidity, or to achieve any valuation as a company overall should it finalize the RTO. This information is provided for reference in assessing potential of the Direct Damages inflicted by you and others.

You have demanded in the Letter that CTI relinquish immediate control to certain parties, which CTI categorically contests as illegal.

The direct damages outlined herein are mounting. If you continue with your two lawsuits, you and those in conspiracy with you may be held responsible for all resulting damage. If you would like to have your position reviewed by a neutral party, I suggest we engage in mediation so that all your complaints pertaining to CTI and its directors be addressed immediately.

If you reject this good faith request to mediate this dispute this month, we will assume that you and all parties involved in the Letter are engaged in an active conspiracy to destroy CTI. Please be reminded that FinCanna, copied hereto, may exercise its right to exert control over the company and commence liquidation of CTI if we do not meet the March 31, 2019 payment deadline.

Let's discuss next steps after the ex parte hearing tomorrow.

Sincerely,

Sam Y. Edgerton, III

EXHIBIT 12

Lawrence W. Horwitz, SBN 122640
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2 South Pointe, Ste. 275
Lake Forest, CA 90
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Attorneys for Plaintiff,
Cultivation Technologies, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CULTIVATION TECHNOLOGIES, INC., a California corporation,

Plaintiff,

v.

JAMES DUFFY, an individual; AMY COOPER, an individual; CATANZARITE LAW CORPORATION, a California corporation, KENNETH CATAZANZARITE, an individual, and DOES 1 through 20,

Defendants.

CASE NO. 30-2019-01120155-CU-BT-CJC

[*Assigned for all purposes to Judge Deborah Servino*

DECLARATION OF REX LOESBY

I, Rex Loesby, make this declaration based on my personal knowledge of each fact set forth below and, if called as a witness, I could and would testify competently and truthfully to those matters before the Court. I hereby declare as follows:

1. During the fourth quarter of 2018 and the first quarter of 2019 I was the duly authorized and elected Chief Executive Officer of Western Troy Capital Resources, Inc.

("Western Troy"), which at that time traded under the symbol WRY on the Canadian Venture Exchange. At that time Western Troy had ceased all its material business operations and was searching for a merger partner to merge an operating business into Western Troy.

2. As a result of the federal prohibition against cannabis operations in the United States, a number of American companies were seeking merger partners on the Canadian stock exchanges. During the fourth quarter of 2018 we began detailed merger discussions with a California company by the name of Cultivation Technologies, Inc. ("CTI"). We had examined a number of merger partners, and CTI, relative to these other parties, had material traction in the marketplace and appeared well financed.

3. Upon completion of our initial due diligence we negotiated a Letter of Intent to complete what is referred to as a reverse takeover transaction ("RTO"), meaning that an operating company (in this case CTI) would receive a controlling interest in Western Troy and begin trading on the CSE after Western Troy moved its listing to that exchange. We negotiated with who we understood to be the management team of CTI which included Justin Beck and Richard Probst.

4. On February 20, 2019, CTI and Western Troy, acting through their respective Boards of Directors, executed a Letter of Intent for CTI to complete the RTO with Western Troy ("LOI"). Attached hereto as **Exhibit A** is a true and correct copy of the LOI. Western Troy publicly announced the fully executed Letter of Intent on its website on February 26, 2019. This transaction was not unusual as many American companies were looking to circumvent the severe capital raising constraints associated with the American capital markets for the more supportive environment in Canada. Some of the largest transactions to that date in the cannabis

industry were done using this method, at valuations of many hundreds of millions with some over $1 billion USD.

5. The CTI-Western Troy merger would have caused CTI shares to be listed publicly on the CSE thereby providing liquidity for CTI shareholders looking to sell their CTI shares and would have enhanced CTI's ability to raise capital by opening up the Canadian capital markets (which had proven extremely friendly to American cannabis companies). We estimated at the time that upon completion of the contemplated merger, CTI's potential valuation ranged from $100,000,000.00 and $240,000,000.00 (which was at the low end of what these sorts of transactions demanded in the marketplace).

6. Up to this point, we had found CTI's management to be responsive, fully capable of continuing with CTI's operations, completing the proposed merger and then supporting the CTI stock price with improved operations after the merger. The relationship with CTI had been very constructive and all concerned on the Western Troy side were very excited about CTI becoming a public company.

7. The same day that Western Troy issued its press release announcing the Letter of Intent, Western Troy received an email communication from Kenneth Catanzarite, a California attorney we had had no previous contact with purporting to represent CTI. Attached hereto as **Exhibit B** is a true and correct copy of that email.

8. The email stated in summary that we had not been dealing with the duly authorized board of CTI, but that in fact Catanzarite had been authorized by the duly elected board (through what he claimed was a written consent dated January 23, 2019) to communicate directly with Western Troy. This email indicated that CTI did not agree to the RTO and that in fact the LOI had been executed by parties who did not have authority to bind CTI. Catanzarite

then listed his claimed management of CTI and further indicated that he had investigated Western Troy and that Western Troy had no assets. This statement, that Western Troy had no assets, certainly demonstrated that Catanzarite had no idea why the LOI was executed: the entire point was for a shell public company with no assets (such as Western Troy) to merge with an operating company (such as CTI) to "take CTI public".

9. Upon receiving Catanzarite's email, we immediately contacted Messrs. Beck and Probst (the CTI representatives we had been dealing with) attempting to ascertain what exactly was going on. Beck and Probst assured us (and we believed them) that they were the properly authorized representatives of CTI.

10. Prior to receiving these communications from Catanzarite Western Troy had every intention of completing the proposed merger. It was the type of transaction being done throughout Canada (American cannabis companies merging into CSE public shells) and we viewed CTI as a very valuable merger partner.

11. Upon receiving the Catanzarite communications, Western Troy began to reconsider its decision to merge with CTI. As previously indicated there were many potential merger partners and while we believed CTI was a very good opportunity, it made absolutely no sense to complete a merger where immediate litigation was apparently the result. This was on top of the confusion associated with authority, board composition, attorney representation etc.

12. As a direct result of Catanzarite's claims CTI and Western Troy jointly determined that they could not fulfill conditions of the Letter of Intent and decided to terminate the venture and CTI paid the $30,000 breakup fee as called for in the Letter of Intent. The transaction never occurred. It is not unusual for a merger partner such as CTI to pay $1 million USD or even more for what is referred to as a "clean public shell" trading on the CSE. Clean

refers to no assets, no liabilities and the ability of the merger partner to quickly commence trading; Western Troy was certainly a clean public shell. By merging into the public shell, it is our experience that a company like CTI would receive at least three benefits:

a. Liquidity for its shareholders by allowing CTI's shareholders to sell their stock in the stock market;

b. Improved valuation; as a result of public status generally companies are valued with a substantial premium which in the cannabis industry, at the time of the LOI, meant many times the gross revenues of the operating company; in this case we estimate that CTI would have commenced trading at a valuation of at least $100 million; and

c. Improved potential for capital raising; not only will capital be raised at a higher valuation (and therefore less of the company would be sold), but many investors and investment funds prefer investing in a public company as this then provides them with a predictable ability to cash out of their investment according to their own time requirements.

13. CTI and its shareholders never received any of these benefits as a direct result of the communications from Attorney Catanzarite.

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

Dated: 9/27/21

Rex Loesby, Declarant

EXHIBIT A

EXHIBIT A

LETTER OF INTENT

WHEREAS, Cultivation Technologies, Inc. ("CTI" or a "Party"), including its operating subsidiaries, is engaged in manufacturing and distribution in the commercial cannabis industry in California;

WHEREAS, Western Troy Capital Resources, Inc. ("WRY" or a "Party," and together with CTI the "Parties"), including its operating subsidiaries, is engaged in mineral exploration and mine development, as well as to seek business combinations that will benefit its shareholders;

WHEREAS, CTI and WRY wish to finalize a reverse takeover transaction ("RTO") whereby CTI will become the surviving issuer under a new name ("Merged Company") and list on the Aequitas NEO Exchange ("NEO").

NOW, THEREFORE, by affixing their signature hereto as of the February 6, 2019 ("Effective Date"), the Parties declare their intent to enter into a binding definitive agreement ("Definitive Agreement") on or before March 15, 2019 according to the material terms and conditions contained within this letter of intent ("LOI"). This LOI is further intended to govern the parties' conduct until such time as the parties execute a binding Definitive Agreement or this LOI has been terminated in accordance with its terms. This LOI shall be superseded in its entirety by the Definitive Agreement.

1. NAME OF MERGED COMPANY

At closing of the RTO, and unless otherwise agreed by the Parties within the Definitive Agreement, the Merged Company and surviving issuer shall be named "SCARAB CO.", or such other name as agreed to by the parties and acceptable to the NEO.

2. PRE-RTO SHARE STRUCTURE AND SHARE STRUCTURE OF MERGED COMPANY

Prior to the RTO, CTI has:

- 32,730,569 common shares issued and outstanding
- 18,750,000 preferred shares issued and outstanding
- 800,000 common options outstanding at a strike price of $.01
- 4,063,500 common options outstanding at a strike price of $1.00
- 932,119 common warrants outstanding at a strike price of $5.00
- 500,000 common warrants outstanding at a strike price of $.25
- 833,333 common warrants outstanding at a strike price of $.05

Prior to the RTO, WRY has:

- 8,182,994 common shares issued and outstanding
- 400,000 common options issued and outstanding at a strike price of **C$0.25**
- 200,000 common warrants issued and outstanding at a strike price of **C$0.25**

As consideration for the RTO, and contingent to signing a full release of claims, CTI shareholders shall exchange on a one-for-one basis, each common share and preferred share in CTI for common shares in the Merged Company. CTI warrant holders shall receive one warrant in the Merged Company on substantially even terms and conditions as the warrants issued by CTI, in exchange for every warrant held in CTI. The Parties shall mutually agree on the conversion or exchange of options issued by CTI. The 200,000 existing WRY warrants shall expire in December 9, 2019. The 400,000 WRY options held by current WRY board members shall expire two (2) years following the date in which the Merged Company commences trading on any exchange.

After completion of the RTO, the Board of the Merged Company shall create a new pool of stock options which will not exceed ten percent (10%) of the issued and outstanding shares of the Merged Company ("Option Pool"), at a strike price to be defined by the Board and in accordance with the rules of the NEO. WRY currently is subject to its Stock Option Plan as required by the TSX Venture Exchange ("TSXV") and it is intended that the Merged Company will assume such Stock Option Plan. It is anticipated that the special shareholder meeting held to approve the RTO and the delisting from the TSXV, if required by applicable securities laws and NEO rules, will be combined with WRY's Annual General Meeting of Shareholders ("**AGM"**) and any Stock Option Plan required by the NEO will also be presented for shareholder approval at the AGM.

So as to meet requirements necessary to meet Foreign Private Issuer ("FPI") designation, the Definitive Agreement shall define voting rights associated with certain shareholders, and in the interest of shareholders of the Merged Company, the Merged Company shall achieve and maintain FPI designation on a best-efforts basis.

3. POST-RTO SHAREHOLDER SALE PROVISIONS

The Parties agree that it is in the interest of each Party and their respective shareholders that the Merged Company structure allows for the orderly formation of a public market for the shares in the Merged Company.

Within the Definitive Agreement, the Parties shall agree upon lock-up and escrow, and/or drip provisions which legally moderate the sale of certain shares into the public market. These provisions shall apply to all shares in CTI which feature a known cost-basis less than $1 per share (the "CTI Shareholder Drip"). The CTI Shareholder Drip shall be communicated within, and approved by, each respective shareholder of CTI receiving shares in the Merged Company as part of the RTO approval and contingent to receiving shares in the Merged Company.

Within the Definitive Agreement, the Parties shall agree upon lock-up, escrow, and/or drip provisions which legally moderate the sale of shares into the public market. These provisions shall apply to at least all shares in WRY which are held by WRY shareholders who are present management or members of the WRY board (the "WRY Shareholder Drip"). WRY shall seek approvals from other WRY shareholders on a best-efforts basis.

Both the CTI Shareholder Drip and the WRY Shareholder Drip shall utilize some combination of third-party escrow and release of shares in the Merged Company by the Merged Company transfer agent.

No provisions detailed in this section shall apply to shares issued in the Bridge or the RTO Financing as defined herein.

4. EXCHANGE FOR THE MERGED COMPANY

The Merged Company shall list on the NEO, unless such listing is not approved by the NEO for any reason, in which case the Merged Company will apply to list on the Canadian Securities Exchange ("CSE"). The Merged Company may seek any additional listing in the United States or abroad which provides additional liquidity or capital resources to the Merged Company.

5. BOARD OF DIRECTORS

The Parties shall agree upon the initial composition of the board of directors ("Board") of the Merged Company within the Definitive Agreement. The Board shall be comprised of up to seven (7) members, with no less than two (2) qualifying as independents under applicable listing regulations.

WRY shall have the right, but not the obligation, to assign one (1) board member for a term of no less than twelve (12) months, with the objective of representing the interests of the existing shareholders of WRY within the Merged Company. Notwithstanding the foregoing, the Board shall at all times meet the listing requirements of either the NEO or CSE, as applicable.

6. MANAGEMENT

The Board shall define the management team of the Merged Company, and shall create a committee to govern compensation, benefits, and time commitments of management ("Compensation Committee"). The Compensation Committee shall include no less than one (1) independent director.

7. PRE-RTO FEES & EXPENSES ASSOCIATED WITH RTO

Each Party shall be responsible for its own costs and expenses until such time that the RTO is completed, unless such costs are paid through the Bridge as defined herein, or unless the RTO is not completed prior to May 31, 2019 ("Targeted Completion Date").

For every additional month required to close the RTO after the Targeted Completion Date, CTI agrees to provide WRY with $10,000 USD in working capital ("WRY Burn") on the 1st of each month until such time that the RTO is closed.

8. PRE-RTO FINANCING & RTO FINANCING

The Parties shall agree upon an interim financing vehicle which pays for both Party's costs and expenses associated with the RTO (the "Bridge"). The Bridge shall be used exclusively for the payment of legal, accounting, audit, banking, investor relations, consulting, exchange fees, the WRY Burn, or equipment for CTI.

CTI intends to complete an equity or convertible debt financing of up to $5,000,000 USD either prior to, upon closing, or within ninety (90) days of closing the RTO (the "RTO Financing") so that the Merged Company has sufficient working capital to meet or exceed either NEO or CSE listing requirements. Should the RTO Financing be completed before the RTO is finalized, every share issued pursuant to the RTO Financing will be exchanged for one share of the resulting issuer at closing of the RTO, thereby increasing the shares outlined within Section 2 of this LOI. The Parties shall agree to the terms of the RTO Financing.

The Definitive Agreement shall grant the Parties the exclusive right to define the RTO Financing terms without additional shareholder approval. As the terms and conditions associated with the RTO Financing may differ from the terms and conditions associated with other financings conducted by the Parties, the Pre-RTO Financing may be offered to all shareholders of the Merged Company ("Rights Offering"), the mechanics of which shall be outlined within the Definitive Agreement based upon the advice of counsel.

9. ASSETS & LIABILITIES OF PARTIES

The Merged Company shall absorb all assets and liabilities of CTI and WRY as part of the RTO.

10. CONDITIONS PRECEDENT

Closing of the RTO is subject to the following conditions, which shall be expanded within the Definitive Agreement:

(1) Execution of the Definitive Agreement;

(2) Review and approval of the RTO by the Board of Directors of each Party;

(3) Reduction or elimination of liabilities of CTI by way of long-term payment arrangements or conversion into shares of Merged Company with one share issued for each $1 outstanding at close of RTO;

(4) Requisite shareholder approval of each Party for the RTO and related matters;

(5) Full release of claims from CTI shareholders who receive shares in Merged Company;

(6) Settlement of all outstanding derivative actions against CTI, with no further material legal complaints filed against either CTI or WRY prior to closing of the RTO;

(7) Review and approval of the TSX Venture, NEO or the CSE exchanges as required and all other regulatory bodies having jurisdiction in connection with the RTO;

(8) Satisfactory completion of due diligence by each Party, acting reasonably, to be completed on or before March 15, 2019; and

(9) Binding amendments to the structure of CTI's agreement(s) with FinCanna Capital Corp. ("FinCanna") before the expiration of the FinCanna Negotiation Period as defined herein, which amendments shall provide not less than the following, in all instances as approved by FinCanna, CTI, and WRY:

a. Complete clarity concerning FinCanna's total participation in the Merged Company in all material respects ("FinCanna Interest");

b. Removal of all negative covenants which may impede the Merged Company's ability to operate, or attract the Bridge, RTO Financing, future financing, or strategic partners;

c. Flexibility for CTI or the Merged Company, at their sole discretion, to amend the characterization of the FinCanna Interest on CTI or the Merged Company's balance sheet with the mutual objectives of meeting listing requirements of NEO or CSE, and attracting future financing;

11. INVESTMENT BANKING FEES

CTI hereby discloses that the RTO and RTO Financing may be subject to transaction fees payable to DelMorgan & Co. of Santa Monica, California ("DelMorgan"). Any such fees and warrants shall be payable at closing of the RTO, and shall impact the share structure outlined in Section 2 of this LOI. The fee structure and role of DelMorgan will be included within the Definitive Agreement.

12. BREAK-UP FEE PRIOR TO EXECUTION OF DEFINITIVE AGREEMENT

CTI shall have until February 20, 2019 to document binding provisions with FinCanna to restructure the relationship with CTI and FinCanna in a matter satisfactory to CTI, FinCanna, and WRY as per Section 10(9) of this LOI ("FinCanna Negotiation Period"). After the FinCanna Negotiation Period, the Parties hereby agree to negotiate in good faith and finalize the Definitive Agreement prior to March 15, 2019, or be subject to a penalty of $30,000 USD ("Breakup Fee").

Should either Party withdraw from this LOI or elect not to execute the Definitive Agreement for any reason after the FinCanna Negotiation Period, the Breakup Fee shall be payable by the terminating Party. Upon complete execution of the Definitive Agreement this provision and the Breakup Fee shall be of no force or effect.

13. LOAN BY CTI UPON EXECUTION OF DEFINITIVE AGREEMENT

Upon execution of the Definitive Agreement and after approval by the board of directors of both CTI and the board of directors of WRY of the Definitive Agreement, CTI hereby agrees to provide WRY a loan of thirty-thousand dollars ($30,000 USD) (the "RTO Loan"). In the event that CTI either terminates the Definitive Agreement, or if the RTO does not close before May 31, 2019 ("Loan Deadline Date"), the RTO Loan shall be forgiven by CTI. The Parties may agree to extend the Loan Deadline Date. The RTO Loan shall only be forgiven if CTI is responsible for the termination of the Definitive Agreement by not meeting conditions precedent set forth in Section 10 of this LOI by the Deadline Date, or in the event of outright termination by CTI for any other reason. The terms and conditions of the RTO Loan shall be completely set forth in a promissory note executed in connection with the Definitive Agreement.

14. GOVERNING LAW

This LOI shall be governed by and construed in the accordance with the laws of the State of California without regard for conflict of law principles.

15. DISPUTES

In the event of a dispute related to or arising from the terms of this LOI, which cannot first be resolved through mediation, such dispute shall be resolved through binding arbitration before a single arbitrator mutual chosen by the parties from JAMS located in Orange County, California. The cost of the arbitration proceeding and any proceeding in court to confirm or to vacate any arbitration award, or any other court action as applicable, including, without limitation, reasonable attorneys' fees and costs, shall be borne by the unsuccessful party, as determined by the arbitrator, and shall be awarded as part of the arbitrator's award. It is specifically understood and agreed that any party may enforce any award rendered pursuant to the arbitration provisions of this Section by bringing suit in any court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable. The Parties agree that the arbitrator shall have authority to grant injunctive or other forms of equitable relief to any party. This Section shall survive the termination or cancellation of this LOI. Each party shall pay its own proportionate share of arbitrator fees and expenses. The arbitrator[s] shall be entitled to award the foregoing arbitration and administrative fees and expenses as damages in his/her discretion. If a party fails to submit the fees specified by JAMS, such party may not participate or continue to participate in the arbitration proceedings. The arbitrator shall deem such party in default as if such party were in default in a court of law. Default judgment may be entered against such party.

16. CONFIDENTIALITY

The Parties acknowledge and confirm that they are bound by the terms of a certain non-disclosure and confidentiality agreement entered into between WRY and CTI (the "Confidentiality Agreement") concurrently with the execution of this LOI. If the Definitive Agreement is not executed by the Deadline Date, or if this LOI is otherwise terminated, all documents, if any, of a confidential nature, delivered by one Party to another Party, or to their respective representatives, and copies thereof, will be immediately returned to the Party that supplied such confidential documentation.

17. OTHER

17.1 Publicity. WRY and CTI shall not, without the prior written consent of the other party, make any public announcement concerning the nature, existence or content of this LOI, the transactions contemplated herein, the content and status of any discussions between the Parties, or any other documents or communications concerning the RTO, including the Confidentiality Agreement, unless such disclosure is required by applicable law or stock exchange rules or policies (in which case the party so advised will promptly notify the other party).

17.2 Severability. If any part of this LOI is declared or held invalid for any reason, such invalidity will not affect the validity of the remainder which shall continue in force and effect and be construed as if this LOI had been executed without such invalid portion and intent of the Parties is that this LOI would been signed without reference to any portion of which may, for any reason, be declared or held invalid.

17.3 Good Faith. From and after the date of this LOI, the Parties shall negotiate in a timely manner and in good faith to settle terms of the Definitive Agreement. Such Definitive Agreement shall contain normal and usual representations, warranties, covenants and conditions as applicable to similar commercial transactions in Canada.

17.4 Final Agreement; Amendment. This LOI terminates and supersedes all prior understandings or agreements between the parties regarding the transactions contemplated herein. This LOI may only be modified or amended by further writing that is duly executed by all Parties hereto.

17.5 Termination This LOI shall terminate: (i) upon mutual agreement in writing of all the parties hereto; (ii) upon execution of the Definitive Agreement; (iii) upon notice by a party hereto of termination of this LOI due to a breach of the terms of this LOI by the other party hereto, provided such breach has not been cured to the reasonable satisfaction of the other party; (iv) upon written notice by one party to the other party that on having completed its due diligence review in good faith, the terminating party is not prepared to complete the RTO as a result of its due diligence review, as provided in paragraph 12 (in each case, a "Termination Date").

17.6 Binding Provisions. It is the parties' intention that paragraphs 7, 12, 14, 15, 16 and 17 shall be legally binding on the parties when they or their representatives have executed this LOI or an instrument expressing the parties' wish to be bound hereby, the consideration for which shall be the mutual covenants of the parties contained herein. The other provisions of this LOI are not intended to be legally binding. The invalidity or unenforceability of any particular provision of this LOI shall not affect or limit the validity or enforceability of the remaining provisions of this letter agreement.

17.6 Counterparts and Electronic Signatures. This LOI may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. The parties agree that this LOI may be electronically signed and that electronic signatures appearing on this LOI are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. A signature of a party transmitted electronically, including, but not limited to email or facsimile, shall be as valid and as binding on the signer as an original signature.

By affixing their signature hereto, the Parties hereby agree to these terms and conditions, with the intention of finalizing the RTO as defined by the Definitive Agreement.

AGREED AND ACCEPTED

For CTI

By: DocuSigned by: Justin Beck 6D867E71BB0D4F7...

Name: Justin Beck

Title (if applicable): CEO & President

For WRY

By: DocuSigned by: Rex Loesby 2C225C3A6EED448...

Name: Rex Loesby

Title (if applicable): CEO

EXHIBIT 13

Subject: Fwd: MFS SHAREHOLDERS - DO NOT SIGN CONSENT DOCUMENT JUST SENT BY POBST--SUPPLEMENTAL EMAIL
Date: Friday, April 19, 2019 at 2:31:49 PM Pacific Daylight Time
From: Richard Probst
To: Justin Beck
Attachments: image001.gif

Thank You
Rick Probst

Begin forwarded message:

From: Han Le <hle@catanzarite.com>
Date: April 19, 2019 at 2:27:53 PM PDT
Cc: Kenneth Catanzarite <kcatanzarite@catanzarite.com>, Becky Phillips <bphillips@catanzarite.com>, Jenifer Weaver <jweaver@catanzarite.com>, "Richard O'Connor (Richard@tgapholdings.com)" <Richard@tgapholdings.com>
Subject: MFS SHAREHOLDERS - DO NOT SIGN CONSENT DOCUMENT JUST SENT BY POBST--SUPPLEMENTAL EMAIL

Dear Shareholders:

Supplement to Email

I want to be clear that neither I, Richard O'Connor, Tony Scudder nor anyone else sued in the Root Case or the Mobile Farming Case have settled any claims with Root or anyone else. All we did was agree to toll the statute of limitations to allow claims to be brought against us later. No conflict. Instead we are working together in the best interests of Mobile Farming and Cultivation Technologies.

There is no conflict as they contend. Instead **the conflict identified is those named Defendants taking the 17,000,000 Series A Preferred Shares with 3 times voting to your common shares, for $0, control of the company and their undisclosed compensation. That is the conflict. They want to keep that against your interest and we seek to cancel those shares and secret compensation arrangements. THEY COULD HAVE SETTLED THIS CASE BY AGREEMING TO CANCEL THEIR PREFERRED SHARES AND CONTROL AND SALARIES--- *YOU NEED TO KNOW THAT THEY REFUSED. THAT IS WHY WE HAVE THIS DISPUTE.***

The consent form should not be signed. It does not allow you to reject the proposal so any signature would approve their request which I say is against the interests of Mobile Farming and Cultivation Technologies shareholders. If you have any questions feel free to call my cell at 760-409-6464.

Richard O'Connor
Director and Officer

Kenneth J. Catanzarite For Richard O'Connor
Catanzarite Law Corporation
2331 West Lincoln Avenue
Anaheim, CA 92801
Direct Dial: (714) 678-2100
Direct Fax: (714) 399-0577
Office Phone: (714) 520-5544
Office Fax: (714) 520-0680

EXHIBIT 14

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CIVIL COMPLEX CENTER
DEPARTMENT CX105

MOBILE FARMING SYSTEMS, INC., PLAINTIFFS,
VS.
RICHARD JOSEPH PROBST, ET AL., DEFENDANTS.
AND
NOMINAL DEFENDANT:
CULTIVATION TECHNOLOGIES, INC., A CALIFORNIA CORPORATION.

NO. 30-2019-01046904 CU-BT-CJC

HONORABLE RANDALL J. SHERMAN, JUDGE PRESIDING

REPORTER'S TRANSCRIPT
VOLUME II

WEDNESDAY, MAY 1, 2019

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:
CATANZARITE LAW CORPORATION
BY: KENNETH J. CATANZARITE, ESQ.

FOR THE DEFENDANT RICHARD JOSEPH PROBST:
ROPERS, MAJESKI, KOHN & BENTLEY
BY: IVAN L. TJOE, ESQ.

FOR THE DEFENDANTS JUSTIN BECK, ROBERT KAMM, ROBERT BERNHEIMER, IRVING EINHORN, AND MIGUEL MOTTA:
O'HAGAN MEYER
BY: SAMUEL Y. EDGERTON, III, ESQ.
BY: JOHNNY ANTWILER, ESQ.

CHERI A. VIOLETTE, CSR NO. 3584
OFFICIAL COURT REPORTER PRO TEMPORE

WITNESS INDEX

(WEDNESDAY MAY 1, 2019)

PLAINTIFF'S WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
(NONE)				

DEFENSE WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
(NONE)				

E X H I B I T S

(WEDNESDAY, MAY 1, 2019)

(ALL EXHIBITS PREMARKED FOR IDENTIFICATION UNLESS OTHERWISE INDICATED)

SANTA ANA, CALIFORNIA - WEDNESDAY, MAY 1, 2019

AFTERNOON SESSION

(THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT:)

THE COURT: GOOD AFTERNOON.

ALL COUNSEL: GOOD AFTERNOON, YOUR HONOR.

THE COURT: BACK ON THE MOBILE FARMING SYSTEM VERSUS PROBST. DO YOU WANT APPEARANCES?

THE COURT REPORTER: PLEASE, YOUR HONOR.

MR. EDGERTON: SAM EDGERTON FOR CERTAIN DEFENDANTS WHO ARE DIRECTORS OF CTI: ROBERT KAMM, ROBERT BERNHEIMER, JUSTIN BECK, AND MIGUEL MOTTA, AND IRVING EINHORN.

MR. ANTWILER: JOHNNY ANTWILER FROM O'HAGAN MEYER ON THE SAME DEFENDANTS.

MR. TJOE: IVAN TJOE, ROPERS, MAJESKI FOR RICHARD PROBST.

MR. CATANZARITE: KEN CATANZARITE FOR THE PLAINTIFF.

THE COURT: YOU MAY BE SEATED.

SO THE REASON WE ARE HERE IS FOR A CORPORATIONS CODE 709 HEARING WHICH MANDATES A QUICK HEARING WITHIN FIVE DAYS, SO THE SCOPE OF THIS HEARING IS ONLY GOING TO BE WHAT IS MANDATED BY THE CODE TO BE EXPEDITED. IT IS NOT GOING TO INCLUDE ALL THESE OTHER THINGS THAT THE PARTIES MIGHT CONSIDER RELEVANT TO THE CASE IN GENERAL.

SO TO THE EXTENT --

WELL, OKAY. SPECIFICALLY THIS IS ABOUT, I SHOULD SAY THE CODE PRIORITY IS ABOUT TO TRY AND DETERMINE THE VALIDITY OF ANY ELECTION OR APPOINTMENT OF ANY DIRECTOR OF ANY DOMESTIC CORPORATION, AND THE ACTION AS FILED BY A SHAREHOLDER OR A PERSON WHO CLAIMS TO HAVE BEEN DENIED THE RIGHT TO VOTE. SO THE PROPER ISSUE FOR THIS COURT IS WHETHER MOBILE FARMING SYSTEMS WAS DENIED THE RIGHT TO VOTE IN THIS DIRECTOR ELECTION THAT TOOK PLACE AND ELECTED THESE FIVE DIRECTORS AS REFERENCED YESTERDAY IN THE OPENING STATEMENTS.

SO TO THE EXTENT THAT DEFENDANTS FEEL THERE ARE CERTAIN THINGS THAT NEED TO BE DECIDED FOR THE HEALTH OF THEIR COMPANY, THAT DOESN'T GET STATUTORY PRIORITY.

TO THE EXTENT THAT THE PLAINTIFFS FEEL THAT THERE IS SOME CHALLENGE TO SOME PREFERRED SHARE OFFERING THAT WOULD REDUCE THE NUMBERS OF SHARES, THAT'S IRRELEVANT TO THIS PROCEEDING.

THE ONLY THING THAT MATTERS IS WHETHER MOBILE FARMING SYSTEMS OWNS STOCK IN CTI. BECAUSE IF THEY DID, THEN THEY HAD A RIGHT TO VOTE, AND THAT WOULD HAVE CHANGED THE OUTCOME OF THE ELECTION. AND IF THEY DIDN'T HAVE THAT SHAREHOLDER RIGHT TO VOTE, THEN THE ELECTION STANDS. SO THE COURT IS ONLY GOING TO HEAR EVIDENCE WITH RESPECT TO THAT PARTICULAR ISSUE.

AND TO THAT END, SINCE COURTS HAVE THE POWER TO,

OR JUDGES, I SHOULD SAY, HAVE THE POWER TO CONTROL THE ORDER OF EVIDENCE, THE WAY I SEE THIS AS BEING THE MOST EFFICIENT WAY TO PROCEED IS FOR THE COURT TO RECEIVE WRITTEN DOCUMENTATION BEFORE ANY ORAL TESTIMONY. AND THEN AFTER ALL THE DOCUMENTATION, THE COURT CAN TRY TO ASSESS WHAT TESTIMONY MIGHT BE RELEVANT OR NECESSARY TO DECIDE THE ISSUE AT HAND.

SO SINCE THIS IS NOT THE USUAL TRIAL WHERE THERE IS EXHIBIT NOTEBOOKS WITH NUMBERED EXHIBITS, WHICH WOULD MAKE MY LIFE EASIER AND THINGS SEEM TO BE ATTACHED TO DECLARATIONS, I AM GOING TO NEED SOME HELP ALONG THE WAY TO GUIDE ME TO THE RIGHT EXHIBITS. BECAUSE BASICALLY I AM GOING TO GO THROUGH THE TRIAL BRIEFS IN ORDER. I MEAN I HAVE ALREADY KIND OF DONE THAT TO NOTE WHAT THINGS I AM LOOKING FOR. AND I WANT TO SEE DOCUMENTS TO SEE WHAT THEY SAY TO SEE IF (A) THEY SUPPORT WHAT IS CONTENDED, AND (B) WHAT EXACTLY THEY SAY AND HOW IT IS RELEVANT TO MY ISSUE TO DECIDE HERE TODAY.

SO I AM STARTING WITH THE DEFENDANT'S BRIEF AND -- OKAY. SO THE FIRST THING THAT LOOKS LIKE DOCUMENT WORTHY IS WHEN CTI SAYS: "MFS IS CONTENDING THAT A WRITTEN UNDERTAKING BETWEEN IT AND CTI CONTROLLED THIS ISSUE WHEN IT DOES NOT."

SO MY QUESTION WOULD BE, MR. EDGERTON, SHOW ME -- WHERE IS THIS WRITTEN UNDERTAKING THAT YOU ARE REFERRING TO? I MEAN IS IT A DOCUMENT THAT IS HERE IN MY

STACK?

MR. EDGERTON: YES, IT IS. GOOD AFTERNOON.

IT IS THE -- WHAT WAS MENTIONED YESTERDAY IS THE ORIGINAL ACTS UNDERTAKING DATED MARCH 30TH, 2015.

THE COURT: OKAY. WELL, THAT WAS ONE OF THE LATER DOCUMENTS, BUT THAT WAS NEXT ACTUALLY. SO THAT WOULD BE ATTACHED TO WHAT?

MR. EDGERTON: THAT IS ATTACHED TO THE DECLARATION OF RICHARD PROBST. SO WE CAN BRING THAT OUT FOR YOU IF YOU WOULD LIKE IT SEPARATE FOR THIS PROCEEDING, BUT THAT IS EXHIBIT -- ONE MOMENT. I WILL TELL YOU EXACTLY THE NUMBER. "E" AS IN EDGERTON.

MR. TJOE: NO. THE ORIGINAL ACTS?

MR. EDGERTON: RIGHT.

MR. TJOE: THAT IS EXHIBIT D, AS IN DAVID, TO MR. PROBST'S DECLARATION, YOUR HONOR.

THE COURT: OF WHAT DATE?

MR. TJOE: THAT WOULD HAVE BEEN FILED APRIL 12TH, 2019.

MR. CATANZARITE: YOUR HONOR, IF IT IS MORE CONVENIENT, THERE IS A BENCH BOOK THAT HAS THAT SAME DOCUMENT AS EXHIBIT 4.

THE COURT: THANK YOU. ALTHOUGH THE DECLARATION WAS COPIED FOR ME, THE EXHIBITS WERE NOT, SO....

MR. EDGERTON: AND WE HAVE NO OBJECTION TO THAT. THE ONLY DOCUMENT WE'RE DISCUSSING IN HIS BOOK IS --

I NEED TO TALK TO YOU ABOUT THAT.

-- IS ONE OF THE ACCOUNTING PREPARED DOCUMENTS, BUT EVERYTHING ELSE IN HIS BOOK IS NON-OBJECTIONABLE.

THE COURT: OH, AWESOME. WHICH REMINDS ME, I SHOULD HAVE MENTIONED THIS EARLIER, I THOUGHT I ASKED YOU TO MEET AND -- DID I ASK YOU TO MEET AND CONFER TO SEE IF YOU COULD AGREE ON ANYTHING?

MR. EDGERTON: YOU DID.

THE COURT: OUTCOME?

MR. EDGERTON: OUTCOME IS WE ARE DOING FINE. WE WERE SCRAMBLING, OF COURSE, TO GET OUR DOCUMENTS THERE. WE GAVE THEM TO MR. CATANZARITE. WE ARE STILL NOT COMPLETED IN THAT PROCESS, BUT WE WILL BE BY THE END OF TODAY. THEY ARE VERY MUCH A REPEAT.

THE COURT: THAT IS KIND OF NOT WHAT I MEANT. I MEANT, IS THERE A STIPULATION THAT CERTAIN DOCUMENTS ARE DEEMED RECEIVED IN EVIDENCE OR OTHERWISE PROPERLY CONSIDERED BY THE COURT?

MR. EDGERTON: NOT OTHER THAN WHAT I JUST REFERRED TO.

THE COURT: OKAY. SINCE WE HAVE THESE NUMBERED EXHIBITS, WHICH MAKES IT EASY, LET'S GO THROUGH THE ONES THAT I AM REFERRING TO HERE. SO WE'RE TALKING ABOUT EXHIBIT 4, ORGANIZATIONAL ACTS AND RESOLUTIONS OF CTI, CORRECT?

MR. EDGERTON: THAT IS CORRECT, YOUR HONOR.

THE COURT: SO SHOW ME THE PAGE NUMBER THAT -- IS THIS A WRITTEN UNDERTAKING ABOUT -- WELL, STOCK, I GUESS.

MR. EDGERTON: OKAY. SO ON PAGE 4 YOU WILL SEE THERE IS A "WHEREAS" CLAUSE.

THE COURT: OKAY. THE ONE THAT TALKS ABOUT 28,000,000 SHARES TO MFS?

MR. EDGERTON: THAT IS CORRECT, YOUR HONOR.

THE COURT: OKAY. AND THIS IS DATED 3/30/15, WAS IT?

MR. EDGERTON: THAT IS CORRECT, YOUR HONOR.

THE COURT: SO IT IS A RESOLUTION TO ISSUE STOCK WITH A CONSIDERATION IN EXHIBIT A, WHICH IS THE THREE THINGS MENTIONED IN THE OPENING STATEMENT.

MR. EDGERTON: AND THAT IS THE STATED CONSIDERATION FOR THE AGREEMENT. THAT IS A SHIPPING CONTAINER, TWO TRAILERS AND UP TO 25,000 IN CASH.

THE COURT: ALL RIGHT.

MR. ANTWILER: WAIT. YOUR HONOR, IT IS ON PAGE 12 AS EXHIBIT A.

THE COURT: I ALREADY FOUND IT. THANK YOU.

MR. ANTWILER: I AM SORRY, YOUR HONOR.

THE COURT: WHICH MENTIONED WHAT THE THREE THINGS WERE.

NOW YOU SAY JUNE 15, 2015 THIS WAS RESCINDED. SO WHERE IS THAT?

MR. CATANZARITE: I CAN GET YOU THAT. IT IS IN THE SAME BOOK.

MR. EDGERTON: THAT IS ALSO IN YOUR BOOK. LET'S TAKE IT FROM YOUR BOOK IF IT IS MORE CONVENIENT.

MR. CATANZARITE: IT MIGHT BE EASIER.

MR. EDGERTON: YES, I THINK SO, TOO. I THINK IT IS THE VERY BOTTOM OF YOURS.

MR. CATANZARITE: IS IT AT THE END?

MR. EDGERTON: I WENT THROUGH YOUR BOOK LAST NIGHT.

THE COURT: 53, INDEX SHOWS THAT DATE.

MR. CATANZARITE: YES, 53.

MR. EDGERTON: YOUR HONOR --

THE COURT: OKAY. WE'RE HERE.

MR. EDGERTON: AND THEN THE RELEVANT PARTS IF YOU NEED TO KNOW RIGHT NOW ARE ON PAGE 1 STARTING WITH THE "WHEREAS" CLAUSES.

THE COURT: YES, THAT IS THE WHOLE IDEA IS I WANT TO LOOK AT THE RELEVANT DOCUMENTS FIRST.

MR. EDGERTON: OKAY.

THE COURT: SO WE HAVE GOT WRITTEN CONSENT OF DIRECTORS OF CTI SIGNED ON 6/15/15. AND IT SAYS, "WHEREAS THE PROPORTION TO AUTHORIZE THE ISSUANCE OF 28,000,000 SHARES, FMS FAILED TO PROVIDE ANY CONSIDERATION AS REQUIRED, AND SO IT WASN'T ISSUED THE STOCK. THE BOARD DEEMS IT IN THE BEST INTEREST TO SELL

TO ITS FOUNDERS LISTED THERE. OTHER PEOPLE" --

OKAY. GOT IT. OKAY. YOU HAVE A STATEMENT THAT STATES, "O'CONNOR'S DECLARATION IS PATENTLY FALSE REGARDING HIS CLAIM THAT 28,000,000 SHARES WERE ISSUED TO MFS."

WAS THERE ANY DOCUMENT FROM PLAINTIFF TO SUPPORT THE CONTENTION THAT THE SHARES WERE ACTUALLY ISSUED?

MR. EDGERTON: THE CERTIFICATE WASN'T ISSUED. BUT IF YOU READ EXHIBIT 4, EXHIBIT 4 SAYS THEY WERE SOLD -- THE SHARES WERE SOLD AND ISSUED.

I MEAN IN EXHIBIT 4, AND THE LAST PAGE OF EXHIBIT 4 CONFIRMS THAT THE SHARES WERE ISSUED. AND THE TESTIMONY WOULD BE THAT THE CONSIDERATION --

THE COURT: YOU HAVE ANSWERED MY QUESTION. THERE IS NO ADDITIONAL DOCUMENT.

MR. CATANZARITE: WELL, THERE WOULD BE EVIDENCE OF CONSIDERATION PAID.

THE COURT: YOU MEAN THOSE THREE REQUIREMENTS?

MR. CATANZARITE: YES.

THE COURT: AND THAT IS IN YOUR NOTEBOOK HERE?

MR. CATANZARITE: YES.

THE COURT: WHERE IS IT?

MR. CATANZARITE: THE FINANCIAL STATEMENTS.

EXHIBIT 31, YOUR HONOR.

THE COURT: OKAY, THERE. NOW WHAT AM I LOOKING AT, WHICH PAGE?

MR. CATANZARITE: EXHIBIT 31, FIRST PAGE -- I AM SORRY, EXHIBIT 31, SECOND PAGE, PAGE 2, THERE IS A REFERENCE TO SEEDLING TRAILERS. IF YOU LOOK, YOUR HONOR, THERE IS 50,740 UNDER 12/31/14.

THE COURT: DID YOU REALIZE THIS IS PLAINTIFF'S FINANCIAL STATEMENT, NOT DEFENDANT'S?

MR. CATANZARITE: CORRECT. BUT IF YOU LOOK AT THE NEXT YEAR, THE ENTRY TO THE RIGHT COLUMN 12/31/15 THE SEEDLING TRAILER IS GONE.

THE COURT: IS THERE ANYTHING SHOWING WHO IT WENT TO?

MR. CATANZARITE: IT WENT TO AND WAS USED, THE TESTIMONY WILL BE, IT WENT TO AND IT WAS USED BY CTI.

THE COURT: NO, YOU ARE PREMATURE. I AM NOT INTERESTED IN OFFERS OF TESTIMONY PROOF.

MR. CATANZARITE: SURE.

THE COURT: I AM INTERESTED IN DOCUMENTS.

MR. CATANZARITE: OKAY.

THE COURT: SO NOTHING SAYING LIKE A BILL OF SALE?

MR. CATANZARITE: NOTHING.

THE COURT: THANK YOU. SAME ANSWER WITH RESPECT TO THE OTHER ASSETS, CORRECT?

MR. CATANZARITE: THERE IS ANOTHER, ON PAGE 1, THERE IS A REFERENCE TO CTI EXPENSES PAID, YOUR HONOR. SAME EXHIBIT --

THE COURT: YES.

MR. CATANZARITE: -- SHOWS THAT 62,000 WAS ADVANCED IN 2015.

THE COURT: YES.

MR. CATANZARITE: EXHIBIT 2 SHOWS --

THE COURT: YOU MEAN PAGE 2 OR EXHIBIT 2?

MR. CATANZARITE: EXHIBIT 2 NOW.

THE COURT: YES.

MR. CATANZARITE: EXHIBIT 2 SHOWS LEGAL AND PROFESSIONAL FEES PAID OF 10,000 IN FEBRUARY OF 2015, WHICH WERE -- I DON'T HAVE AN INVOICE, AND YOU DON'T WANT TO HEAR WHAT THE ORAL TESTIMONY WOULD BE, BUT THAT WOULD BE -- THAT AND THE EXPENSES INCURRED IN THE FIRST FOUR MONTHS WOULD BE SUPPORTIVE OF PLAINTIFF'S POSITION THAT CONSIDERATION HAD PASSED.

EXHIBIT 6 --

THE COURT: YOU DON'T NEED TO BE REDUNDANT ON THE MONEY. DO YOU HAVE ANYTHING FOR THE OTHER TWO ASSETS?

MR. CATANZARITE: YES, EXHIBIT 6, YOUR HONOR. EXHIBIT 6 IS A LEASE WITH PACIFIC CULTIVATORS ASSOCIATION SIGNED BY MR. PROBST TO MR. O'CONNOR FOR LEASE OF A TRAILER.

THE COURT: 4/2/15, THREE DAYS AFTER THE ORIGINAL ACTS WERE SIGNED?

MR. CATANZARITE: YES, YOUR HONOR.

THE COURT: SO IT IS IN ANTICIPATION OF COMPLIANCE BY PLAINTIFF?

MR. CATANZARITE: YES.

THE COURT: WHICH DIDN'T HAPPEN?

MR. CATANZARITE: IT DID HAPPEN.

THE COURT: OKAY.

MR. CATANZARITE: EXHIBIT 5, YOUR HONOR.

THE COURT: WHAT ABOUT IT?

MR. CATANZARITE: EXHIBIT 5, PARAGRAPH 4 -- EXHIBIT 4 REFERENCES THE FORMATION OF THE SUBSIDIARY, THIS IS MOBILE FARMING TO BE KNOWN AS CTI.

THE COURT: AND IT SAYS THEY GAVE THEM A 32 FOOT SEEDING TRAILER AND 40 FOOT SHIPPING CONTAINER.

MR. CATANZARITE: YES. IN ORDER TO CAPITALIZE MOBILE FARMING SYSTEMS HAS CONTRIBUTED CERTAIN ASSETS TO CTI INCLUDING, IN OTHER WORDS, PAST TENSE, YOUR HONOR, AND THE 40 FOOT CONTAINER.

THE COURT: I DON'T SEE A DATE ON THIS LETTER. IS THERE ONE?

MR. CATANZARITE: I BELIEVE -- THE CONCURRENCE IS IS APRIL OF 2015, YOUR HONOR. THIS WAS SENT TO ALL MOBILE FARMING SHAREHOLDERS.

THE COURT: THANK YOU.

MR. CATANZARITE: AND EXHIBIT 8, YOUR HONOR, EXHIBIT 8 IS MAY 9TH, 2015, SECOND PARAGRAPH, QUOTE: "RIGHT NOW CTI IS OWNED 100 PERCENT BY MFS, MOBILE

FARMING, PROBST TO O'CONNOR."

AND EXHIBIT 7, YOUR HONOR, EXHIBIT 7, PAGE 4, UNDER "CULTIVATION" -- PAGE 4 UNDER THE "CULTIVATION TECHNOLOGY'S" COLUMN, YOUR HONOR, "LONG-TERM LIABILITIES," THERE IS A REFERENCE TO MFS LOAN, $75,000. MFS LOAN ACCRUED INTEREST 12,000, INDICATING THAT MONEY HAD PASSED. AND THE 2015 FINANCIAL STATEMENT I REFERRED YOU TO CONFIRMS THIS MUCH.

THE COURT: HOW IS A LOAN RELEVANT TO WHAT WE HAVE BEEN TALKING ABOUT?

MR. CATANZARITE: CONSIDERATION PAID UP TO 25,000.

THE COURT: SO IF IT IS A LOAN, IT IS NOT GIVEN?

MR. CATANZARITE: WELL, THEY ARE CALLING IT A LOAN, BUT THAT IS WHAT THEY ARE CALLING IT. THE EVIDENCE IS OTHERWISE.

THE COURT: OKAY. THANK YOU.

OKAY. THE THING ON PAGE 2 WHICH SAYS, "THE ANTICIPATED AGREEMENT TO MAKE MFS A SHAREHOLDER WAS RESCINDED BEFORE PERFORMANCE," THAT'S THE SAME THING YOU ARE TALKING ABOUT ABOUT THE JUNE 15TH, 2015 ACTION, THAT IS WHAT YOU ARE REFERRING TO THERE?

MR. EDGERTON: AS FAR AS THE DOCUMENTS, YES.

THE COURT: OKAY.

MR. EDGERTON: HOLD ON. LET ME CONSULT.

(DEFENSE COUNSEL AND CLIENTS CONFER OFF THE

RECORD.)

MR. EDGERTON: YES, THERE IS MORE, BUT IT IS MORE INDIRECT. IT IS EVERYTHING -- THE ENSUING SHAREHOLDER LIST DID NOT LIST MFS, THE SHAREHOLDER, IF THAT IS RELEVANT TO WHAT YOU WOULD LIKE TO SEE.

THE COURT: SURE.

MR. EDGERTON: OKAY.

THE COURT: DO YOU HAVE AN EXHIBIT NUMBER TIED TO THE PLAINTIFF BOOK?

MR. EDGERTON: I DON'T THINK SO.

THE COURT: DO YOU HAVE THEIR INDEX OF EXHIBITS?

MR. EDGERTON: I DO IN THE BOOK.

THE COURT: IF YOU CAN LOOK AT THE INDEX AND TELL ME WHICH ONE IT WOULD BE.

MR. EDGERTON: I WILL DO THAT RIGHT NOW.

THE COURT: SO THE PLAINTIFF EXHIBIT NOTEBOOK LEAVES OFF AT 57, SO WE'LL CALL IT 58.

MR. CATANZARITE: WHAT IS THAT? DO YOU HAVE AN EXTRA ONE?

MR. EDGERTON: YOUR HONOR, I WOULD LIKE TO ADDRESS THE COURT. FROM THIS, THERE IS A SERIES OF EXHIBITS THAT REINFORCE THROUGH EXTRINSIC EVIDENCE THAT MFS WAS NOT RECOGNIZED AS A SHAREHOLDER, SIGNED OFF BY THE CEO, MR. O'CONNOR, AND THAT GOES TO THE SHAREHOLDER CONSENTS. THERE IS ALSO DOCUMENTS WHERE SHARE --

WHAT HAPPENED LATER IN THE STORY WAS THEN THERE

WERE SHARES ON THE SWITCHOVER, AND IT HAD THE SHAREHOLDER TABLE WHERE MFS WAS ABSENT, AND THAT WAS SIGNED OFF BY MR. O'CONNOR.

NOW THAT EVIDENCE IS SOMEWHAT CUMULATIVE, AND WE CAN GIVE THAT TO THE COURT, BUT IT IS SORT OF A BACKUP AND REINFORCEMENT CORROBORATING EVIDENCE OF THE FACT THAT THAT WAS KNOWN.

THE COURT: WHAT PART OF EXHIBIT 58 AM I SUPPOSED TO LOOK AT HERE?

THE COURT REPORTER: I AM SORRY, YOUR HONOR --

THE COURT: OKAY. THERE IS A COURT REPORTER --

MR. ANTWILER: WE WILL ANSWER YOUR QUESTION.

THE COURT: -- YOU ARE TREATING THIS LIKE A ROUNDTABLE MEETING, BUT IT IS A COURT HEARING. ONE PERSON SPEAKS AT A TIME, AND THE COURT REPORTER NEEDS TO HEAR WHAT IS SAID.

MR. EDGERTON: OKAY. SO THE COURT IS REQUESTING WHAT PART OF THE PHYSICAL EXHIBIT SHOWS THAT FACT.

THE COURT: AND I THOUGHT -- I AM LOOKING FOR AN EXHIBIT THAT IS ATTACHED TO THE DECLARATION, NOT THE DECLARATION ITSELF, BECAUSE I DON'T REALLY CARE ABOUT, YOU KNOW, WHAT SOMEBODY DECLARES UNDER PENALTY OF PERJURY. I WANT THE UNDERLYING DOCUMENT.

SO WHAT AM I LOOKING AT?

MR. EDGERTON: IT IS EXHIBIT NUMBER 1.

THE COURT: PLAINTIFFS' SECURITIES AGREEMENT?

MR. EDGERTON: YES. WE CAN GIVE IT TO YOUR CLERK. WE JUST PULLED IT FROM THE DECLARATION.

THE COURT: WHAT PAGE DO I WANT?

MR. TJOE: YOUR HONOR, IT IS PAGE 1. SO IT IS PART OF THE SECURITIES AGREEMENT. SUBPARAGRAPH E: "THE ISSUER MUST PROVIDE TO QUICK SILVER THE FOLLOWING DOCUMENTS: SUBPARAGRAPH E IS A COMPLETE LIST OF ISSUED AND OUTSTANDING SECURITIES OF THE ISSUER INCLUDING BUT NOT LIMITED TO PARAGRAPHS A, B, C, D AND E, AND WHAT WAS THEREAFTER PROVIDED."

THE COURT: SO WHAT PAGE IS THE LIST ON?

MR. TJOE: THAT IS A SEPARATE EXHIBIT, YOUR HONOR.

THE COURT: OH.

MR. EDGERTON: WELL, I THINK --

MR. ANTWILER: YOUR HONOR, UNDER E IT REQUESTS A COMPLETE LIST OF ISSUED AND OUTSTANDING SECURITIES, AND AT THAT POINT --

THE COURT: SO WHAT ARE YOU TALKING ABOUT, A NEGATIVE INFERENCE?

MR. EDGERTON: YES.

THE COURT: OKAY.

MR. ANTWILER: THE ONLY SHARES THAT HAVE BEEN ISSUED WOULD BE THE FOUNDERS WHICH WERE ISSUED AT THAT TIME THROUGH THAT SECURITIES AGREEMENT.

MR. EDGERTON: YES, BUT IT IS A NEGATIVE

INFERENCE.

THE COURT: OKAY. I AM LOOKING FOR DOCUMENTARY SUPPORT FOR ALL THESE VARIOUS THEORIES. SO IF YOU DON'T HAVE A DOCUMENT ON THE SHAREHOLDER LIST, FINE.

MR. TJOE: YOUR HONOR, THE NEXT DOCUMENT WOULD BE 59. IT IS THE SHARES INITIALLY ISSUED BY QUICK SILVER. IN OTHER WORDS, THE INFERENCE, IF THAT MAY BE CALLED, IS THIS IS WHAT WAS ISSUED AT THE VERY BEGINNING, THE VERY FIRST SHARES.

THE COURT: SO PASS IT AROUND UNLESS IT IS ALREADY PART OF THE NOTEBOOK.

MR. ANTWILER: IT IS NOT, YOUR HONOR.

MR. CATANZARITE: IS THAT THIS ONE?

MR. ANTWILER: YES.

MR. CATANZARITE: IT IS THIS ONE?

MR. ANTWILER: CORRECT.

THE COURT: SO THIS IS DATED 7/30/15, CHECKLIST REMINDER. AND YOU ARE SAYING THIS LISTS THE INITIAL SHAREHOLDERS?

MR. TJOE: YES. AND IT ALSO HAS COPIES OF THE INITIAL SHARES THAT WERE ISSUED STARTING OUT CERTIFICATE 1001.

THE COURT: SO PAGE 3 LISTS EIGHT SHAREHOLDERS.

MR. TJOE: CORRECT.

THE COURT: NONE OF WHICH ARE THE PLAINTIFF.

MR. TJOE: CORRECT, YOUR HONOR.

THE COURT: WHICH MAY BE CONSISTENT WITH SOME OTHER PREVIOUS DOCUMENT I SAW ABOUT ISSUING SHARES TO CERTAIN PEOPLE INSTEAD OF TO THE PLAINTIFF.

MR. TJOE: YES, YOUR HONOR.

THE COURT: YOU KNOW, THERE ARE THINGS IN THIS DEFENSE BRIEF ABOUT THINGS HAPPENING, BUT IS THERE ANYTHING THAT SHOWS LIKE WHO ARE THE INDIVIDUALS WITH THE PLAINTIFF AT THIS TIME SUCH THAT THEIR ACTIONS CAN BE IMPUTED TO THE CORPORATION? IN OTHER WORDS, JUST BECAUSE RICHARD O'CONNOR, RICHARD PROBST AND AMY COOPER ON BEHALF OF CTI SAY WE ARE NOT GOING TO ISSUE STOCK TO MFS, THAT DOESN'T NECESSARILY MEAN MFS AGREES. HOWEVER, IF THOSE ARE THE SAME THREE PEOPLE THAT ARE IN CHARGE OF MFS, THEN THAT COULD SUPPORT AN INFERENCE THAT MFS DOES AGREE.

SO WHAT EVIDENCE IN WRITING IS THERE ABOUT WHO IS IN CHARGE OF MFS AT THIS POINT IN TIME?

MR. EDGERTON: THAT IS EASY TO PROVIDE. THAT JUST GOES TO PROOF, I WOULD THINK THAT AT THE TIME THERE IS AN MFS DOCUMENT SHOWING THAT THOSE ARE THE THREE SOLE BOARD MEMBERS. AND THAT COMES FROM THE DECLARATION OF RICHARD PROBST BECAUSE HE WAS THE ONE WHO PROVIDED ALL THE BACKGROUND INFORMATION ON MFS.

THE COURT: DID YOU JUST SAY IT IS THE SAME THREE PEOPLE?

MR. EDGERTON: IT IS.

THE COURT: OKAY.

MR. EDGERTON: THAT IS UNDISPUTED, CORRECT? THAT IS UNDISPUTED, RIGHT?

MR. CATANZARITE: IT IS UNDISPUTED THEY ARE THE SAME THREE PEOPLE, BUT THEY DID NOT ACT FORMALLY TO ACKNOWLEDGE THAT MFS WAS NEVER A SHAREHOLDER.

THE COURT: UNDERSTOOD.

MR. EDGERTON: SO YOU HAVE THE SAME THREE CONTROLLING TWO COMPANIES.

THE COURT: OKAY. MOVING RIGHT ALONG.

MR. EDGERTON: YOUR HONOR, I WANTED TO MENTION SOMETHING THAT I MENTIONED YESTERDAY THAT --

THE COURT: NO, I DON'T WANT TO HEAR IT.

MR. EDGERTON: OKAY.

THE COURT: MY NUMBER 1 GOAL TODAY IS TO FINISH TODAY. WHETHER OR NOT THAT IS GOING TO HAPPEN TODAY REMAINS TO BE SEEN. BUT IT IS ALL ABOUT ME ABSORBING INFORMATION.

MR. EDGERTON: SURE. BUT I JUST WANT TO ADD A DOCUMENT AT SOME POINT.

THE COURT: I AM GOING THROUGH YOUR TRIAL BRIEF. YOU SAY O'CONNOR ALSO SIGNED OVER 50 SUBSCRIPTION AGREEMENTS TO SELL CTI STOCK DIRECTLY TO MFS SHAREHOLDERS.

MR. EDGERTON: THAT IS CORRECT, YOUR HONOR.

THE COURT: IS THERE A DOCUMENT ON THAT ONE?

MR. EDGERTON: YES, THERE IS.

THE COURT: WHILE YOU ARE LOOKING FOR THAT, THE NEXT STATEMENT IS, "GREG D FILINGS AND PRIVATE PLACEMENT MEMORANDUMS CONFIRM WHO THE MAJOR SHAREHOLDERS WERE. MFS WAS NEVER LISTED AS A SHAREHOLDER IN ANY OF THESE DOCUMENTS."

SO YOU HAVE ALREADY GIVEN ME EXHIBIT 59. SO IS THERE ANYTHING THAT WOULD BE NOT REDUNDANT OF THAT THAT SUPPORTS THAT ASSERTION?

MR. EDGERTON: NO. IT IS CUMULATIVE.

THE COURT: OKAY.

MR. EDGERTON: PERHAPS YOU ARE RIGHT.

THE COURT: I MEAN THAT IS FINE, IF THERE WAS AN ISSUANCE TO ANOTHER BATCH OF SHAREHOLDERS --

MR. EDGERTON: RIGHT.

THE COURT: -- THAT WOULD BE NONREDUNDANT.

MR. EDGERTON: RIGHT.

THE COURT: AND YOU SAY, "O'CONNOR REPRESENTED AND WARRANTED TO THE CTI TRANSFER AGENT THAT MFS WAS NOT A SHAREHOLDER OF CTI. SEE OPTA INJUNCTION PAGE 7, SECTION F." OKAY. SO IS THERE A DOCUMENT FOR THIS STATEMENT?

MR. ANTWILER: IT WOULD BE 58, YOUR HONOR. WE ALREADY MARKED.

MR. EDGERTON: AND, YOUR HONOR, DO YOU HAVE 58 AS ONE PAGE OR THE WHOLE EXHIBIT THAT I HAVE?

THE COURT: I HAVE QUICK SILVER, 12 PAGES.

MR. EDGERTON: OKAY. YOU HAVE IT.

THE COURT: SO WHERE DOES IT SAY FOR MR. O'CONNOR THAT MFS ISN'T A SHAREHOLDER?

MR. ANTWILER: IT IS THROUGH A NEGATIVE INFERENCE, YOUR HONOR.

THE COURT: SO WHEN YOU SAY HE REPRESENTED AND WARRANTED THAT THEY WEREN'T A SHAREHOLDER, THAT IS FROM HIM SAYING THESE OTHER PEOPLE ARE SHAREHOLDERS?

MR. ANTWILER: HE WAS BOUND UNDER 1E THAT WE DISCUSSED TO GIVE A COMPLETE LIST OF ALL SHARES ISSUED AND OUTSTANDING, AND MFS WAS NOT LISTED.

THE COURT: SO WHERE DID HE PROVIDE THIS LIST? IS THAT THE EXHIBIT 59 LIST?

MR. ANTWILER: 59 IS THE ONLY THING THAT WAS PROVIDED, THAT IS CORRECT, YOUR HONOR.

THE COURT: I AM NOT SURE THAT THAT ANSWERED MY QUESTION.

MR. EDGERTON: I DON'T THINK IT DID. IT IS NOT A GOOD ANSWER. BUT ON PAGE 1 IT'S HE IS REPRESENTING HE IS ANSWERING THESE QUESTIONS AS HE IS BEING ASKED BY THE TRANSFER AGENT TO ANSWER.

THE COURT: PAGE 1 OF?

MR. EDGERTON: OF THE QUICK SILVER DOCUMENT. AND THAT IS WHAT HE IS SUPPOSED TO BE PROVIDING, AND HE PROVIDES A LIST, WHICH CONSPICUOUSLY ABSENT IS MFS AS A SHAREHOLDER.

THE COURT: AND THIS LIST IS AT PAGE 2 OF EXHIBIT 59 THAT LISTS SHARES 1000 THROUGH 1007?

MR. TJOE: CORRECT, YOUR HONOR.

MR. EDGERTON: THAT IS CORRECT, YOUR HONOR.

THE COURT: IS THERE SOMETHING SAYING THIS CAME FROM HIM? I MEAN IT MAY NOT EVEN BE DISPUTED. I JUST WANT TO KNOW IF IT IS IN WRITING.

MR. EDGERTON: I UNDERSTAND.

MR. ANTWILER: ACTUALLY, YOUR HONOR, ON EXHIBIT 58, IF I MAY, IT ATTACHES EXHIBIT -- I AM SORRY. ONE MOMENT, YOUR HONOR, I THINK I CAN FIND IT.

MR. TJOE: AND, YOUR HONOR, ALSO EXHIBIT 58, PAGE 10, MIGHT HAVE BEEN A MISSTATEMENT THAT MR. O'CONNOR SAID THIS. BUT MS. COOPER AT PAGE 10 OF 12, YOUR HONOR, I BELIEVE THAT SHE TESTIFIED -- DECLARES EFFECTIVELY UNDER PENALTY OF PERJURY THAT, UNDER WHERE IT SAYS TOWARDS THE BOTTOM HALF OF THE PAGE, "SHARES OF SAID STOCK HAVE BEEN ISSUED," AND THERE IS NONE.

THE COURT: I AM NOT SEEING THAT.

MR. TJOE: SO TWO-THIRDS DOWN THE PAGE "THAT OF SAID AUTHORIZED STOCK THEY ARE NOW ISSUED" --

THE COURT: YES.

MR. TJOE: AND THERE IS NOTHING. NO STOCK HAD BEEN INDICATED HAD BEEN ISSUED AS OF THIS DATE.

THE COURT: YES.

MR. TJOE: SO THAT WOULD BE INDICATIVE OF THE

FACT THAT NO SHARES OF CTI HAVE EVER BEEN ISSUED TO MFS AS OF THIS DATE.

THE COURT: OH, OKAY.

MR. TJOE: AS SIGNED BY MS. COOPER.

AND I BELIEVED THE CONFUSION IS THE INFERENCE, THE NEXT PAGE, THAT IS PAGE 11 OF 12, YOUR HONOR, THIS IS A CERTIFICATE OF AUTHORITY OF OFFICERS, AND THAT IS SIGNED BY MR. O'CONNOR, MISS COOPER, MR. PROBST, AND I DON'T THINK IT IS MUCH OF A LEAP TO SAY THAT THEY WERE EFFECTIVELY VALIDATING WHAT MS. COOPER SAID ON PAGE 10 OF 12.

THE COURT: OKAY.

MR. ANTWILER: AND, YOUR HONOR, IN EXHIBIT 59 WHERE THE FIRST CERTIFICATES WERE ISSUED IT DOES INCLUDE A COPY OF THE AMENDED ORGANIZATIONAL ACTS.

THE COURT: WHICH I HAVE ALREADY LOOKED AT?

MR. ANTWILER: CORRECT, YOUR HONOR.

THE COURT: SO THEN YOU SAY THAT ALL BUT SIX OF 59 PLAINTIFF SHAREHOLDERS AGREE TO PARTICIPATE AND PURCHASE STOCK IN CTI, PROBST'S DECLARATION SECTION PARAGRAPH 31 IN EXHIBIT J.

MR. TJOE: YES, YOUR HONOR. EXHIBIT J TO MR. PROBST'S DECLARATION IS UNFORTUNATELY NOT A VERY GOOD PRINTOUT OF -- IT SUMMARIZES AND HIGHLIGHTS IN YELLOW THE INDIVIDUALS THAT DID NOT PARTICIPATE IN THE FRIENDS AND FAMILY ROUND.

I CAN GIVE THE COURT CLERK WHAT I WILL MARK AS EXHIBIT 60.

MR. CATANZARITE: I HAVE GOT THAT ONE.

MR. ANTWILER: IT IS IN HIS BINDER.

MR. CATANZARITE: IT IS BLOWN-UP.

THE COURT: WHAT NUMBER IS IT?

MR. CATANZARITE: THERE IS A SET OF SPREADSHEETS; IT IS AT 52. WE MADE IT BIGGER.

MR. EDGERTON: OH, THIS IS THE ONE THAT I WAS NOT SURE ABOUT. IS THAT JUST THE BLOWUP?

MR. CATANZARITE: YES.

MR. EDGERTON: OKAY. SO I AM STIPULATING TO HIS WHOLE BOOK.

MR. CATANZARITE: IT IS BLOWN-UP AS AN 11-BY-17. I DON'T THINK IT HAS THE YELLOW ON IT.

MR. EDGERTON: SO THAT IS JUST REPLICATION?

MR. CATANZARITE: YES.

MR. EDGERTON: OKAY. THAT IS FINE.

MR. TJOE: SO TO THE EXTENT THAT IT IS HELPFUL --

THE COURT: OKAY. SO WE HAVE GOT CTI SHAREHOLDER LIST. WE HAVE GOT FIRST 1 THROUGH 9, AND THEN WE HAVE GOT 1 THROUGH 163, AND THEN YOU HAVE GOT MORE ON TOP OF THAT WITH ISSUE DATES SET FORTH. AND I TAKE IT THERE IS NO PLAINTIFF ON HERE?

MR. TJOE: NO, YOUR HONOR.

MR. EDGERTON: THAT IS CORRECT.

THE COURT: OKAY. IS THERE ANYTHING TYING THIS IN TO THE PLAINTIFF TAKING THE POSITION THAT THIS IS ACCURATE?

MR. EDGERTON: THE PLAINTIFF IS TAKING THE ADVERSE POSITION NOW THAT IT IS NOT ACCURATE, AND THAT IS THE EXHIBIT THAT I WANTED TO MARK.

THE COURT: THAT IS EXACTLY WHY I WANT TO SEE IF THEY TOOK THE POSITION IN THE PAST THAT IT WAS ACCURATE.

MR. EDGERTON: THEY DID NOT TAKE A POSITION IN THE PAST THAT IT WAS ACCURATE. THEY WENT WITH OUR POSITION. THREE-AND-A-HALF YEARS LATER IS WHEN THE DISPUTE AROSE.

THE COURT: I FEEL LIKE YOU ARE SAYING THE SAME THING THAT I WAS SAYING.

MR. EDGERTON: PROBABLY. I JUST WANT TO MAKE SURE IT IS JUST SAID THAT WAY.

THE COURT: I WILL REPEAT WHAT I AM SAYING: IF YOU HAVE ADMISSIONS BY THE PLAINTIFF THAT THEY ARE NOT A SHAREHOLDER, THEN THAT IS SOMETHING I WOULD WANT TO SEE.

SO IF A LIST OF SHAREHOLDERS THAT DOESN'T INCLUDE THE PLAINTIFF IS ARGUED BY THE DEFENDANT, OKAY, FINE. BUT IF THE PLAINTIFF HAS EMBRACED THIS LIST, THEN THAT IS MORE INTERESTING TO ME.

MR. EDGERTON: SO IT IS EXECUTED BY MR. O'CONNOR, SO A TACIT ADMISSION IS ACKNOWLEDGED BY

HIM.

THE COURT: OKAY. WHERE DO I FIND A SIGNATURE ON HERE?

MR. ANTWILER: YOUR HONOR, I DON'T KNOW IF IT'S -- WHICH DOCUMENT WE ARE REFERRING TO AT THE MOMENT, BUT WE HAVE --

THE COURT REPORTER: I AM SORRY, I DIDN'T HEAR YOU.

THE COURT: WHEN YOU FACE BACKWARD, NOBODY CAN HEAR YOU.

MR. ANTWILER: I AM SORRY, YOUR HONOR.

WE HAVE SUBSCRIPTION AGREEMENTS THAT ARE SIGNED, WHICH WOULD GO ALONG WITH THE NEW SHARE STRUCTURE, WHICH DOES NOT INCLUDE MFS THAT ARE SIGNED BY RICHARD O'CONNOR.

THE COURT: OKAY. WELL, I UNDERSTAND THAT THERE IS AN ARGUMENT IN YOUR BRIEF THAT HE SHOULDN'T BE HEARD TO COMPLAIN THAT OTHER PEOPLE OWN STOCK, BUT I AM NOT REALLY SURE THAT IS AN ISSUE FOR THIS HEARING. IT'S MORE ABOUT DOES PLAINTIFF ITSELF OWN ANY STOCK, WHETHER PLAINTIFF IS A 100 PERCENT SHAREHOLDER OR SOME LESSER PERCENTAGE SHAREHOLDER?

SO THE FACT THAT MR. O'CONNOR AGREED THAT THERE ARE THESE OTHER SHAREHOLDERS, IT CAN ONLY GO SO FAR.

MR. TJOE: YOUR HONOR, IF YOU ARE JUST LOOKING FOR DOCUMENTARY EVIDENCE, THERE IS AN E-MAIL EXCHANGE ON MOBILE FARMING SYSTEMS' LETTERHEAD. THIS IS BETWEEN

MR. PROBST, MR. COOPER -- EXCUSE ME, MS. COOPER AND MR. O'CONNOR.

THE COURT: IF IT IS RELEVANT, I WANT TO SEE IT. AND I WOULD RATHER READ IT MYSELF THAN HAVE YOU READ IT TO ME.

MR. TJOE: THAT IS FINE, YOUR HONOR.

MR. CATANZARITE, IS THIS E-MAIL PART OF YOUR TRIAL EXHIBIT BINDER?

MR. CATANZARITE: IS THERE A DATE?

MR. TJOE: IT IS NOVEMBER 3RD, 2017. IT WAS PREVIOUSLY ATTACHED --

MR. CATANZARITE: NO, WE DON'T HAVE THIS.

MR. TJOE: -- PREVIOUSLY ATTACHED AS EXHIBIT L TO MR. PROBST'S DECLARATION.

IF IT IS OKAY WITH MR. CATANZARITE, I WILL LABEL THIS AS 60.

MR. CATANZARITE: SURE.

THE COURT: WELL, ACTUALLY IT IS NOT OKAY -- IT DOESN'T HAVE TO BE OKAY WITH HIM IF IT IS MARKED, BUT ONLY IF IT IS ADMITTED. SO YOU CAN MARK IT AS EXHIBIT 60.

MR. TJOE: IDENTIFIED, EXACTLY, YOUR HONOR. MY APOLOGIES.

THE COURT: SO WE ARE CALLING THESE E-MAILS DATED 11/3/17.

SO POINT ME TO THE INTERESTING PART.

MR. TJOE: SURE, YOUR HONOR. SO BEGINNING AT THE BOTTOM OF THE PAGE, THIS IS FROM MY CLIENT, MR. PROBST; THIS IS ADDRESSED TO -- THIS WAS SENT TO MS. COOPER AND MR. O'CONNOR. "GUYS, WE NEED TO CLOSE THE COMPANY OR POSSIBLY B.K. IT. ITS ONLY ASSETS ARE THE STOCK IT OWNS IN GROW POD SOLUTIONS AND THE NOTE FROM CTI WHICH WON'T BE PAID ANY TIME SOON."

THE COURT: OKAY. SO YOUR POINT IS HE IS NOT IDENTIFYING CTI STOCK AS AN ASSET OF MFS?

MR. TJOE: CORRECT. AND IF YOU FOLLOW THE REST OF THE E-MAIL, NO ONE DISAGREES WITH THAT. NO ONE OBJECTS TO THAT POSITION.

THE COURT: OKAY.

MR. ANTWILER: YOUR HONOR, ALSO THERE ARE PPM'S THAT WOULD LIST ALL SHAREHOLDERS THAT OWN FIVE OR PERCENT MORE OF CTI. MFS IS NOT LISTED, AND THEY ARE EXECUTED -- SOME OF THEM ARE EXECUTED BY, OR AUTHORIZED BY MR. O'CONNOR.

THE COURT: WELL, AT THIS POINT I BELIEVE IT IS THE PLAINTIFF'S CONTENTION THAT THEY ACQUIRED STOCK AT THE VERY BEGINNING. SO THE FACT THAT THEY WEREN'T LISTED ON SOME SUBSEQUENT STOCK OFFERING I DON'T THINK REALLY MATTERS FOR PURPOSES OF THIS HEARING. CORRECT?

MR. ANTWILER: WELL, IT LISTED THE CURRENT SHAREHOLDERS THAT OWN FIVE OR PERCENT MORE, AND IT DOES NOT LIST MFS. SO IT IS A SHOWING THAT MFS WAS NOT A FIVE

PERCENT OR MORE SHAREHOLDER.

THE COURT: OH, I THOUGHT YOU WERE LISTING IT AS A LIST OF A NEW ISSUANCE AS OPPOSED TO A CUMULATIVE LIST OF ALL STOCKHOLDERS OF FIVE PERCENT OR MORE. SO YOU ARE SAYING IT IS THE LATTER. SO WHERE IS THAT?

MR. ANTWILER: IT IS THE LATTER.

THAT IS WHAT I AM TRYING TO GATHER, YOUR HONOR. I DON'T HAVE IT IN FRONT OF ME, BUT I CAN PROVIDE IT AT THE FIRST AVAILABLE BREAK.

THE COURT: OKAY. OR YOU CAN KEEP LOOKING FOR IT.

OKAY. THEN YOU HAVE GOT A REPRESENTATION THAT SINCE OCTOBER 2015 CTI RAISED OVER 3,000,000 FROM OVER 60 PRIVATE INVESTORS AND AN ADDITIONAL 6,000,000 IN FINANCING WITH REPRESENTATIONS THAT MFS DID NOT OWN ANY SHARES OF CTI STOCK. SO THAT IS SOMETHING I MIGHT WANT TO SEE IF WE CAN LABEL THAT AS A REPRESENTATION FROM THE PLAINTIFF.

MR. EDGERTON: SO EXTRINSICALLY THAT PROOF, A LOT OF THAT IS GOING TO COME INTRINSICALLY IS WHAT --

WHAT IS THE BACKUP, GENTLEMEN, FOR THAT DOCUMENT?

MR. ANTWILER: YOUR HONOR, THAT WILL ALSO BE INCLUDED ON SOME OF THE PRIVATE PLACEMENT MEMORANDUMS, AND IT IS ALSO ON I THINK WOULD BE REFLECTED IN SOME OF THESE SUBSCRIPTION AGREEMENTS.

ON SOME OF THE SUBSCRIPTION AGREEMENTS IT SAYS THERE IS 23,000,000 SHARES. SO YOU CAN ONLY READ THAT IN CONJUNCTION WITH THE AMENDED BECAUSE THERE IS 28,000,000 SHARES AS PURPORTEDLY ISSUED IS WHAT THEY ARE ARGUING. SO IF THERE ARE ONLY 23,000,000 OUTSTANDING SHARES, THEN NO SHARES CAN BE ISSUED TO MFS.

BUT THE OTHER DOCUMENTARY EVIDENCE IS THE PPM'S THAT WE ARE CURRENTLY TRYING TO FIND TO PROVIDE TO YOUR HONOR.

THE COURT: OKAY. THOSE AMENDED ACTS ARE COMING UP AGAIN. THAT WAS WHAT EXHIBIT?

MR. ANTWILER: I THINK IT'S -- LET ME JUST CONFIRM.

MR. CATANZARITE: 53.

MR. ANTWILER: 53, YOUR HONOR.

THE COURT: ALL RIGHT. I THINK WE ARE AT THE POINT WHERE I WANT TO HAVE PLAINTIFF NOW POINT ANY DOCUMENTS THAT THEY WISH OUT TO ME THAT SUPPORT THIS PLAINTIFF OWNS STOCK INTENTION.

MR. EDGERTON: CAN I JUST, THIS ONE DOCUMENT --

THE COURT: WHAT IS THAT?

MR. EDGERTON: -- IF IT IS APPROPRIATE?

SO YESTERDAY I MENTIONED THE DECLARATION ABOUT MR. O'CONNOR STILL CLAIMING THAT MFS IS THE SOLE SHAREHOLDER OF CTI. AND I APOLOGIZED TO THE COURT AND SAID, IT IS REALLY NOT BLACK AND WHITE IN HIS

DECLARATION, WHICH I ANALYZED, BUT IT IS IN A SHAREHOLDER CONSENT AGREEMENT THAT HE SERVED ON CTI PROCLAIMING HIMSELF TO BE THE CEO OF CTI AND REPRESENTED THAT MFS IS THE SOLE SHAREHOLDER.

SO THAT WAS SOMETHING THAT HE SERVED ON CTI IN JANUARY. SO AS LATE AS JANUARY HE WAS CLAIMING THAT MFS IS THE SOLE SHAREHOLDER OF CTI, A POSITION THAT WE CLAIM IS FALSE.

THE COURT: OKAY. ALL RIGHT, MR. CATANZARITE.

MR. EDGERTON: WOULD YOU LIKE TO HAVE THIS?

THE COURT: NO. IT SOUNDS REDUNDANT.

MR. EDGERTON: ALL RIGHT.

OH, WE JUST FOUND SOMETHING THAT YOU WERE LOOKING FOR.

THE COURT: NAMELY?

MR. TJOE: ONE OF THE PPM'S, YOUR HONOR.

MR. ANTWILER: WE WILL MARK THIS AS EXHIBIT 61?

THE COURT: YES.

MR. EDGERTON: WHAT PAGE?

MR. ANTWILER: I WILL HAND THIS TO THE COURT ATTENDANT.

MR. CATANZARITE: IS THERE A PAGE?

MR. ANTWILER: PAGE 27.

THE COURT: PRIVATE PLACEMENT MEMORANDUM.

MR. CATANZARITE: WHAT IS THE DATE ON IT?

MR. ANTWILER: THE DATE OF THIS MEMORANDUM IS

OCTOBER 2ND, 2015, AND IT IS LISTED ON THE BOTTOM OF THE FIRST PAGE.

THE COURT: PAGE WHAT?

MR. ANTWILER: 27, YOUR HONOR.

THE COURT: SECURITY OWNERSHIP.

MR. ANTWILER: AND IT IS THAT FIRST PARAGRAPH AND THE BELOW TABLE WHICH IS RELEVANT. I CAN READ IT IF YOUR HONOR LIKES.

THE COURT: I DON'T NEED THAT.

AND WHAT DO I HAVE THAT SAYS THAT THIS IS A STATEMENT FROM THE PLAINTIFFS' REPRESENTATIVES?

MR. ANTWILER: WE ARE -- WE HAVE AGREEMENTS THAT HAVE BEEN EXECUTED BY MR. O'CONNOR. I AM CURRENTLY JUST MAKING SURE THAT EVERY REDACTION IS MADE TO ANY SOCIAL SECURITY NUMBERS FOR THE INVESTORS.

THE COURT: YOU ARE GETTING THIS BACK AT THE END OF THE DAY PROBABLY.

MR. ANTWILER: OKAY. SO IT IS FINE IF WE SHOW THAT?

THE COURT: I AM NOT PUTTING IT ON THE INTERNET OR FILING IT AS A DOCUMENT FOR PUBLIC VIEWING.

MR. ANTWILER: IN THAT CASE WE WILL MARK AS EXHIBIT 62 A GROUP OF SIGNED SUBSCRIPTION AGREEMENTS. AND IF YOU WILL LOOK THROUGH SEVERAL OF THESE PAGES, YOU WILL SEE RICHARD O'CONNOR'S SIGNATURE THROUGH DOCUSIGN THERE ON THE BOTTOM OF EACH ONE.

THE COURT: SO THIS IS VARIOUS DATES IN LATE 2015/EARLY 2016. AND YOU ARE SAYING THIS IS PEOPLE GETTING STOCK IN CTI?

MR. ANTWILER: CORRECT, YOUR HONOR. PURSUANT TO THE SUBAGREEMENT THAT WAS EXHIBIT 61, I BELIEVE.

THE COURT: OKAY. I AM NOT SURE HOW HELPFUL THIS IS BECAUSE I AM NOT INTERESTED IN DETERMINING WHETHER PLAINTIFF IS THE ONLY SHAREHOLDER, BUT RATHER IF THEY ARE A SHAREHOLDER.

MR. ANTWILER: BUT THE ONLY REASON I POINTED IT OUT, YOUR HONOR, IS THAT, AS WE SAW ON PAGE 27, IT LISTS ALL SHAREHOLDERS WHO OWNED FIVE PERCENT OR MORE. MOBILE FARMING SYSTEMS, THE PLAINTIFF, IS NOT LISTED, AND WE HAVE O'CONNOR WHO IS AFFILIATED WITH BOTH PLAINTIFF AND CTI SIGNING OFF AND ACCEPTING THOSE.

THE COURT: YOU MEAN THE FACT THAT THESE PEOPLE ARE GETTING STOCK?

MR. ANTWILER: NOT THAT THEY ARE GETTING STOCK, BUT THAT HE IS AUTHORIZING THE PPM, WHICH DOES NOT REPRESENT MFS AS A FIVE PERCENT SHAREHOLDER.

MR. TJOE: IF I MAY CLARIFY?

THE COURT: ARE YOU TYING EXHIBIT 62 TO EXHIBIT 61? IS 62 CARRYING OUT 61?

MR. ANTWILER: CORRECT, YOUR HONOR.

THIS IS THE SIGNATURE PAGES THAT WOULD BE TIED TO EXHIBIT 61.

THE COURT: OKAY. THANK YOU. OKAY. ENOUGH FROM THE DEFENDANT. HAVE A SEAT.

MR. CATANZARITE, YOUR TURN TO SHOW ME DOCUMENTS THAT SUPPORT ANY NOTION OF PLAINTIFF OWNING STOCK IN THIS COMPANY.

MR. CATANZARITE: WELL, I GAVE YOU THE -- I GUESS I INTERRUPTED DEFENDANTS, BUT WE GAVE YOU A LIST OF -- I PROVIDED YOU WITH A LIST OF THE DOCUMENTS WE RELY UPON.

THE COURT: I DON'T KNOW WHAT YOU ARE REFERRING TO.

MR. CATANZARITE: YOU WANT ME TO GO BACK OVER THEM? I WILL. WE BEGAN WITH 2 --

THE COURT: ARE YOU TALKING ABOUT YOUR OPENING STATEMENT?

MR. CATANZARITE: I AM TALKING ABOUT YOU ASKED FOR WHAT ADDITIONAL EXHIBITS I HAD.

THE COURT: OH, THAT. OKAY. NO. WHAT I MEAN IS, DO YOU HAVE ANYTHING ELSE THAT YOU HAVEN'T TOLD ME ABOUT TODAY?

MR. CATANZARITE: NO.

THE COURT: OKAY. ALL RIGHT. SO BASICALLY THE DOCUMENTS SUPPORT THE POSITION THAT CTI HAS TAKEN THE POSITION THAT MFS DOESN'T OWN STOCK. CTI HAS DONE THAT THROUGH ITS THREE DIRECTORS AS OF 2015: PROBST, COOPER AND O'CONNOR, AND THOSE ARE THE THREE DIRECTORS OF MOBILE

FARMING SYSTEMS.

SO EVEN THOUGH MOBILE FARMING SYSTEMS DIDN'T PER SE ITSELF ADOPT THIS POSITION THAT IT DIDN'T OWN STOCK, THEN THE THREE PEOPLE DID SO, WHICH FOR LACK OF A BETTER TERM CONSTITUTES AN ADMISSION AGAINST INTEREST. IF IT WASN'T TRUE, THEY WOULD BE VIOLATING THEIR FIDUCIARY DUTIES UP THE YING YANG TO SIGN DOCUMENTS ON BEHALF OF CTI SAYING THAT MFS IS NO LONGER A STOCKHOLDER IF, IN FACT, MFS WAS A STOCKHOLDER.

SO YOU HAVE SOME SERIOUS EXPLAINING TO DO WHY I SHOULD CONCLUDE THAT MFS IS AS OF TODAY -- WELL, AS OF THE DATE OF THIS CORPORATE ELECTION A SHAREHOLDER OF CTI THAT WAS DENIED ITS RIGHT TO VOTE IN THIS DIRECTOR ELECTION THAT IS BEING CONTESTED.

MR. CATANZARITE: YOU WANT ME TO ADDRESS THAT RIGHT NOW?

THE COURT: YES.

MR. CATANZARITE: OKAY. SO I THINK THAT THE EVIDENCE -- THE OFFER OF PROOF WOULD BE THAT THE TESTIMONY WOULD BE SUCH THAT THE CONSIDERATION PASSED, TRAILERS, CONTAINER PASSED, WERE USED BY CULTIVATION TECHNOLOGIES AS A WHOLLY OWNED SUBSIDIARY. THE REPRESENTATION IN THE APRIL LETTER IS THAT THEY ARE A WHOLLY OWNED SUBSIDIARY AND WILL BE DISTRIBUTED AS A DIVIDEND AT SOME POINT IN TIME. OKAY? AT SOME POINT IN TIME, THAT IS EXHIBIT 5.

SO EXHIBIT 2 CONFIRMS THE AMOUNT OF MONEY SPENT. EXHIBITS -- THE FINANCIAL STATEMENTS CONFIRM THAT MORE THAN 29,000 -- MORE UPWARDS OF 75,000 WAS PAID ON BEHALF OF -- BY MOBILE FARMING FOR THE BENEFIT OF CTI.

THERE IS NO DOCUMENT THAT -- THERE IS NO DOCUMENT THAT SHOWS IT IS A LOAN. IN OTHER WORDS, CTI DOES NOT SIGN A NOTE THAT IT OWES MOBILE FARMING MONEY. THERE IS NO WRITTEN EVIDENCE OF A NOTE. THERE IS NO MOBILE FARMING SHAREHOLDER MEETING AUTHORIZING THE LOAN OF ANY MONEY.

THE LOAN TO MOBILE FARMING DOES NOT APPEAR -- DOES NOT APPEAR ON THE FINANCIAL STATEMENTS IN ANY AUTHORIZED CAPACITY, MEANING IT IS NOT AUTHENTICATED BY A DOCUMENT OF ANY KIND. IT IS JUST PUT FORWARD IN A SET OF RECORDS.

AND THE TESTIMONY WOULD BE THAT THEY WERE TOLD, THAT IS, COOPER AND O'CONNOR WERE TOLD THAT YOU HAVE TO DO IT THIS WAY BECAUSE OF THE FINANCIAL CONDITION OF MOBILE FARMING. SO SIGN THESE DOCUMENTS, WHICH THEY DID.

THE COURT: WHICH DOCUMENTS?

MR. CATANZARITE: WELL, SOME OF THE DOCUMENTS THEY ARE REFERRING TO, THE SHARE ISSUANCES AND THE LIKE THAT THEY ARE RELYING UPON FOR THE NEGATIVE INFERENCE.

THE COURT: SO LET'S ASSUME FOR ARGUMENT SAKE THAT ALL THREE OF THESE MODES OF CONSIDERATION WERE CONVEYED FROM THE PLAINTIFF TO THE DEFENDANT, THEN YOU

HAVE GOT THIS RESOLUTION REPUDIATING THE SHAREHOLDER SIGNED OFF ON BY THE THREE INDIVIDUALS IN THEIR REPRESENTATIVE CAPACITY FOR CTI, YES, BUT THEY ARE THE THREE PRINCIPALS OF THE PLAINTIFF, WHICH GIVES YOU AN ESTOPPEL ARGUMENT AMONG OTHER LEGAL ARGUMENTS AND DOCTRINES THAT COULD APPLY HERE, SO WHY WOULDN'T THAT SUPERSEDE THOSE PREVIOUS FACTS?

MR. CATANZARITE: WELL, BASED UPON -- WELL, THERE IS A COUPLE OF PROBLEMS WITH 53. IF YOU READ 53, IN PARTICULAR PAGE 4, IT PURPORTS TO BE A RESOLUTION OF DIRECTORS. BUT IF MOBILE FARMING WAS NEVER A SHAREHOLDER, THERE WERE NEVER ANY DIRECTORS BECAUSE MOBILE FARMING WOULD HAVE HAD TO VOTE FOR THE DIRECTORS.

IN OTHER WORDS, IF YOU LOOK AT EXHIBIT 4, EXHIBIT 4 HAS MOBILE FARMING ADOPTING THE ACTS AND RESOLUTIONS AS THE SOLE SHAREHOLDER OF CTI. BUT IF AS THEY SAY MOBILE FARMING NEVER PAID, NEVER WAS ENTITLED TO ANY SHARES, NEVER WAS ISSUED ANY SHARES, THEN THERE WOULDN'T BE THAT -- THAT MEETING WOULD BECOME A NULLITY. AND THE ONLY PERSON THAT COULD ACT ON BEHALF OF THE COMPANY IN THAT DEFAULT WOULD BE THE INCORPORATOR WHO RESIGNED ON THE VERY SAME DAY.

AND SO THE INCORPORATOR, MR. ERIC WILLENS, DOES NOT SIGN EXHIBIT 53. IT PURPORTS TO BE SIGNED BY PEOPLE WHO COULD ONLY HAVE BEEN ELECTED AS DIRECTORS BY MOBILE FARMING, AND MOBILE FARMING THEY CLAIM IS NOT A

SHAREHOLDER. SO IT CAN'T BE -- THEY CAN'T RELY UPON 53 IF, IN FACT, THE DIRECTORS ARE NOT AUTHORIZED TO ACT ON BEHALF OF THE COMPANY BECAUSE THEY WEREN'T DULY ELECTED BECAUSE THEY RECANT THAT MOBILE FARMING IS NOT A SHAREHOLDER.

IN OTHER WORDS, THEY DON'T GO BACK AND HAVE WILLENS CONDUCT A NEW MEETING AND SAY THAT MOBILE FARMING DIDN'T PASS THE CONSIDERATION. I WITHDRAW MY RESIGNATION. I NOW ACT AS INCORPORATOR AND I NOW START ANOTHER MEETING AND ALLOW YOU ALL TO PURCHASE SHARES.

THEY JUST HAVE THIS RESOLUTION THAT PURPORTS TO DO SOMETHING THAT THEY ARE NOT -- THEY DON'T HAVE CAPACITY TO DO.

THE COURT: WHEN WAS THIS ELECTION OF DIRECTORS THAT YOU ARE CHALLENGING?

MR. CATANZARITE: WELL, THE LATER -- WELL, THE SUBSEQUENT ACTS BY THE DIRECTORS OF THE COMPANY, BECAUSE IT HAD NO SHAREHOLDERS AS OF THIS POINT OF TIME, IT COULD NOT HAVE HAD DIRECTORS.

THE COURT: HOW DO YOU ADDRESS THE LACHES DEFENSE ARGUMENT THAT YOU WAITED TOO LONG IN THIS EQUITABLE PROCEEDING TO MAKE THIS CLAIM?

MR. CATANZARITE: WELL, I THINK -- LACHES IS AN EQUITABLE ARGUMENT. THE COUNTERPART INS UNCLEAN HANDS THAT THE SHARE --

THE COURT: I DIDN'T ASK YOU ABOUT UNCLEAN

HANDS. I ASKED YOU ABOUT LACHES, THE DELAY IN BRINGING THE PROCEEDING.

MR. CATANZARITE: WELL, I WOULD SAY THAT THE KNOWLEDGE THAT THE SHAREHOLDERS OF MOBILE FARMING HAD NOT RECEIVED THEIR 47 PERCENT OF THE INITIAL ISSUANCE OF THE 28,000,000 SHARES, THE LACK OF THAT KNOWLEDGE WAS NOT DISCOVERED UNTIL THE LAWSUITS WERE INITIATED.

THE COURT: YOU ARE SAYING THE THREE FOUNDERS DIDN'T KNOW THAT MFS NEVER GOT STOCK CERTIFICATES?

MR. CATANZARITE: I AM SAYING THREE FOUNDERS DIDN'T KNOW THAT THE WAY THE ATTORNEYS ENDED UP ISSUING THE SHARES WAS NOT IN ACCORDANCE WITH THE REPRESENTATION MADE IN THE MAY 5TH LETTER TO THE SHAREHOLDERS THAT THEY WOULD END UP WITH 47 PERCENT OF THOSE INITIAL SHARES.

THE COURT: WHO IS "THEY"?

MR. CATANZARITE: THEY MEANING MR. O'CONNOR AND MR. PROBST IN WRITING THE LETTER TO THE SHAREHOLDERS.

THE COURT: I DON'T CARE ABOUT THEIR PERSONAL OWNERSHIP OF SHARES. I AM ONLY REFERRING TO THE MFS OWNERSHIP OF SHARES.

MR. CATANZARITE: MFS, PURSUANT TO THE LETTER THAT WAS ANNOUNCED TO THE SHAREHOLDERS AS STATING THAT MOBILE FARMING OWNED CTI AS A SUBSIDIARY, PROMISED THAT THE SHAREHOLDERS WOULD RECEIVE ON A SPINOUT OR STOCK DIVIDEND WHAT AMOUNTS TO MATHEMATICALLY 13,000,000 SHARES; 47 PERCENT OF THE COMPANY. IT WAS NOT DISCOVERED

UNTIL MUCH LATER, 2018, THAT THE SHAREHOLDERS OF MOBILE FARMING IN RECEIPT OF THAT STOCK DIVIDEND DID NOT END UP WITH THE EQUIVALENT OF 13,000,000 SHARES. THEY ENDED UP WITH ONLY 11 PERCENT OR 4.5 MILLION SHARES. THAT'S THE DISPUTE. THAT WAS DISCOVERED MUCH LATER. BECAUSE THE SHAREHOLDERS DIDN'T HAVE A SHARE COUNT.

THE MOBILE FARMING SHAREHOLDERS DIDN'T HAVE KNOWLEDGE, THE NON-INSIDERS DID NOT HAVE KNOWLEDGE OF THE SHARE COUNT. SO LACHES WOULDN'T APPLY IF THERE IS NO KNOWLEDGE ATTRIBUTABLE TO THESE MATERIAL FACTS.

THE COURT: OKAY. WE ARE GOING TO TAKE OUR AFTERNOON RECESS UNTIL 3:15.

(RECESS.)

THE COURT: WE ARE BACK. NOW THAT I HAVE HAD TIME TO DECOMPRESS WITH THE AFTERNOON RECESS, MR. CATANZARITE, EVERY FIBER OF MY BEING SAYS THAT THE FACTS ARE OVERWHELMING AGAINST YOUR POSITION IN THIS CASE. SO UNLESS YOU CAN CONVINCE ME OTHERWISE, I AM PREPARED TO RULE THAT THIS ELECTION WAS VALID.

MR. CATANZARITE: WELL, THE ONLY THING I CAN SAY IS THAT THE SOLE DOCUMENT UPON WHICH THEY RELY IS EXHIBIT 53, WHICH IS WHAT YOU SAY, AND I UNDERSTAND THE POSITION IS AN ADMISSION AGAINST INTEREST AGAINST MOBILE FARMING BECAUSE IT IS SIGNED BY THREE PERSONS WHO WERE ALSO DIRECTORS AND IN CONTROL OF MOBILE FARMING.

BUT AT THE SAME TIME THE EVIDENCE AT TRIAL WOULD

BE THAT ALL OF THE CONSIDERATION PASSED, AND THE TRAILER PASSED, ALL THE CONSIDERATION -- CONSIDERATION OF MONEY PASSED, IN ALL MEANS PASSED, AND THAT THE SHARES WERE ISSUED AND SOLD.

THE FACT THAT THERE IS NO CERTIFICATE DOES NOT SOLVE -- DOES NOT CURE OR ERASE THAT FACT.

WHEN THEY SIGN ON JUNE 15TH OF 2015 THAT THE CONSIDERATION DID NOT PASS, THAT IS BASED UPON THE ADVICE OF COUNSEL, AND IT IS FLAT OUT WRONG, AND IT IS AGAINST THE INTEREST OF MOBILE FARMING TO HAVE SIGNED IF, IN FACT, MOBILE FARMING DID NOT RECEIVE THE SHARES IT WAS ENTITLED TO.

SO I THINK THAT WHEN YOU SAY THAT IT IS AN ADMISSION, IT IS NOT -- AN ADMISSION AGAINST INTEREST SIGNED BY THE LAWYER WHO TELLS THEM TO SIGN IT BECAUSE THIS IS THE WAY IT MUST BE DONE, THAT TYPE OF EXPLANATION, IF OFFERED, AND BELIEVED BY THE COURT, AND COUPLED WITH THE EVIDENCE THAT THE CONSIDERATION HAD, IN FACT, PASSED SHOULD ALONE BE SUFFICIENT, YOUR HONOR, TO AWARD THE 28,000,000 SHARES TO MOBILE FARMING.

THE COURT: THANK YOU.

SO, YOU KNOW, I NOTICED IN THE OPENING STATEMENT YESTERDAY MR. EDGERTON SAID THAT PLAINTIFFS WERE RELYING ON A CASE FROM 1880 SOMETHING. BUT WHEN I WAS LOOKING AT THE CASE AT THE STATUTORY ANNOTATIONS UNDER 709, THERE'S A CASE FROM 2009 CALLED HAAH, H-A-A-H, VERSUS KIM, 175

CAL.APP.4TH, 45, THAT HOLDS THAT STANDING REGARDING A 709 CLAIM INCLUDES SOMEONE WHO HAD ENTERED INTO AN AGREEMENT TO TAKE SHARES IN A CORPORATION, BUT WHO HAD NOT BEEN ISSUED THOSE SHARES.

SO I THINK THAT IS WHAT THE PLAINTIFF IS CLAIMING HERE. BUT WE HAVE REPUDIATION OF THE AGREEMENT BY PEOPLE WHO WERE THE SAME PRINCIPALS IN THE PLAINTIFF. WE HAVE ACTIONS -- REPEATED ACTIONS TAKEN SUBSEQUENTLY CONSISTENT WITH THE NOTION THAT PLAINTIFF WAS NOT A STOCKHOLDER. THE DELAY IN BRINGING THIS ACTION IS CONSISTENT WITH THAT CONCLUSION, THAT PLAINTIFF HAS BEEN OF THE VIEW THAT THEY ARE NOT A SHAREHOLDER.

SO THE COURT CONCLUDES THAT THE CHALLENGE DIRECTOR ELECTION IS DENIED, AND THE COURT CONCLUDES THAT PLAINTIFF IS NOT A STOCKHOLDER IN CTI.

AND DURING THE BREAK I LOOKED AT THE PRELIMINARY INJUNCTION, AND IT IS ALL SEEKING TO ENJOIN THINGS UNTIL THE 709 HEARING HAS BEEN HELD, WHICH IT NOW HAS BEEN. SO THE PRELIMINARY INJUNCTION IS DENIED, AND THE TRO IS DISSOLVED.

SO I AM NOT SURE WHAT THAT DOES FOR THE CASE AS A WHOLE, BUT, YOU KNOW, YOU CAN CONTINUE TO LITIGATE WHATEVER IS REMAINING IN THE CASE.

THERE ARE ONE OR MORE RELATED CASES, WHICH I GUESS AT LEAST ARE SET FOR STATUS CONFERENCES OR CMC'S ALONG THE WAY, BUT THAT IS THE RULING FOR TODAY.

LET'S HAVE AN ORDER PREPARED BY MR. EDGERTON FOR THE COURT.

MR. EDGERTON: WE SHALL PREPARE IT.

THE COURT: AND, YOU KNOW, THE COURT WILL WAIT FOR OBJECTIONS WITHIN THE STATUTORY TIME FROM MR. CATANZARITE OR ANYBODY ELSE TECHNICALLY WHO CAN OBJECT.

AND LET'S RETURN THE EXHIBITS, JOSE, WITH THEIR SOCIAL SECURITY NUMBERS ON HERE, 58 THROUGH 62, AND BOTH OF THESE NOTEBOOKS FROM THE PLAINTIFF.

IS THIS A COURTESY -- I MEAN, THIS GOES BACK TO YOU. I AM NOT SURE IF THIS IS LIKE A COURTESY COPY.

MR. EDGERTON: IS IT MINE? I THINK THAT WAS A WITNESS COPY.

MR. CATANZARITE: THERE WAS A BENCH BOOK AND A WITNESS BOOK.

THE COURT: OH, THERE IS SOMETHING, THAT THING ON THE WITNESS STAND.

COURTROOM ATTENDANT: YES, THAT IS THE WITNESS BOOK.

THE COURT: SO THEY CAN HAVE THIS BACK, TOO.

OKAY, THANK YOU.

MR. CATANZARITE: THANK YOU.

MR. EDGERTON: THANK YOU, YOUR HONOR.

MR. TJOE: THANK YOU, YOUR HONOR.

(ADJOURNMENT TAKEN.)

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

REPORTER'S CERTIFICATE

I, CHERI A. VIOLETTE, CSR NO. 3584, COURT REPORTER PRO TEMPORE, IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT CONSISTING OF PAGES 89 THROUGH 130 IS A TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES IN THE ABOVE-ENTITLED CASE.

DATED THIS 2ND DAY OF MAY,2019.

CHERI A. VIOLETTE, CSR NO. 3584
OFFICIAL COURT REPORTER PRO TEMPORE

T

EXHIBIT 15

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Attorneys for Defendants Cultivation Technologies, Inc., Justin Beck, Robert Kamm, Robert Bernheimer, Irving Einhorn, and Miguel Motta

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MOBILE FARMING SYSTEMS, INC., et al.;

Plaintiffs,

v.

RICHARD JOSEPH PROBST, et al.,

Defendants,

-and-

CULTIVATION TECHNOLOGIES, INC.,

Nominal Defendant.

CASE NO.: 30-2019-01046904 CU-BT-CJC

DECLARATION OF CARLOS CALIXTO

Assigned for All Purposes to Honorable Randall J. Sherman

DECLARATION OF CARLOS CALIXTO

I, Carlos Calixto, make this declaration based on my personal knowledge of each fact set forth below and if called as a witness, I could and would testify competently and truthfully to these matters before the Court. I hereby declare as follows:

1. I am over the age of 18.

2. I currently reside in Riverside County, California.

3. I hold 85,000 shares of common stock ("Shares") of Cultivation Technologies, Inc., a California corporation ("CTI").

4. On or about May 6, 2019, I began receiving calls, text messages, and voicemails from Anthony Scudder ("Scudder") requesting that I execute a document designating a proxy agent to vote my Shares ("Proxy") to facilitate the replacement of CTI management.

5. On or about May 8, 2019, to put an end to his incessant calling, I spoke with Scudder who requested that I speak with attorney Kenneth J. Catanzarite of Catanzarite Law Corporation ("Catanzarite"); Scudder merged Catanzarite into our call.

6. Catanzarite explained to me the purpose of the Proxy was to remove the board of directors of CTI through an action by majority written consent of the shareholders of CTI ("Shareholder Consent").

7. Following our conversation, Catanzarite sent me the Proxy and requested my signature.

8. On May 9, 2019, I explained to Scudder that I did not want to get involved and declined to execute the Proxy.

9. On May 10, 2019, Richard O'Connor ("O'Connor") sent me text messages and voicemails offering me $5,000.00 to execute the Proxy; which I declined.

10. On May 14, 2019, I was provided a copy of the Shareholder Consent dated as of May 14, 2019, executed by O'Connor as proxy holder for certain CTI

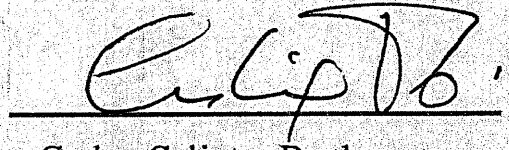
shareholders with a register of purported proxies attached thereto and attached hereto as **Exhibit "A."**

11. Page 28 of the Shareholder Consent is a forged Proxy authorizing O'Connor to vote my Shares.

12. This Proxy was not signed by me or by anyone acting upon my authority or with my knowledge or consent.

13. I have no knowledge of the identity of the person(s) who forged my Proxy.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed and dated in Riverside County, California on May 17, 2019.



Carlos Calixto, Declarant

EXHIBIT 16

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RE: Meet & Confer Regarding Cross-Motion for Protective Order in *Justin S. Beck v. Kenneth J. Catanzarite et al*.; Orange County Superior Court Case No. 30-2020-01145998

April 13, 2023

Mr. Catanzarite,

I'm writing concerning the May 5, 2023, pending hearing to compel production of discovery with a request to meet and confer in good faith tomorrow on the issues generally cited herein.

I intend to file a cross motion for protective order to be protected from unwarranted "annoyance, embarrassment, or oppression or undue burden and expense." See Cal. Cod. Civ. Proc. § 2025.420 (B), § 2030.090(b), § 2031.060(b), and § 2033.080.(b). I have good cause for hardship exception to the extent this is viewed as untimely, and the Court has power to control its proceedings.

The discovery you are seeking is unreasonably cumulative or duplicative or obtainable from some other source that is more convenient, less burdensome, or less expensive.

1) Most importantly, your office filed demurrers in this case in which you assert your own conflicts prevent you from disclosing your client's information – but you somehow believe I should produce exhaustive information for your clients. This is unreasonable at best.

2) You have previously served over 5,000 requests upon and against parties you are now representing, including Mobile Farming Systems, Inc. – and you were separately provided with discovery responses that led to more fraudulent litigation and procedural abuse.

3) As purported counsel for Mobile Farming Systems, Inc. and Cultivation Technologies, Inc. (against each other) at various times – you've had access to all the information you seek (from your "clients.") You've also extracted information through a TRO to which you weren't entitled – in which you made material misrepresentations of fact to the Court.

4) You know the basis of my damages because I've furnished a preponderance of evidence thereof, and you were aware of the $261 million transaction you disrupted in a detailed letter on February 5, 2019 – but you chose to continue your schemes willingly, with malice.

I am not furnishing you with more information that enables you to file more fraudulent litigation against innocent people. This is a malicious prosecution case in which three cases have already terminated favorably on the merits reflecting my innocence. The benefit of the doubt is gone.

Kindly provide me a reasonable list of what you truly need from me informally (information that you don't have access to already, on and after September 14, 2018), and a proposed schedule for depositions of each of your firm's associates and clients during the month of May 2023.

For each item you ask of me, confirm to me in writing that you will furnish the same information for each of your clients on the date of production we agree to. If we agree on that list, we will agree to the same information being produced, the same day, by each defendant including you, your firm Catanzarite Law Corporation, Woodward, O'Keefe, and Catanzarite-Woodward and me. Anything else is not reasonable or acceptable.

As an alternative to this, I propose we simply stipulate to a trial date this year and rely upon witness and victim testimony and the voluminous evidence in each of our possession.

There have been thousands of ROAs, underlying the six cases and an evidentiary trial of fact. As you are aware, CTI's lead investor was public – so you had access and you have shown, pleaded, and declared intimate knowledge of facts. Contakt World Technologies was also public, and you have the issuer statement. You have the merger agreement with Western Troy. You have the FinCanna financing agreement... Indeed, you even filed it in Orange County Superior Court. You have access to settlement agreements with your own clients involving shares you also said do not exist which implicates them further in alleged fraud on the Courts and me.

You are abusing the discovery process to harass me, an innocent person. I'm more than willing to provide you, or point to, the documents underlying my claims by a preponderance – but I am not willing to "consent" to what amounts to further malicious prosecution by your firm or clients.

Let me know how you'd like to handle the "quid pro quo": anything you ask for of me must be produced by each defendant to the case in kind – and we'll need to agree on depositions for each of you next month (and me).

As an alternative, let's stipulate to a 2-week jury trial date for September or October 2022; we can agree to use discovery involving magistrate-controlled process from Federal Court to avoid duplication or procedural waste.

I note Ms. Catanzarite-Woodward misled Honorable Sherman by stating you needed to re-draft and re-file demurrers, but instead just noticed them for a date after the status conference wherein I'm seeking to book a trial date. This recurring abuse of process will be reflected in my status conference statement.

Respectfully,

Justin J. Beck

February 5, 2019
Letter to CLC Clients

O'HAGAN MEYER

ATTORNEYS ▲ ADVISORS

VIA EMAIL:

Kenneth J. Catanzarite, Esq. kcatanzarite@catanzarite.com
Catanzarite Law Corporation
2331 W Lincoln Avenue
Anaheim, California 92801

Mr. Catanzarite:

We are in receipt of your letter and the attempted "consents" pertaining to Cultivation Technologies, Inc. ("CTI") from Friday, January 25, 2019 ("Letter") and the subsequent complaint ("New Lawsuit") in which you purport that a majority of former officers and directors ("Controlling Parties") of both CTI and Mobile Farming Systems, Inc. ("MFS") have agreed to void their previous actions conducted in their capacities as officers and directors from the period March 30, 2015 to January 25, 2019, and "renounce" their shares in CTI for which CTI received good and valuable consideration and subsequently issued stock certificates through CTI's transfer agent of record.

To summarize the two complaints filed by the Catanzarite Law Corporation, the relevant facts are as follows:

- In March 2015, the boards of MFS and CTI were both comprised of O'Connor, Cooper, and Probst at the time of CTI's formation. O'Connor, Cooper, and Probst authorized all corporate actions of MFS and CTI in 2015 on behalf of each company;

- CTI has operated since 2015 and continues to do so. MFS shareholders account for more than 50 shareholders of CTI shareholders, who purchased shares in CTI for consideration of $.01 per share;

- Ms. Pinkerton, on behalf of Mr. Root, sued O'Connor, Cooper, and Probst for abuse of the elderly and payment of illegal commissions in violation of section 15(b) of the Securities Exchange Act of 1934;

- CTI began operating in June 2015 under the direction of O'Connor, Cooper, and Probst, who, with full knowledge by MFS shareholders restructured the plan to make CTI a wholly owned subsidiary and offered CTI shares to MFS shareholders based upon their MFS positions at $.01 a share;

- Shareholders who have executed the MFS consents sent by your law firm are, in fact, bona fide shareholders of CTI, have acted on behalf of the company in voting in many instances, and have signed agreements with the company for their shares;

- In January 2019, your firm filed a new legal Complaint, in which O'Connor and Cooper, in signing the "consents," attempt to "renounce" their shares and "undo" all activities of CTI from the period of 2015 to 2019 in favor of MFS;

- The New Lawsuit suggests that MFS should benefit from all good and valuable consideration furnished by every party subsequent to June 2015, which includes, but is not limited to:

    - $932,119 in 506(b) private placement shares sold by CTI in subscription agreements executed by O'Connor, which also represent the cap table of CTI (without any shares owned by MFS);

    - $527,000 in 506(c) private placement shares sold by CTI through subscription agreements, many of which are executed by O'Connor, which also represent the cap table of CTI (without any shares owned by MFS);

    - $1,645,000 in convertible notes; and

    - $5,959,251 provided by FinCanna Capital Corp. pursuant to multiple agreements executed between CTI and FinCanna

This letter serves as formal notice ("Notice") to Catanzarite Law Corporation and others listed above of the potential damages inflicted against CTI and its shareholders caused by the Letter, New Lawsuit and the "consents" and attempted "renouncements" as set forth above ("Direct Damages"), which includes the very same shareholders that you are either representing or soliciting for signature.

The following transactions are in process ("Transactions"), all of which are now at imminent, material risk of failing due to your actions along with other shareholders who executed the shareholder consents.

CTI is preparing disclosure documents related to the parties of these agreements so that they are not consummated without full disclosure of the additional risks now attributed by your capricious actions.

- FinCanna Letter of Agreement. Necessitates a payment of no less than $3,000,000 to FinCanna on or before March 31, 2019, after which FinCanna may elect to force dissolution pursuant to their General Security Agreement.

- Sale of the Coachella Property for $4,000,000. The proceeds from this sale go to FinCanna to reduce more than $8,000,000 in outstanding payment obligations with FinCanna. This transaction was approved by CTI shareholders in November 2018 and is presently in escrow, with a closing date slated for February 2019. This property and any proceeds are subject to a blanket security agreement with FinCanna.

- Sale of the Colusa Property for $300,000. A majority of the proceeds from this sale go to FinCanna to reduce more than $8,000,000 in outstanding payment obligations outstanding with FinCanna. This property and any proceeds are subject to a blanket security agreement with FinCanna.

- Sale – Leaseback of Palm Desert Property for $1,575,000. If CTI is unable to transition its manufacturing operations from Coachella to Palm Desert before June 30, 2019 – the company will be unable to operate or sustain itself beyond that date. CTI is in escrow pursuant to a build-to-suit, sale-leaseback which affords CTI an opportunity to transition commercial operations from Coachella to Palm Desert, but the timing is absolutely critical. This property and any proceeds are subject to a blanket security agreement with FinCanna.

- Reverse Takeover Transaction with Public Issuer in Canada ("RTO"). CTI has been working on a transaction which may afford liquidity to CTI shareholders, but it requires significant effort and necessitates cooperation and satisfaction of numerous conditions precedent. We have attached a valuation summary detailing other public issuers in the cannabis industry which was prepared by DelMorgan & Co. of Santa Monica, California from October 2018. Note that, according to this information provided to CTI by DelMorgan & Co., comparison companies with $3M in revenue resulting from the "LTM" or last twelve months imputes a potential valuation range of $175,000,000 to $261,000,000 for CTI.

CTI makes no warranties nor representations of its ability to close the foregoing transactions, to provide shareholder liquidity, or to achieve any valuation as a company overall should it finalize the RTO. This information is provided for reference in assessing potential of the Direct Damages inflicted by you and others.

You have demanded in the Letter that CTI relinquish immediate control to certain parties, which CTI categorically contests as illegal.

The direct damages outlined herein are mounting. If you continue with your two lawsuits, you and those in conspiracy with you may be held responsible for all resulting damage. If you would like to have your position reviewed by a neutral party, I suggest we engage in mediation so that all your complaints pertaining to CTI and its directors be addressed immediately.

If you reject this good faith request to mediate this dispute this month, we will assume that you and all parties involved in the Letter are engaged in an active conspiracy to destroy CTI. Please be reminded that FinCanna, copied hereto, may exercise its right to exert control over the company and commence liquidation of CTI if we do not meet the March 31, 2019 payment deadline.

Let's discuss next steps after the ex parte hearing tomorrow.

Sincerely,

Sam Y. Edgerton, III

EXHIBIT 18

Kenneth J. Catanzarite (SBN 113750)
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Tim James O'Keefe (SBN 290175)
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Fax: (714) 520-0680

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

DENISE PINKERTON, an individual as attorney in fact for ROGER D. ROOT, individually and as successor in interest to the claims of his deceased Spouse Sharon K. Root, and derivatively on behalf of MOBILE FARMING SYSTEMS, INC., a California corporation,

Plaintiffs,

v.

CULTIVATION TECHNOLOGIES, INC., a California corporation; RICHARD JOSEPH PROBST, an individual; RICHARD FRANCIS O'CONNOR II, an individual; AMY JEANETTE COOPER, an individual; JOSEPH R. PORCHE, an individual; JUSTIN S. BECK, an individual; TGAP HOLDINGS, LLC, a limited liability company; EM2 STRATEGIES, LLC, a limited liability company; I'M RAD, LLC, a limited liability company; CLIFF HIGGERSON, an individual; AROHA HOLDINGS INC., a California corporation; ANTHONY SCUDDER, a.k.a. TONY SCUDDER, an individual; SCOTT UNFUG, an individual; RANA FOROUGHI MOBIN, an individual; ROBERT KAMM, an individual; ROBERT A. BERNHEIMER, an individual; IRVING MARK EINHORN, an individual; MIGUEL MOTTA, an individual; and Does 1-150,

Defendants.

Case No. 30-2018-01018922-CU-FR-CJC

Assigned for All Purposes to
Hon. Judge Geoffrey T. Glass
Dept. __

COMPLAINT FOR:

1. **Breach of Fiduciary Duty**
2. **Constructive Fraud**
3. **Aiding and Abetting Breach of Fiduciary Duty**
4. **Conspiracy to Breach Fiduciary Duty**
5. **Conversion**
6. **Declaratory Relief for Order Directing Surrender and Exchange of Certificates (*Calif. Corp. Code*, § 422)**
7. **Misappropriation of Trade Secrets, California Civil Code Section 3426**
8. **Unfair Competition Under California Business & Professions Code Section 17200, et seq.**
9. **Fraudulent Concealment**
10. **Exploitation of the Elderly**
11. **Violation of *Florida Statute* § 517.301 Fraudulent Transaction and Falsification and Concealment of Facts Giving Rise to Remedies under *Florida Statue* § 517.211**

CATANZARITE LAW CORPORATION
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Nominal Defendant: MOBILE FARMING SYSTEMS, INC., a California corporation.

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7. For compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures suffered or incurred under the "tort of another" doctrine as required to act in the protection of Plaintiffs' interests by bringing this action in accordance with *Prentice v. North Am. Title Guaranty Corp., Alameda Division* (1963) 59 Cal.2d 618; *Electrical Electronic Control, Inc. v. Los Angeles Unified School Dist.* (2005) 126 Cal.App.4th 601;

8. For statutory attorneys fees and costs as appropriate under *Corporations Code*, § 25501.5 and *Code of Civil Procedure*, § 1029.8. Plaintiffs also allege they are entitled to the remedy afforded by *Code of Civil Procedure*, § *1029.8* which provides that where an unlicensed person, who took securities sales commissions, cause injury or damage to another person(s) as a result of providing services for which such license is required those defendants, jointly and severally, "...shall be liable to the injured person for treble the amount of damages assessed in a civil action in any court having proper jurisdiction." with such additional damages not to exceed $10,000. In addition the Court may "in its discretion award all costs and attorney's fees to the injured person if that person prevails in the action." See *Civil Code*, § *1029.8 (a)*;

9. Punitive, exemplary, and treble damages, and any other damages authorized by law;

10. For prejudgment and post-judgment interest at the maximum legal rate, as provided by California law, as applicable, as an element of damages which Plaintiffs has suffered as a result of Defendants' wrongful and unlawful acts;

11. For reasonable attorneys' fees and costs incurred herein as allowed by statute; and

12. For such other relief as the Court deems just and proper.

DATED: September 14, 2018. CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite
Brandon E. Woodward
Tim James O'Keefe
Attorneys for Plaintiffs

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EXHIBIT 19

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

MOBILE FARMING SYSTEMS, INC., a California corporation, directly and derivatively on behalf of CULTIVATION TECHNOLOGIES, INC., a California corporation,

Plaintiffs,

v.

RICHARD JOSEPH PROBST, an individual; JUSTIN S. BECK, an individual; EM2 STRATEGIES, LLC, a limited liability company; I'M RAD, LLC, a limited liability company; ROBERT KAMM, an individual; ROBERT A. BERNHEIMER, an individual; IRVING MARK EINHORN, an individual; MIGUEL MOTTA, an individual; TOW AND GROW, INC., a California corporation, and Does 1-200,

Defendants.

Nominal Defendant: CULTIVATION TECHNOLOGIES, INC., a California corporation.

Case No. _____

Assigned for All Purposes to
Hon. _____
Dept. __

COMPLAINT FOR:

1. **Violation of Cal. Corp. Code § 1507**
2. **Breach of Fiduciary Duty**
3. **Declaratory Relief**
4. **Permanent Injunction**
5. **Conversion- CTI Shares**
6. **Conversion- TOW-GROW**
7. **Declaratory Relief for Order Directing Surrender and Exchange of Certificates (*Calif. Corp. Code*, § 422)**
8. **Misappropriation of Trade Secrets, *California Civil Code* Section 3426**
9. **Unfair Competition under *California Business & Professions Code* Section 17200, Et. Seq. Breach of Fiduciary Duty**

[REQUEST FOR HEARING UNDER *CAL. CORP. CODE* § 709(b)]

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12. Punitive, exemplary, and treble damages, and any other damages authorized by law;

13. For prejudgment and post-judgment interest at the maximum legal rate, as provided by California law, as applicable, as an element of damages which Plaintiffs has suffered as a result of Defendants' wrongful and unlawful acts;

14. For reasonable attorneys' fees and costs incurred herein as allowed by statute; and

15. For such other relief as the Court deems just and proper.

DATED: January 28, 2019.

CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite
Brandon E. Woodward
Tim James O'Keefe
Attorneys for Plaintiffs

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EXHIBIT 20

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

RICHARD MESA, individually and on behalf of himself and all others similarly situated and derivatively on behalf of CULTIVATION TECHNOLOGIES, INC., a California corporation,

Plaintiffs,

v.

RICHARD JOSEPH PROBST, an individual; JUSTIN S. BECK, an individual; ROBERT A. BERNHEIMER, an individual; ROBERT A. BERNHEIMER, INC., a California corporation; ROBERT KAMM, an individual; IRVING MARK EINHORN, an individual; MIGUEL MOTTA, an individual; MICHAEL BURDICK, an individual; FREDERICK HEIM, an individual; JEFFREY SHERWOOD, an individual; THOMAS BRODEUR, an individual; ERIC MATHUR, an individual; JASON PITKIN, an individual; BRYAN TIMMERMAN, an individual; KEVIN GILLIAN, an individual; ROBERT SCHMIDT, an individual; DARREN WETHERHOLD, an individual; EM2 STRATEGIES, LLC, a limited liability company; I'M RAD, LLC, a limited liability company; TOW AND GROW, INC., a California corporation; and Does 1-200,

Defendants.

Nominal Defendant: CULTIVATION TECHNOLOGIES, INC., a California corporation.

Case No. 30-2019-01064267-CU-MC-CXC

Assigned for All Purposes to
Hon. Judge Peter Wilson
Dept. CX102 --

[PROPOSED] CLASS ACTION COMPLAINT FOR:

1. **Violation of Cal. Corp. Code § 1507**
2. **Breach of Fiduciary Duty**
3. **Declaratory Relief**
4. **Permanent Injunction**
5. **Conversion- CTI Shares**
6. **Conversion- TOW-GROW**
7. **Declaratory Relief for Order Directing Surrender and Exchange of Certificates (*Calif. Corp. Code*, § 422)**
8. **Misappropriation of Trade Secrets, *California Civil Code* Section 3426**
9. **Unfair Competition under *California Business & Professions Code* Section 17200, Et. Seq. Breach of Fiduciary Duty**

[REQUEST FOR HEARING UNDER *CAL. CORP. CODE* § 709(b)]

CATANZARITE LAW CORPORATION
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14. For prejudgment and post-judgment interest at the maximum legal rate, as provided by California law, as applicable, as an element of damages which Plaintiffs has suffered as a result of Defendants' wrongful and unlawful acts;

15. For reasonable attorneys' fees and costs incurred herein as allowed by statute; and

16. For such other relief as the Court deems just and proper.

DATED: April 16, 2019.

CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite
Brandon E. Woodward
Tim James O'Keefe
Attorneys for Plaintiffs

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EXHIBIT 21

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

RICHARD MESA, AMY COOPER, TOM S. MEBANE, individually and on behalf of himself/herself/themselves and all others similarly situated and derivatively on behalf of CULTIVATION TECHNOLOGIES, INC., a California corporation,

Plaintiffs,

v.

RICHARD JOSEPH PROBST, an individual; JUSTIN S. BECK, an individual; ROBERT A. BERNHEIMER, an individual; ROBERT A. BERNHEIMER, INC., a California corporation; ROBERT KAMM, an individual; IRVING MARK EINHORN, an individual; MIGUEL MOTTA, an individual; MICHAEL BURDICK, an individual; FREDERICK HEIM, an individual; JEFFREY SHERWOOD, an individual; THOMAS BRODEUR, an individual; ERIC MATHUR, an individual; JASON PITKIN, an individual; BRYAN TIMMERMAN, an individual; KEVIN GILLIAN, an individual; ROBERT SCHMIDT, an individual; DARREN WETHERHOLD, an individual; EM2 STRATEGIES, LLC, a limited liability company; I'M RAD, LLC, a limited liability company; TOW AND GROW, INC., a California corporation; FINCANNA CAPITAL CORP., a British Columbia corporation and Does 1-200,

Defendants.

(Caption Continues on Next Page)

Case No. 30-2019-01064267

Assigned for All Purposes to
Hon. ~~Peter Wilson~~ Randall Sherman
Dept. ~~CX-102~~ CX105

FIRST AMENDED ~~[PROPOSED]~~ CLASS ACTION COMPLAINT FOR:

1. **Violation of Cal. Corp. Code § 1507**
2. **Breach of Fiduciary Duty**
3. **Declaratory Relief**
4. **Permanent Injunction**
5. **Conversion- CTI Shares**
6. **Conversion- TOW-GROW**
7. **Declaratory Relief for Order Directing Surrender and Exchange of Certificates (*Calif. Corp. Code*, § 422)**
8. **Wrongful Foreclosure - May 2, 2019**
9. **For Recovery of Treble Damages for Usurious Interest and Fees under California Civil Code § 1916-3**
10. **For Common Law Recovery or Offset of Usurious Interest & Fees**
11. **Unfair Competition under *California Business & Professions Code* Section 17200, Et. Seq.**

[REQUEST FOR HEARING UNDER *CAL. CORP. CODE* § 709(b)]

CATANZARITE LAW CORPORATION
2331 WEST LINCOLN AVENUE
ANAHEIM, CALIFORNIA 92801
TEL: (714) 520-5544 • FAX: (714) 520-0680

Nominal Defendant: CULTIVATION TECHNOLOGIES, INC., a California corporation.

CATANZARITE LAW CORPORATION
2331 WEST LINCOLN AVENUE
ANAHEIM, CALIFORNIA 92801
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against CTI, and that CTI has no duty under the agreements to pay any interest or fees to FINCANNA;

15. Awarding treble damages and directing FINCANNA to pay the sum of $6,000,000 and $3,000,000 to CTI in accordance with California Civil Code § 1916-3 in connection with usurious interest and fees paid on the FINCANNA loans;

16. For compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures suffered or incurred under the "tort of another" doctrine as required to act in the protection of Plaintiffs' interests by bringing this action in accordance with *Prentice v. North Am. Title Guaranty Corp., Alameda Division* (1963) 59 Cal.2d 618; *Electrical Electronic Control, Inc. v. Los Angeles Unified School Dist.* (2005) 126 Cal.App.4th 601;

17. Punitive, exemplary, and treble damages, and any other damages authorized by law;

18. For prejudgment and post-judgment interest at the maximum legal rate, as provided by California law, as applicable, as an element of damages which Plaintiffs has suffered as a result of Defendants' wrongful and unlawful acts;

19. For reasonable attorneys' fees and costs incurred herein as allowed by statute; and

20. For such other relief as the Court deems just and proper.

DATED: May 15, 2019. CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite
Brandon E. Woodward
Tim James O'Keefe
Attorneys for Plaintiffs

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EXHIBIT 22

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Attorneys for Defendants and
Cross-Complainants

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

FINCANNA CAPITAL CORP.,

Plaintiff,

v.

CULTIVATION TECHNOLOGIES, INC., COACHELLA MANUFACTURING, LLC, COACHELLA DISTRIBUTORS, LLC, and DS GEN, LLC, and DOES 1-100

Defendants.

CULTIVATION TECHNOLOGIES, INC., a California corporation, COACHELLA MANUFACTURING, LLC, a California limited liability company; COACHELLA DISTRIBUTORS, LLC, a California limited liability company; and DS GEN, LLC, a California limited liability company;

Cross-Complainants,

v.

FINCANNA CAPITAL CORP., a British Columbia corporation, ANDRIYKO HERCHAK , an individual; ROBERT KAMM, an individual; MIGUEL MOTTA, an individual, and Roes 1-100,

Cross-Defendants.

Case No. 30-2019-01072088-CU-BC-CJC

Assigned for All Purposes to
Hon. Linda Marks
Dept. C10

CROSS-COMPLAINT FOR:

1. **Breach of Fiduciary Duty**
2. **Conversion**
3. **Wrongful Foreclosure - May 2, 2019**
4. **For Recovery of Treble Damages for Usurious Interest and Fees under California Civil Code § 1916-3**
5. **For Common Law Recovery or Offset of Usurious Interest & Fees**
6. **Unfair Competition under California Business & Professions Code Section 17200, Et. Seq.**

CATANZARITE LAW CORPORATION
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11. For prejudgment and post-judgment interest at the maximum legal rate, as provided by California law, as applicable, as an element of damages which Cross-Complainants have suffered as a result of Cross-Defendants' wrongful and unlawful acts;

12. For reasonable attorneys' fees and costs incurred herein as allowed by contract and or statute; and

13. For such other relief as the Court deems just and proper.

DATED: June 25, 2019.

CATANZARITE LAW CORPORATION

By: _____
Kenneth J. Catanzarite, Esq.
Attorneys for Cross-Complainants

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EXHIBIT 23

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Fax: (714) 520-0680

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

MOBILE FARMING SYSTEMS, INC., a California corporation,

Plaintiff,

v.

RICHARD JOSEPH PROBST, an individual; JUSTIN S. BECK, an individual; I'M RAD, LLC, a limited liability company; ROBERT KAMM, an individual; ROBERT A. BERNHEIMER, an individual; IRVING MARK EINHORN, an individual; MIGUEL MOTTA, an individual; PRO FAB TECH, LLC, a California limited liability company, and Does 2-200,

Defendants.

Case No. 30-2019-01046904-CU-BT-CJC

Assigned for All Purposes to
Hon. Randall J. Sherman
Dept. CX105

FIRST AMENDED COMPLAINT FOR:

1. **Breach of Fiduciary Duty;**
2. **Conversion;**
3. **Common Count for Money Had and Received;**
4. **Accounting;**
5. **Misappropriation of Trade Secrets, *California Civil Code* Section 3426; and**
6. **Unfair Competition under *California Business & Professions Code* Section 17200, Et. Seq. Breach of Fiduciary Duty.**

CATANZARITE LAW CORPORATION
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8. For reasonable attorneys' fees and costs incurred herein as allowed by statute; and

9. For such other relief as the Court deems just and proper.

DATED: July 22, 2019.

CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite
Brandon E. Woodward
Tim James O'Keefe
Attorneys for Plaintiff

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EXHIBIT 24

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

DENISE PINKERTON, an individual as attorney in fact for ROGER D. ROOT, individually and as successor in interest to the claims of his deceased Spouse Sharon K. Root,

Plaintiffs,

v.

RICHARD JOSEPH PROBST, an individual; JUSTIN S. BECK, an individual; I'M RAD, LLC, a limited liability company; ROBERT KAMM, an individual; ROBERT A. BERNHEIMER, an individual; IRVING MARK EINHORN, an individual; MIGUEL MOTTA, an individual; and Does 1-100,

Defendants.

Case No. 30-2018-01018922

Assigned for All Purposes to
Hon. Randall J. Sherman
Dept. CX-105

FIRST AMENDED COMPLAINT FOR:

1. **Breach of Fiduciary Duty**
2. **Fraudulent Concealment**
3. **Exploitation of the Elderly**
4. **Violation of *Florida Statute* § 517.301 Fraudulent Transaction and Falsification and Concealment of Facts Giving Rise to Remedies under *Florida Statue* § 517.211**

CATANZARITE LAW CORPORATION
2331 WEST LINCOLN AVENUE
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4. For an Order directing Defendants to return all MFS property in their possession, custody or control;

5. For compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures suffered or incurred under the "tort of another" doctrine as required to act in the protection of Plaintiffs' interests by bringing this action in accordance with *Prentice v. North Am. Title Guaranty Corp., Alameda Division* (1963) 59 Cal.2d 618; *Electrical Electronic Control, Inc. v. Los Angeles Unified School Dist.* (2005) 126 Cal.App.4th 601;

6. For statutory attorneys fees and costs as appropriate under *Corporations Code*, § 25501.5 and *Code of Civil Procedure*, § 1029.8. Plaintiffs also allege they are entitled to the remedy afforded by *Code of Civil Procedure*, § *1029.8* which provides that where an unlicensed person, who took securities sales commissions, cause injury or damage to another person(s) as a result of providing services for which such license is required those defendants, jointly and severally, "...shall be liable to the injured person for treble the amount of damages assessed in a civil action in any court having proper jurisdiction." with such additional damages not to exceed $10,000. In addition the Court may "in its discretion award all costs and attorney's fees to the injured person if that person prevails in the action." See *Civil Code*, § *1029.8 (a)*;

7. Punitive, exemplary, and treble damages, and any other damages authorized by law;

8. For prejudgment and post-judgment interest at the maximum legal rate, as provided by California law, as applicable, as an element of damages which Plaintiff has suffered as a result of Defendants' wrongful and unlawful acts;

9. For reasonable attorneys' fees and costs incurred herein as allowed by statute; and

10. For such other relief as the Court deems just and proper.

DATED: July 23, 2019.

CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite
Brandon E. Woodward
Tim James O'Keefe
Attorneys for Plaintiffs

CATANZARITE LAW CORPORATION
2331 WEST LINCOLN AVENUE
ANAHEIM, CALIFORNIA 92801
TEL: (714) 520-5544 • FAX: (714) 520-0680

EXHIBIT 25

CSC

Notice of Service of Process

null / ALL
Transmittal Number: 20418290
Date Processed: 09/20/2019

Primary Contact: SOP Team nwsop@nationwide.com
Nationwide Mutual Insurance Company
Three Nationwide Plaza
Columbus, OH 43215

Electronic copy provided to: Ashley Roberts

Entity:	Scottsdale Insurance Company Entity ID Number 3286058
Entity Served:	Scottsdale Insurance Company
Title of Action:	Cultivation Technologies, Inc vs. Scottsdale Insurance Company; Ohio Stock Insurance Company, and Does 1 Through 20
Document(s) Type:	Summons/Complaint
Nature of Action:	Contract
Court/Agency:	Orange County Superior Court, CA
Case/Reference No:	30-2019-01096233-CU-IC-CJC
Jurisdiction Served:	Ohio
Date Served on CSC:	09/19/2019
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Catanzarite Law Corporation N/A

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SCOTTSDALE INSURANCE COMPANY, an Ohio Stock Insurance company, and Does 1 through 20, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CULTIVATION TECHNOLOGIES, INC., a California corporation

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ***¡AVISO!*** *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Orange County Superior Court
Central Justice Center
700 Civic Center Drive West Santa Ana CA 92701

CASE NUMBER:
(Número del Caso):
30-2019-01096233-CU-IC-CJC
Judge Glenn Salter

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kenneth J. Catanzarite (SBN 113750) - 2331 West Lincoln Avenue Anaheim, CA 92801 Tel: (714) 520-5544

DATE: 09/11/2019 *(Fecha)* DAVID H. YAMASAKI, Clerk of the Court Clerk, by *(Secretario)* _____, Deputy *(Adjunto)*
Jessica Edwards

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

Beck v. Superior Court of California, County of Orange
ADA Complaint Exhibits 220

Kenneth J. Catanzarite (SBN 113750)
kcatanzarite@catanzarite.com
CATANZARITE LAW CORPORATION
2331 West Lincoln Avenue
Anaheim, California 92801
Tel: (714) 520-5544
Fax: (714) 520-0680

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

CULTIVATION TECHNOLOGIES, INC., a California corporation, Plaintiff, v. SCOTTSDALE INSURANCE COMPANY, an Ohio Stock Insurance company, and Does 1 through 20, inclusive Defendant.	Case No. 30-2019-01096233-CU-IC-CJC Assigned for All Purposes to Dept: Judge Glenn Salter Hon. **COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff, CULTIVATION TECHNOLOGIES, INC. (hereinafter "CTI" and "Plaintiff") alleges as follows:

1. CTI is and at all times relevant hereto was a duly organized and existing California corporation for times relevant conducting business from its offices in Orange County.

2. Plaintiff is informed and believes and on that basis alleges that defendant SCOTTSDALE INSURANCE COMPANY (hereinafter "SCOTTSDALE") is and at all times relevant hereto was a duly organized and existing corporation which is engaged in the business of insurance and doing business in the State of California.

3. The true names of Defendant Does 1 through 10, inclusive, are unknown to CTI at this time. CTI sues these defendants by these fictitious names pursuant to Section 474 of the Code of Civil Procedure. CTI is informed and believes and upon that basis alleges that each of the Defendants designated as a Doe is legally responsible for the events and happenings referred

to in this Complaint, and unlawfully caused the injuries and damages to CTI alleged in this Complaint. CTI is further informed and believes and on that basis alleges that each of the Defendants designated as a Doe is or was a resident or citizen of the State of California. CTI will amend this Complaint to substitute the true names and identities of the fictitiously sued defendants once they have been identified.

4. CTI is informed and believes and on that basis alleges that at all times herein mentioned, each defendant was the agent, principal, alter ego, partner and/or co-conspirator of each of the other defendants in the acts and conduct alleged herein, and therefore incurred liability to plaintiff for the acts and omissions alleged below.

5. This dispute involves at least one insurance policy issued be Defendants and Does 1-20 to CTI while doing business in Orange County.

6. There is at least one underlying lawsuit for which disputed directors and officers of CTI may have sought insurance coverage from SCOTTSDALE specifically the matter styled *Richard Mesa, et al. v. Richard Joseph Probst, et al.*, Orange County Superior Court case number 30-2019-01064267 (the "Mesa Action").

7. Upon information and belief SCOTTSDALE is currently the insurer of a Business and Management Indemnity Policy with CTI, Policy No. EKS3206247 for $3,000,000 coverage for the directors, officers and CTI (the "Policy").

8. Upon information and belief CTI alleges that SCOTTSDALE is providing defense and potentially indemnity to the individual defendants in the Mesa Action under the Policy after having been notified that those persons have not had any indemnity approved by the disinterested common shareholders and as such have not met and cannot meet the requirements of *California Corp. Code*, § 317 which provides:

> (e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or ©, by any of the following:
> (1) A majority vote of a quorum consisting of directors who are not parties to such proceeding.
> (2) If such a quorum of directors is not obtainable, by independent legal counsel in a written opinion.
> (3) Approval of the shareholders (Section 153), with the shares owned by the person to be

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> indemnified not being entitled to vote thereon.
> (4) The court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the corporation.
> *California Corp. Code*, § 317

9. Further, CTI informed SCOTTSDALE that its Bylaws required an undertaking prior to providing any indemnity or defense.

10. Finally, CTI has notified SCOTTSDALE of its demand that no defense or indemnity be provided to the individual defendants in the Mesa Action under the Policy until and unless the disinterested common shareholders approve the same and a suitable undertaking has been provided by each such defendant.

11. SCOTTSDALE has refused to communicate with the officers and directors elected by the common shareholders of CTI who are of the position that only they and their elected officers and directors speak for CTI.

12. Upon information and belief SCOTTSDALE is following instructions from directors and officers, and counsel engaged thereby, based upon votes by Series A Preferred Stock, the issuance of which is disputed by CTI's common shareholders.

13. An actual controversy now exists between CTI, on the one hand, and SCOTTSDALE, on the other hand, with respect to the rights and liabilities of the parties under the Policy. CTI contends that no defense or indemnity can be provided absent compliance with *California Corp. Code*, § 317 including a vote by the disinterested common shareholders and an adequate undertaking.

14. CTI is informed and believes, and on that basis alleges, that SCOTTSDALE, contends to the contrary.

15. CTI seeks a declaration of its rights under the Policy specifically including, without limitation, a judicial declaration that:

a. No further defense may be provided under the Policy unless and until the vote of the disinterested common shareholders of CTI is obtained, and

//

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ANAHEIM, CALIFORNIA 92801
TEL: (714) 520-5544 • FAX: (714) 520-0680

b. An adequate undertaking is provided by any person provided defense or indemnity.

WHEREFORE, plaintiff CTI prays for judgment as follows:

1. For a declaration that SCOTTSDALE is required under the terms and conditions of the Policy to withhold defense and indemnity until a majority vote of disinterested common shareholders of CTI is obtained and an adequate undertaking is provided;

2. For costs of suit; and

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

DATED: September 6, 2019.

CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite
Attorneys for Plaintiff

CATANZARITE LAW CORPORATION
2331 WEST LINCOLN AVENUE
ANAHEIM, CALIFORNIA 92801
TEL: (714) 520-5544 • FAX: (714) 520-0680

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Kenneth J. Catanzarite (SBN 113750)
Nicole M. Catanzarite-Woodward (SBN 205746)
CATANZARITE LAW CORPORATION
2331 W. Lincoln Avenue, Anaheim, CA 92701
TELEPHONE NO.: (714) 520-5544 FAX NO.: (714) 520-0680
ATTORNEY FOR (Name): Plaintiffs

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS: same
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

CASE NAME:
Cultivation Technologies, Inc. v. Scottsdale Insurance Company et al.

CIVIL CASE COVER SHEET

☑ **Unlimited** (Amount demanded exceeds $25,000) ☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation

☐ **Counter** ☐ **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 30-2019-01096233-CU-IC-CJC

JUDGE: Judge Glenn Salter

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- ☐ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☐ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☐ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☐ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☑ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/Inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☐ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☑ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☐ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: one
5. This case ☐ is ☑ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: September 6, 2019

Kenneth J. Catanzarite
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

Beck v. Superior Court of California, County of Orange
ADA Complaint Exhibits 225

EXHIBIT 26

Kenneth J. Catanzarite (SBN 113750)
kcatanzarite@catanzarite.com
Brandon Woodward (SBN 284621)
bwoodward@catanzarite.com
CATANZARITE LAW CORPORATION
2331 West Lincoln Avenue
Anaheim, California 92801
Tel: (714) 520-5544
Fax: (714) 520-0680

Attorneys for Cross-Complainant

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY ORANGE

JUSTIN S. BECK, an individual,

Plaintiff,

v.

KENNETH CATANZARITE, ESQ., an individual; CATANZARITE LAW CORPORATION, a California corporation; MOBILE FARMING SYSTEMS, INC., a California corporation; BRANDON WOODWARD, ESQ., an individual; TIM JAMES OKEEFE, ESQ., an individual; RICHARD FRANCIS O'CONNOR, JR., an individual; AMY JEANETTE COOPER, an individual; CLIFF HIGGERSON, an individual; TONY SCUDDER, an individual; JAMES DUFFY, an individual; MOHAMMED ZAKHIREH, an individual; TGAP HOLDINGS, LLC, a Nevada limited liability corporation; AROHA HOLDINGS, INC., a California corporation; and DOES 1-15

MOBILE FARMING SYSTEMS, INC., a California corporation,

Cross-Complainant,

v.

JUSTIN S. BECK, an individual; I'M RAD, LLC, a Nevada limited liability company; EM2 STRATEGIES, LLC, a Nevada limited liability company; CTI NEVADA I, LLC, a Nevada limited liability company;

(Caption Continues on Next Page)

Case No. 30-2020-01145998-CU-BT-CJC

Assigned for All Purposes to
Hon. Deborah C. Servino
Dept. C21

CROSS-COMPLAINT FOR:

1. **Breach of Fiduciary Duty**
2. **Fraud And Deceit**
3. **Conversion**
4. **Violations of California Prohibitions Against Computer Crimes, California Penal Code Section 502**
5. **Legal Malpractice**
6. **Breach of Contract - Management Agreement**
7. **Breach of Contract - Membership Purchase**
8. **Violation of Business & Professions Code Section 17200 et seq.**

Jury Trial Requested

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ANAHEIM, CALIFORNIA 92801
TEL: (714) 520-5544 • FAX: (714) 520-0680

RICHARD J. PROBST, an individual; TOW AND GROW, INC., a California corporation; ROBERT A. BERNHEIMER, an individual; ROBERT A. BERNHEIMER, INC., a California corporation; LAWRENCE W. HORWITZ, an individual; JOHN R. ARMSTRONG II, an individual; HORWITZ + ARMSTRONG, A PROFESSIONAL LAW CORPORATION, a California corporation; TWELVE TWELVE LLC, a Nevada limited liability company; WILLIAM MOORE, an individual; BRIAN MOORE, an individual and Roes 1-100,

Cross-Defendants.

CATANZARITE LAW CORPORATION
2331 WEST LINCOLN AVENUE
ANAHEIM, CALIFORNIA 92801
TEL: (714) 520-5544 • FAX: (714) 520-0680

12. For compensation for the reasonably necessary loss of time, attorneys' fees, and other expenditures suffered or incurred under the "tort of another" doctrine as required to act in the protection of MFS' interests by bringing this action in accordance with *Prentice v. North Am. Title Guaranty Corp., Alameda Division* (1963) 59 Cal.2d 618 and/or *Electrical Electronic Control, Inc. v. Los Angeles Unified School Dist.* (2005) 126 Cal.App.4th 601.

13. Punitive, exemplary, and any other damages authorized by law;

14. For prejudgment and post-judgment interest at the maximum legal rate, as provided by California law, as applicable, as an element of damages which MFS has suffered as a result of Cross-Defendants' wrongful and unlawful acts;

15. Costs of suit; and,

16. For such other relief as the Court deems just and proper.

DATED: August 10, 2020.

CATANZARITE LAW CORPORATION

Kenneth J. Catanzarite
Brandon E. Woodward
Attorneys for Cross-Complainants

CATANZARITE LAW CORPORATION
2331 WEST LINCOLN AVENUE
ANAHEIM, CALIFORNIA 92801
TEL: (714) 520-5544 • FAX: (714) 520-0680

EXHIBIT 28

STATE OF CALIFORNIA
Office of the Secretary of State
STATEMENT OF INFORMATION
CORPORATION

California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 653-3516

For Office Use Only

-FILED-

File No.: BA20221301281

Date Filed: 12/22/2022

Entity Details

Corporation Name	MOBILE FARMING SYSTEMS, INC.
Entity No.	3159363
Formed In	CALIFORNIA

Street Address of Principal Office of Corporation

Principal Address	2331 WEST LINCOLN AVENUE ANAHEIM, CA 92801

Mailing Address of Corporation

Mailing Address	2331 WEST LINCOLN AVENUE ANAHEIM, CA 92801
Attention	

Street Address of California Office of Corporation

Street Address of California Office	2331 WEST LINCOLN AVENUE ANAHEIM, CA 92801

Officers

Officer Name	Officer Address	Position(s)
JAMES A. DUFFY	2331 WEST LINCOLN AVENUE ANAHEIM, CA 92801	Chief Executive Officer, Secretary
Richard F. O'Connor II	2331 West Lincoln Avenue Anaheim, CA 92801	Chief Financial Officer

Additional Officers

Officer Name	Officer Address	Position	Stated Position
None Entered			

Directors

Director Name	Director Address
James A. Duffy	2331 West Lincoln Avenue Anaheim, CA 92801
Amy J. Cooper	2331 West Lincoln Avenue Anaheim, CA 92801
Richard F. O'Connor II	2331 West Lincoln Avenue Anaheim, CA 92801

The number of vacancies on Board of Directors is: 0

Agent for Service of Process

Agent Name	KENNETH J. CATANZARITE
Agent Address	2331 WEST LINCOLN AVENUE ANAHEIM, CA 92801

Type of Business

Type of Business	AGRICULTURE EQUIPMENT MFG. AND HOLDING C

Email Notifications

Opt-in Email Notifications	Yes, I opt-in to receive entity notifications via email.

Labor Judgment

No Officer or Director of this Corporation has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.

Electronic Signature

☒ By signing, I affirm that the information herein is true and correct and that I am authorized by California law to sign.

Kenneth J. Catanzarite	*12/22/2022*
Signature	Date

EXHIBIT 29

California Secretary of State
Electronic Filing

FILED
Secretary of State
State of California

Corporation - Statement of Information

Entity Name:	MOBILE FARMING SYSTEMS, INC.
Entity (File) Number:	C3159363
File Date:	11/17/2020
Entity Type:	Corporation
Jurisdiction:	CALIFORNIA
Document ID:	GM13209

Detailed Filing Information

1. Entity Name: MOBILE FARMING SYSTEMS, INC.

2. Business Addresses:
   a. Street Address of Principal Office in California:
   2331 West Lincoln Avenue
   Anaheim, California 92801
   United States of America

   b. Mailing Address:
   2331 West Lincoln Avenue
   Anaheim, California 92801
   United States of America

   c. Street Address of Principal Executive Office:
   2331 West Lincoln Avenue
   Anaheim, California 92801
   United States of America

3. Officers:
   a. Chief Executive Officer:
   James A. Duffy
   2331 West Lincoln Avenue
   Anaheim, California 92801
   United States of America

   b. Secretary:
   James A. Duffy
   2331 West Lincoln Avenue
   Anaheim, California 92801
   United States of America

Document ID: GM13209

California Secretary of State
Electronic Filing

Officers (cont'd):

c. Chief Financial Officer:

Richard F. O'Connor II
2331 West Lincoln Avenue
Anaheim, California 92801
United States of America

4. Director:

James A. Duffy
2331 West Lincoln Avenue
Anaheim, California 92801
United States of America

Number of Vacancies on the Board of Directors:

0

5. Agent for Service of Process:

Kenneth J. Catanzarite
2331 West Lincoln Avenue
Anaheim, California 92801
United States of America

6. Type of Business:

Agriculture Equipment Mfg. and holding company subsidiaries.

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature: James A. Duffy

Use bizfile.sos.ca.gov for online filings, searches, business records, and resources.

Document ID: GM13209

California Secretary of State
Electronic Filing

Corporation - Attachment to Statement of Information

List of Additional Directors:

1. Amy J. Cooper
   2331 West Lincoln Avenue
   Anaheim, California 92801
   United States of America

2. Richard F. O'Connor II
   2331 West Lincoln Avenue
   Anaheim, California 92801
   United States of America

3.

4.

5.

6.

7.

Document ID: GM13209

VERIFICATION OF COMPLAINT SUPPLEMENT & EXHIBITS #2 BY PLAINTIFF

I, Justin S. Beck, declare the following under penalty of perjury under the laws of the State of California. I have personal knowledge of each fact to which I declare. I have personal knowledge of, and verify, the authenticity of each exhibit attached hereto. I could and would testify competently as to the truth of any matter set forth in this declaration, the foregoing verified supplement to my pleadings, and the authenticity of each exhibit attached hereto.

1. OMITTED EXHIBIT 1 was true and correct copy of the 709 trial transcript dated May 1, 2019. I attended this trial, confirm the factual findings of the Court as true, and am readily familiar with the contents of the transcript and the evidence the Court reviewed to reach its conclusions.
2. Attached as EXHIBIT 2 is a true and correct copy of a May 8, 2020, "Order Liquidating and Awarding Compensatory Sanctions" in U.S. Bankruptcy Court Southern District of Florida. I obtained this through opposing counsel in that case by email and am familiar with its contents.
3. Attached as EXHIBIT 3 is a true and correct copy of an "Order Affirming Order of Bankruptcy Court" in Case No. 20-61032-CIV-SMITH. I obtained this through opposing counsel in that case by email and am readily familiar with its contents.
4. Attached as EXHIBIT 4 is a true and correct copy of an "Order Liquidating and Awarding Compensatory Sanctions" in Case No. 18-23750-SMG. I obtained this through opposing counsel in that case by email and am readily familiar with its contents.
5. Attached as EXHIBIT 5 is a true and correct copy of an "Order Granting in Part Motion to Enforce Preliminary Injunction and Imposing Sanctions" in Case No. 18-23750-SMG, Case No. 18-23751-SMG, and Case No. 18-23752-SMG. I obtained this through opposing counsel in that case by email and am readily familiar with its contents.
6. Attached as EXHIBIT 6 is a true and correct copy of an "Order to Show Cause Why Attorney Kenneth Catanzarite, Esq.'s Pro Hac Vice Status Should Not Be Revoked" in Case No. 18-23750-SMG. I obtained this through opposing counsel in that case by email and am readily familiar with its contents.
7. Attached as EXHIBIT 7 is a true and correct copy of United States Court of Appeals, Eleventh Circuit, No. 21-12766 opinion in "Catanzarite v. GCL, LLC (In re Daymark Realty Advisors,

Inc.) dated March 9, 2022. I obtained this copy through Casetext.com and am readily familiar with its contents.

8. Attached as EXHIBIT 8 is a true and correct copy of public records disclosed to me by The State Bar of California's Office of Chief Trial Counsel on June 14, 2022. I obtained this by email and am readily familiar with its contents.
9. Attached as EXHIBIT 9 is a true and correct copy of "FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants" dated "October 2015." I obtained this from the internet on Federal Trade Commission's Website and a readily familiar with its contents. The State Bar of California lacks active state supervision per federal law.
10. Attached as EXHIBIT 10 is a true and correct copy of a letter I received on July 20, 2022, from Suzanne Grandt on behalf of Ruben Duran and the Board of Trustees for The State Bar of California. I obtained this by email and am readily familiar with its contents.
11. Attached as EXHIBIT 11 is a true and correct copy of a letter I received dated December 15, 2022, from Ellin Davtyan. I obtained this by email and via postal mail and am readily familiar with its contents.
12. Attached as EXHIBIT 12 is a true and correct copy of a letter I received dated December 29, 2022, from "Public Records Coordinator" on behalf of "Rob Bonta, Attorney General." I obtained this by email and am readily familiar with its contents.
13. Attached as EXHIBIT 13 is a true and correct copy of an email I received from my former counsel in this case dated January 13, 2021. I waive privilege on this email to show other conduct of Catanzarite and Tice related to "Corzo." I obtained this by email January 13, 2021 at 10:25 AM and am readily familiar with its contents.
14. Attached as EXHIBIT 14 is a true and correct copy of a letter I received from Suzanne Grandt on behalf of herself, The State Bar of California, Ruben Duran, and Eli David Morgenstern in response to a deposition subpoena for The State Bar of California to appear September 9, 2022, at its own address. I obtained this by email July 29, 2022, and am readily familiar with its contents.

15. Attached as EXHIBIT 15 is a true and correct copy of an email I received from Laura Mandler from Fair Political Practices Commission in response to my inquiries of active state supervision over Ruben Duran and The State Bar of California. I obtained this email March 28, 2023 at 4:39 PM and am readily familiar with its contents.
16. Attached as EXHIBIT 16 is a true and correct copy of California Rules of Professional Conduct 5.1 "Responsibilities of Managerial and Supervisory Lawyers." I obtained this from the internet on The State Bar of California's website.
17. Attached as EXHIBIT 17 is a true and correct copy of The State Bar of California's service of process procedures. I obtained this by visiting The State Bar of California lobby.
18. Attached as EXHIBIT 18 is a true and correct copy of the Fourth District, Division Three Court of Appeal ruling in G059766 dated July 13, 2022, overturning four Anti-SLAPP orders in this case and finding prima facie case for three counts of malicious prosecution. I obtained this from Court of Appeal and verify the factual conclusions. I am readily familiar with its contents.
19. Attached as EXHIBIT 19 is a true and correct copy of the Fourth District, Division Three Court of Appeal ruling in G058700 dated June 28, 2021, confirming four disqualification orders against Catanzarite Law Corporation. I obtained this from Court of Appeal and am readily familiar with its contents.
20. I hereby verify the content of my complaint and this supplement as being factual and true.

SIGNED FROM OCEANSIDE, CALIFORNIA

DATE: May 4, 2023

By Justin S. Beck

Declarant

EXHIBIT 2

ORDERED in the Southern District of Florida on May 8, 2020.

Scott M. Grossman

Scott M. Grossman, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:	Chapter 7
Daymark Realty Advisors, Inc., *et al.*,	Case No. 18-23750-SMG (substantively consolidated)
Debtors.	

/

ORDER LIQUIDATING AND AWARDING COMPENSATORY SANCTIONS

This matter came before the Court upon the *Order (1) Granting Motion by Cottonwood Entities for Protective Order and (2) Imposing Sanctions* (the "Sanctions Order"),[1] the *Notice of Filing Affidavit of Attorneys' Fees and Expenses* (the

[1] ECF No. 395.

"Cottonwood Affidavits"),[2] and attorney Kenneth J. Catanzarite, Esq. and the Objecting Creditors' *Objection*[3] to the Cottonwood Affidavits.

In the Sanctions Order, the Court awarded compensatory sanctions to the Cottonwood Entities[4] under Federal Rule of Civil Procedure 26(g)(3)[5] for attorneys' fees and expenses they incurred relating to their *Expedited Motion for Protective Order*[6] (the "MPO") with respect to discovery requests served by Mr. Catanzarite in violation of Federal Rule of Civil Procedure 26(g)(1)(B).[7] The Court directed the Cottonwood Entities to file an affidavit of fees and expenses incurred and provided Mr. Catanzarite a deadline to file any objections thereto.[8]

The Cottonwood Entities timely filed the Cottonwood Affidavits, requesting $18,314.50 in fees and $36.43 in expenses, consisting of $4,350.00 in fees incurred by Henry H. Oh, Esq. and Shumener Odson & Oh LLP ("SOOLLP"),[9] and $13,964.50 in fees incurred and $36.43 in expenses advanced by Jerry M. Markowitz, Esq. and

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[2] ECF No. 401.

[3] ECF No. 425.

[4] The Cottonwood Entities are Cottonwood Residential, O.P., LP, Cottonwood Capital Property Management II, LLC, Cottonwood Capital Management, Inc., and Daniel Shaeffer.

[5] Made applicable here by Federal Rules of Bankruptcy Procedure 9014 and 7026.

[6] ECF No. 365.

[7] Made applicable here by Federal Rules of Bankruptcy Procedure 9014 and 7026.

[8] Sanctions Order, ¶¶ 4-5. The Sanctions Order also stated that if an objection was filed, the Court would schedule a hearing to resolve the objection. Upon further reflection after review of the Cottonwood Affidavits and the Objection, however, the Court determines that a hearing is not necessary, as the Court now has everything it needs to address the matter on the papers. *See also* note 16, *infra*.

[9] Mr. Oh is a partner with the law firm of SOOLLP, which serves as co-counsel to the Cottonwood Entities in this matter.

Markowitz, Ringel, Trusty & Hartog, P.A. ("MRTH").[10] Both Affidavits properly attached detailed time entries.

Mr. Catanzarite timely objected to the Cottonwood Affidavits, arguing that the fees are excessive with respect to both the rates charged by the attorneys, as well as the amount of time expended. According to the time entries attached to the Cottonwood Affidavits, attorneys with SOOLLP and MRTH collectively worked 33 hours in connection with filing and prosecuting the MPO, at the following rates: $725.00 per hour (Mr. Oh), $625.00 per hour (Mr. Markowitz), and $475.00/$490.00[11] per hour (Grace Robson, Esq.). Mr. Catanzarite suggests in his Objection that attorneys for the Cottonwood Entities should have spent no more than 3 hours on this matter at a rate of no more than $400.00 per hour – for a total of $1,200.00. For the reasons that follow, the Court finds no merit in Mr. Catanzarite's suggestion and will award most of the requested fees and all of the requested expenses.

Federal Rule of Civil Procedure 26(g)(3) provides that if a discovery certification "violates this rule without substantial justification, the court, on motion or on its own, *must* impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation."[12] In determining a sanctions award, the Court has significant discretion, and "may impose

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[10] Mr. Markowitz is a partner with the law firm of MRTH, which is co-counsel to the Cottonwood Entities in this matter.

[11] According to the MRTH affidavit and time records, the hourly rate for Ms. Robson increased from $475 to $490 as of February 1, 2020.

[12] Fed. R. Civ. P. 26(g)(3) (emphasis added).

a penalty as light as a censure and as heavy as is justified—a fine that may exceed the amount of fees incurred by the opposing party."[13] In using that discretion, courts must always be mindful of the purpose of the particular sanctions award at issue.[14] Where, as here, the sanctions are compensatory, the purpose of the sanction is, of course, to compensate the aggrieved party "for the attorneys['] fees and expenses unnecessarily incurred as a result of the sanctioned party's conduct."[15]

As noted in Mr. Catanzarite's Objection, "[i]n evaluating a claim for attorney's fees, the Court, itself being an expert on this subject, may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment."[16] Based on that knowledge and experience, the Court determines that "[t]he aggrieved party . . . is entitled to hire whichever counsel it chooses and to pay the rates charged by that counsel" in order to represent its interests.[17] Thus, in order to compensate the aggrieved party, "the fee award must be based on evidence of the actual fees and costs incurred by that party. If the attorney's fees awarded are not based on evidence of the actual fees incurred and instead are based on reasonable fees, the aggrieved party will not be made whole."[18]

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[13] *In re Rimsat, Ltd.*, 229 B.R. 914, 921 (Bankr. N.D. Ind. 1998) (internal citation and quotation marks omitted), *aff'd*, 230 B.R. 362 (N.D. Ind. 1999), *aff'd*, 212 F.3d 1039 (7th Cir. 2000).

[14] *Id.*

[15] *Id.*

[16] *In re TLFO, LLC*, 571 B.R. 880, 887 n.4 (Bankr. S.D. Fla. 2017) (internal quotation and citation marks omitted).

[17] *Id.* at 887.

[18] *Id.*

In order to make the Cottonwood Entities substantially whole, it is therefore appropriate to award most of the attorneys' fees and expenses incurred in connection with filing and prosecuting the MPO. After all, the Cottonwood Entities were entitled to hire counsel of their choice and are obligated to pay the actual amounts billed to them by both SOOLLP and MRTH. If the Court were to limit its award to what Mr. Catanzarite contends to be "reasonable" attorneys' fees, the sanctions award would cease to be compensatory in nature.

That being said, the Court agrees with Mr. Catanzarite in part, that certain time entries reflect fees that do not appear to have been billed in connection with filing and prosecuting the MPO. Further, certain entries lack sufficient detail to enable the Court to determine whether they relate to the MPO, and certain others contain multiple tasks, some of which do not appear related to the MPO. Thus, the Court is unable to determine which portion of time of these "lumped" entries may be attributable to the MPO. Accordingly, the following time entries will not be included in the compensatory sanctions award:

Date	*Attorney*	*Description*	*Hours*	*Rate*	*Amount*
1/6/2020	JMM	Emails regarding discovery.	0.2	$625.00	$125.00
1/7/2020	JMM	Emails regarding discovery.	0.2	$625.00	$125.00
1/10/2020	JMM	Emails regarding discovery.	0.3	$625.00	$125.00[19]
1/14/2020	JMM	Review emails regarding discovery	0.3	$625.00	$187.50
1/29/2020	JMM	Review motion for protective order and related drafts; notice of appeal; conference with A. Hartley	0.5	$625.00	$312.50[20]

[19] Although 0.3 hours at $625.00 per hour, which totals $187.50, is shown on the MRTH time records, the total listed in the "Amount" column was $125.00.

[20] Because this entry shows multiple tasks – some of which do not pertain to the MPO – without a breakdown of the specific tasks, the Court is unable to determine the amount of time allocable to each task and must disallow all of the fees for this entry.

1/30/2020	GER	Communications regarding appeal by Catanzarite of sanctions; hearing on motion for protective order.	0.5	$475.00	$237.50[21]
1/31/2020	JMM	Numerous emails regarding Catanzarite; review subpoenas and trustee's motion; research regarding Catanzarite's suspension.	1.1	$625.00	$687.50[22]
2/2/2020	JMM	Emails regarding Catanzarite's bar admissions; research regarding same	0.4	$625.00	$250.00
2/3/2020	GER	Continue preparation for hearing; review communications regarding depositions, motion for order to show cause	1.5	$490.00	$735.00[23]
2/3/2020	JMM	Review emails and pleadings	0.3	$625.00	$187.50
2/7/2020	JMM	Emails regarding discovery	0.2	$625.00	$125.00
TOTAL					**$3,097.50**

The Court finds that the remainder of the time entries are appropriately related to the MPO and are not duplicative. Accordingly, pursuant to Rule 26(g)(3) and the Sanctions Order, the Court awards the Cottonwood Parties $15,217.00 in attorneys' fees and $36.43 in costs, as compensatory sanctions against Kenneth J. Catanzarite for serving discovery requests in violation of Federal Rule of Civil Procedure 26(g)(1)(B).

[21] *Id.*

[22] *Id.*

[23] *Id.*

For the reasons in the discussed in detail above and in accordance with the Court's Sanctions Order, it is therefore

ORDERED that:

1. The Cottonwood Entities are awarded $15,253.43 as compensatory sanctions, consisting of $15,217.00 in attorneys' fees and $36.43 in costs incurred in filing and prosecuting the MPO.

2. Mr. Catanzarite must pay $15,253.43 to the Cottonwood Entities within fourteen days of the entry of this Order.

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Copies furnished to:

All interested parties

EXHIBIT #36: 014
22-CV-01616-BAS-DDL

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-61032-CIV-SMITH

KENNETH J. CATANZARITE,

Appellant,

vs.

TODD A. MIKLES, *et al.*,

Appellees.
_____/

ORDER AFFIRMING ORDER OF BANKRUPTCY COURT

This is an appeal from an order entered by the Bankruptcy Court awarding compensatory sanctions against Appellant and to Appellees and the Chapter 7 Bankruptcy Trustee ("Trustee") for Appellant's violation of a preliminary injunction entered by the Bankruptcy Court. Appellant has appealed the Bankruptcy Court's May 8, 2020 Order Liquidating and Awarding Compensatory Sanctions ("Liquidating Order"). Prior to entry of the Liquidating Order the Bankruptcy Court had entered its Order Granting in Part Motion to Enforce Preliminary Injunction and Imposing Sanctions ("Sanctions Order"). In the Sanctions Order, the Bankruptcy Court awarded Appellees compensatory sanctions, to be paid by Appellant, for attorneys' fees and expenses incurred in connection with another lawsuit, because the Bankruptcy Court found that Appellant had violated a preliminary injunction issued by the Bankruptcy Court.

I. BACKGROUND

This appeal arises out of the consolidated Chapter 7 proceedings of debtors, Daymark Realty Advisors, Inc., Daymark Properties Realty, Inc., and Daymark Residential Management, Inc. ("Daymark Bankruptcy"). On July 31, 2019, Appellees filed an adversary proceeding seeking injunctive relief ("Adversary Action") against Richard Carlson, Milton O. Brown, Tyrone

Wynfield, Dennis Dierenfield, William B. Gilmer, NNN 1600 Barberry Lane 8, LLC, NNN 1600 Barberry Lane 9, LLC, NNN Plantations at Haywood 1, LLC, NNN Plantations at Haywood 2, LLC, NNN Plantations at Haywood 13, LLC, and NNN Plantations at Haywood 23, LLC ("Carlson Defendants"). The Adversary Complaint sought to enjoin the Carlson Defendants' pending and threatened state court actions against Appellees, brought by their shared attorney, Appellant, Kenneth Catanzarite. The injunction was sought to maintain the status quo while the Bankruptcy Court decided whether to approve a settlement agreement between Appellees and the Chapter 7 Trustee (the "Settlement Agreement"). An essential term of the Settlement Agreement requires the Trustee in the Daymark Bankruptcy to obtain a bar order concerning potential causes of action by any and all conceivable parties against, among others, the Appellees.

On July 31, 2019, Appellees filed their first Motion for Temporary Restraining Order and Preliminary Injunction in the Adversary Action. On August 27, 2019, the Bankruptcy Court granted the Motion for Preliminary Injunction and ordered:

> Plaintiffs are hereby granted a preliminary injunction for a period of sixty (60) days effective as of the Hearing, enjoining continuation of the Subject Lawsuits or the commencement of any further actions under same or similar facts or circumstances to the Subject Lawsuits, by these Defendants.

("Preliminary Injunction") (First Prelim. Inj. Order [DE 5-6] at 41.[1]) On October 18, 2019, Appellees filed their Motion to Extend the Preliminary Restraining Order. On October 23, 2019, the Bankruptcy Court granted the extension, stating:

> The preliminary injunction is extended for an additional period through and including December 11, 2019, effective as of the Hearing, enjoining continued

[1] Appellant has designated as the record on appeal over 19,000 pages of documents and neither party has cited to the record as filed in this case, making it extremely difficult to find any particular document. The Court will cite to the docket entry number containing the cited portion of the record and the page number of the docket entry, not the internal page number of the individual document cited.

> prosecution of the Subject Lawsuits or the commencement of any further actions under same or similar facts or circumstances to the subject lawsuits by these Defendants.

(Second Prelim. Inj. Order [DE 5-7] at 1300.) This order was in effect on November 7, 2019, when Appellant allegedly violated the preliminary injunction. On November 8, 2019, Appellees filed a second Motion to Extend the Preliminary Restraining Order, which the Bankruptcy Court granted by extending the preliminary injunction through February 28, 2020.

On November 19, 2019, Appellees file their Motion to Enforce the Preliminary Injunction and for Sanctions against the Carlson Defendants' counsel, Appellant, Kenneth Catanzarite ("Sanctions Motion"). The Sanctions Motion alleged that on November 7, 2019, Appellant Catanzarite filed a complaint in the Superior Court of California, San Diego County (the "Henkin-Looper Case"), on behalf of Edward Henkin, Jonmar Partnership, Katherine Looper, Pat McRoberts, Chicago Houston Partners, LLC, William E. Bump, Thomas F. Scheidt, Ellen B. Friedman, Lawrence F. Leventon, and Paul L. Cohen (the "Henkin-Looper Parties") against Appellees Mikles and GCL, LLC, and against Global Lending Resources, LLC and Does 1-100. In connection with the newly filed case in San Diego County, Catanzarite filed a *lis pendens*.

On December 5, 2019, the Bankruptcy Court held a hearing at which it heard argument on the Sanctions Motion. At the hearing, the Bankruptcy Court heard from the Appellees and Appellant. The Court also heard from the Trustee on whether Appellant's actions violated the stay or otherwise were an attempt to exercise control over property of the estate. Appellant had an opportunity to respond to the Trustee's arguments.

On January 15, 2020, the Bankruptcy Court entered its Order Granting in Part Motion to Enforce Preliminary Injunction and Imposing Sanctions ("Sanctions Order"), in which the Bankruptcy Court found that Catanzarite had violated the Injunction by filing the Henkin-Looper

Case and the associated *lis pendens*. The Bankruptcy Court concluded that the filing of the Henkin-Looper Case constituted "the commencement of [ ] further actions under same or similar facts or circumstances to the subject lawsuits by these Defendants" because the Henkin-Looper Case was based on the same interests as existing enjoined lawsuits and arose from a common nucleus of facts as existing enjoined lawsuits. Relying on Federal Rule of Civil Procedure 65(d)(2), which provides that an injunction or restraining order binds not only the parties named in the order, but also the parties' officers, agents, servants, employees, and attorneys and any other persons who are in active concert or participation with the named parties or their officers, agents, servants, employees, and attorneys, the Bankruptcy Court found that Catanzanite was the attorney for some of the parties specifically enjoined and also for the Henkin-Looper Parties. Thus, Catanzanite was prohibited from engaging in conduct in which the specifically enjoined parties could not participate. Noting that it had the power to issue sanctions for civil contempt pursuant to both its inherent power and § 105 of the Bankruptcy Code, the Bankruptcy Court found that Appellees and the Trustee were entitled to compensatory sanctions for any actual attorneys' fees and expenses incurred in connection with the filing of the Henkin-Looper Case, including the fees and expenses incurred in responding to the Henkin-Looper Complaint and in prosecuting the Motion to Enforce the Preliminary Injunction and for Sanctions.

On January 30, 2020, Catanzanite appealed the Bankruptcy Court's Sanctions Order. That appeal was dismissed on July 6, 2020, after the district court found that it was premised on a non-final sanctions order. Subsequently, the Bankruptcy Court issued an order liquidating the sanctions order (the "Liquidation Order"). The appeal of the Liquidation Order is the instant appeal. The Liquidation Order awarded monetary compensatory damages to Appellees and the Trustee and ordered Catanzanite to pay the damages within fourteen days of entry of the Liquidation Order.

Catanzanite filed the instant appeal on May 26, 2020. His Notice of Appeal [DE 1] states that he is appealing the Order Liquidating and Awarding Compensatory Sanctions entered by the Bankruptcy Court on May 8, 2020.

II. Standard of Review

A bankruptcy court's conclusions of law are reviewed *de novo* and the bankruptcy court's factual findings are reviewed for clear error. *In re Coady*, 588 F.3d 1312, 1315 (11th Cir. 2009). "A factual finding is not clearly erroneous unless, after reviewing all of the evidence, [a reviewing court is] left with 'a definite and firm conviction that a mistake has been committed.'" *In re Daughtrey*, 896 F.3d 1255, 1273 (11th Cir. 2018) (citations omitted). A decision to award sanctions is reviewed for abuse of discretion. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991). "A bankruptcy court abuses its discretion when it either misapplies the law or bases its decision on factual findings that are clearly erroneous." *Daughtrey*, 896 F.3d at 1274.

III. DISCUSSION

Appellant raises eight issues on appeal:

1. Whether the Bankruptcy Court erred when it enforced a temporary restraining order and imposed sanctions.

2. Whether the Bankruptcy Court erred when it imposed sanctions against Appellant and certain real parties in interest without acquiring personal jurisdiction over the real parties in interest.

3. Whether the Bankruptcy Court erred when it granted the injunction without considering the imposition of a bond.

4. Whether the Bankruptcy Court erred when it awarded the Chapter 7 Trustee fees.

5. Whether the Bankruptcy Court erred when it awarded attorneys' fees sanction to the Chapter 7 Trustee.

6. Whether the Bankruptcy Court erred when it awarded attorneys' fees to the Appellees in the absence of sufficient record substantiating the reasonableness of the hours billed and rates charged.

7. Whether the Bankruptcy Court erred when it awarded attorneys' fees to the Chapter 7 Trustee in the absence of sufficient record substantiating the reasonableness of the hours billed and rates charged.

8. Whether the Bankruptcy Court erred when it awarded attorneys' fees to Appellees that are excessive, unreasonable, and unconscionable.

First, the Court notes that a couple of the issues raised by Appellant are not properly before the Court. Appellant's issue number three is not properly before the Court because whether the Bankruptcy Court should have required a bond when it issued the Preliminary Injunction is not an issue that arose in the Sanctions Order or Liquidating Order. Appellant should have raised it in an appeal of the injunction. Thus, the Court will not address this issue. The Court also notes that issue number two is not properly before the Court because Appellant never raised the issue of personal jurisdiction below. Further, neither the Sanctions Order nor Liquidating Order found that anyone other than Appellant had violated the Preliminary Injunction and the sanctions were imposed against Appellant. Additionally, the record does not indicate that Appellant or his counsel are appearing on behalf of these "real parties in interest" and, thus, neither Appellant nor his counsel can assert arguments on their behalf. Consequently, the Court will also not address these issues.

Second, a review of Appellant's issues demonstrates that there are really only three issues on appeal: (1) whether the Bankruptcy Court erred when it entered the Sanctions Order by finding Appellant had violated the Preliminary Injunction, (2) whether the Bankruptcy Court erred in the amount of attorney's fees awarded to Appellees in the Liquidation Order; and (3) whether the

Bankruptcy Court erred in awarding attorneys' fees, and the amount of the fees awarded, to the Chapter 7 Trustee.

A. Violation of the Preliminary Injunction

The Bankruptcy Court found that Appellant, as the attorney for the enjoined Carlson Defendants, was prohibited, under Federal Rule of Civil Procedure 65(d)(2)(B), from engaging in conduct in which the Carlson Defendants could not engage. Thus, the Bankruptcy Court found that Appellant's filing of the Henkin-Looper Case and the associated *lis pendens* violated the Bankruptcy Court's second preliminary injunction order. As a result, the Bankruptcy Court imposed civil contempt sanctions against Appellant pursuant to its inherent powers and § 105 of the Bankruptcy Code. Appellant argues that this was error because he was not acting on behalf of the Carlson Defendants when he filed the Henkin-Looper Case.

Federal Rule of Civil Procedure 65(d)(2), titled "Persons Bound," states that every injunction "binds only the following who receive actual notice of it . . .: (A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in concert or active participation with anyone described in Rule 65(d)(2)(A) or (B)." Thus, under the plain language of Rule 65(d)(2)(B), Appellant, as the attorney for the enjoined Carlson Defendants, was bound by the Preliminary Injunction.

Appellant argues that, while he could not pursue enjoined conduct on behalf of the Carlson Defendants, he could pursue similar conduct on behalf of other clients. However, the language of Rule 65(d)(2)(B) is clear that Appellant, as the attorney of the Carlson Defendants, is also bound by the terms of the injunction. Moreover, the Bankruptcy Court found that the Henkin-Looper Parties and the Carlson Defendants were in active participation with each other through Appellant. Thus, even if Appellant was not acting directly on behalf of the Carlson Defendants, he was bound

by the Preliminary Injunction, under Rule 65(d)(2)(C), because his filing of the Henkin-Looper Case and the associated *lis pendens* was done in concert or active participation with the Carlson Defendants and the Henkin-Looper Parties.

Appellant takes issue with the Bankruptcy Court's finding that he was acting in concert with the Carlson Defendants and the Henkin-Looper Parties. However, we review the factual findings of the Bankruptcy Court for clear error. Based on the record, this Court does not have a definite and firm conviction that a mistake has been committed. While Appellant argues that the enjoined proceedings differ from the Henkin-Looper Case, the Bankruptcy Court did not find that the proceedings were the same; it found that the enjoined lawsuits and the Henkin-Looper Case were based on similar ownership interests and the same or similar facts or circumstances. The Bankruptcy Court did not find that the Carlson Defendants and the Henkin-Looper Parties had an identity of interest nor did it find that the enjoined lawsuits and the Henkin-Looper Case sought the same relief.

Finally, Appellant argues that the Bankruptcy Court's analysis is flawed because it would allow the Henkin-Looper Parties to file the Henkin-Looper Case through different counsel. But that is exactly why the Bankruptcy Court found that Appellant violated the Preliminary Injunction. The Appellant is the one against whom the injunction applied; in the Sanction Order, the Bankruptcy Court only enjoined the Henkin-Looper Parties, and the prosecution of the Henkin-Looper Case, because they acted through Appellant[2] and in concert with the Carlson Defendants.

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[2] Appellant also seems to argue that the Bankruptcy Court erred in finding the injunction applied to the Henkin-Looper Parties because the Henkin-Looper Parties were not properly before the Bankruptcy Court. However, the Bankruptcy Court did not find that the injunction applied to the Henkin-Looper Parties under all circumstances; instead it found that the filing of the Henkin-Looper Case and the associated *lis pendens* violated the injunction because it was done through Appellant, against whom the injunction did apply pursuant to Rule 65(d)(2).

Consequently, the Court finds that the Bankruptcy Court did not err in imposing sanctions against Appellant.

B. The Amount of Sanctions Awarded to Appellees

The Liquidating Order awarded Appellees $49,020.50 in compensatory sanctions for the attorneys' fees and expenses that Appellees incurred in connection with responding to the Henkin-Looper Complaint and filing and prosecuting the Motion to Enforce the Preliminary Injunction and for Sanctions in the Bankruptcy Court. Appellant argues that the Bankruptcy Court erred in awarding these sanctions because the affidavits submitted in support of the amount of sanctions do not show that the fees were actually billed to Appellees. Appellant also argues that the amount of time billed by Appellees counsel was unreasonable and the Bankruptcy Court did not apply the lodestar method in determining the fees.

First, the Court notes that Appellant did not timely object to Appellees' affidavits related to the fees incurred and he did not seek an extension of time in which to object. Therefore, when the Bankruptcy Court considered the fee affidavits, it did not consider Appellant's untimely objections. Appellant's failure to object to the fee affidavit and his conclusory and vague challenges to the reasonableness of the fees in his initial brief are fatal to his argument. *See Barash v. Kates*, 585 F. Supp. 2d 1368, 1375 (S.D. Fla. 2008) (stating "in the attorney's fees context, failing to object is generally deemed fatal."). Further, as a general rule, an appellate court does not consider an issue raised for the first time on appeal. *Finnegan v. Comm'r of Internal Revenue*, 926 F.3d 1261, 1271 (11th Cir. 2019). Appellant had an opportunity to challenge the reasonableness of the fees sought by Appellees in the Bankruptcy Court and failed to do so in a timely manner.

Second, the Court finds that the Bankruptcy Court did not abuse its discretion in awarding Appellees $49,020.50 in compensatory sanctions. The Bankruptcy Court stated that it "carefully reviewed the Affidavits and time records" submitted by Appellees and found the fees were "properly incurred in connection with responding to the Henkin-Looper Complaint and in prosecuting the [Motion to Enforce the Injunction], and are not excessive." Appellant has not shown that the Bankruptcy Court misapplied the law or based its decision on factual findings that are clearly erroneous. While Appellant argues that the Bankruptcy Court failed to utilize the lodestar approach to determine the amount of fees to award, a court imposing sanctions for civil contempt does not have to utilize the lodestar method in determining the amount of attorneys' fees. *See Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Olympia Holding Corp.*, 140 F. App'x 860, 864 n.1 (11th Cir. 2005) (stating "[s]anctions for civil contempt are not equivalent with typical payment of attorneys' fees, and civil contempt sanctions do not require the use of the lodestar method.") Thus, given the broad discretion courts have in fashioning contempt sanctions, *see F.T.C. v. Leshin*, 618 F.3d 1221, 1237 (11th Cir. 2010), the Bankruptcy Court did not abuse its discretion in awarding Appellees $49,020.50 in compensatory sanctions.

C. The Attorneys' Fees Awarded to the Trustee

In the Sanctions Order, the Bankruptcy Court awarded the Trustee attorneys' fees as part of the sanction against Appellant. The Bankruptcy Court noted:

> Although Trustee Paiva is not a party to this particular adversary proceeding, in light of the pending settlement motion in the main bankruptcy case and the intent of the injunctive relief in this adversary proceeding – to maintain the status quo pending the hearing to consider approval of that settlement – the Court finds it appropriate to compensate the bankruptcy estate, in addition to the [Appellees] for any attorneys' fees and expenses incurred in connection with this matter.

(Sanctions Order at 13 n.15.) Appellant argues that the Bankruptcy Court erred in awarding attorneys' fees to the Trustee, who was not a party to the underlying Adversary Action and did not seek to enforce the Preliminary Injunction, which was issued in the Adversary Action. The Trustee is also not a party to this appeal and has not filed an answer brief.

While Appellant argues that his due process rights were violated because he lacked notice and an opportunity to be heard on the Trustee's right to fees, Appellant seems to ignore that the fees were awarded to the Trustee as part of the contempt sanction. Appellant had notice of the Motion to Enforce the Preliminary Injunction and for Sanctions and had an opportunity to respond in writing and at the hearing on the Motion to Enforce the Preliminary Injunction and for Sanctions. At the hearing, the Bankruptcy Court heard from the Trustee's counsel on whether Appellant's actions violated the stay or otherwise were an attempt to exercise control over property of the estate. At the hearing, Appellant had an opportunity to respond to the Trustee's arguments. Thus, Appellant was on notice that the Bankruptcy Court was also considering whether and how Appellant's actions may have affected the Trustee and the estate and whether that should give rise to sanctions. Further, after the Trustee submitted his fee affidavit and accompanying records, Appellant had an opportunity to file objections but failed to timely do so. Thus, Appellant had an opportunity to be heard on the issue. As noted above, a court has broad discretion in fashioning contempt sanctions. Thus, the Court finds that the Bankruptcy Court did not err in awarding the Trustee attorneys' fees as part of the sanctions against Appellant.

Appellant also challenges the amount of attorneys' fees awarded to the Trustee. However, for the same reason that the amount awarded to Appellees was not an abuse of discretion, the $11,639.25 awarded to the Trustee was not an abuse of discretion. Further, it is clear that the Bankruptcy Court carefully reviewed the submissions from the Trustee because it awarded only

50% of the fees billed for certain items because the record was not clear if the items related to the main case or the Adversary Action out of which the contempt arose.

Accordingly, the Bankruptcy Court's Sanctions Order and Liquidation Order are **AFFIRMED.**

DONE AND ORDERED in Fort Lauderdale, Florida, this 28th day of July, 2021.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

EXHIBIT 4

ORDERED in the Southern District of Florida on May 8, 2020.

Scott M. Grossman

Scott M. Grossman, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:

Daymark Realty Advisors, Inc., *et al.*,

Debtors.
_____/

Chapter 7

Case No. 18-23750-SMG
(substantively consolidated)

Todd A. Mikles, *et al.*,

Plaintiffs,

v.

Richard Carlson, *et al.*,

Defendants.
_____/

Adv. No. 19-1291-SMG

ORDER LIQUIDATING AND AWARDING COMPENSATORY SANCTIONS

This matter came before the Court upon the *Order Granting in Part Motion to Enforce Preliminary Injunction and Imposing Sanctions* (the "Sanctions Order"),[1] the

[1] ECF No. 112.

EXHIBIT #36: 027
22-CV-01616-BAS-DDL

Plaintiff's Affidavit of Fees Sought as Compensatory Sanctions and Notice of Filing Bill of Particulars (the "Mikles Affidavits")[2] filed by the Mikles Plaintiffs,[3] the *Notice of Filing Affidavit of Attorney's Fees and Costs Incurred by Chapter 7 Trustee Chad S. Paiva* (the "Trustee's Affidavit"),[4] the *Notice of Late Filing of Paper Pursuant to Local Rule 5005-1(F)(2)* (the "Notice of Late Filing"),[5] with an attached Objection to the Affidavits, filed by Attorney Kenneth J. Catanzarite, and the *Response to Notice of Late Filing and Untimely Filed Joint Objections to Affidavits*[6] filed by the Mikles Plaintiffs.

In the Sanctions Order, the Court awarded compensatory sanctions to the Mikles Plaintiffs and to Chapter 7 Trustee Chad S. Paiva (the "Trustee"), to be paid by Mr. Catanzarite, for attorneys' fees and expenses incurred in connection with responding to the Henkin-Looper Complaint[7] and filing and prosecuting the *Motion to Enforce the Preliminary Injunction and for Sanctions* (the "MTE").[8] The Court

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[2] ECF No. 118. The Mikles Affidavits consist of affidavits from attorneys Adam T. Kent, Robert K. Sparks, and Thomas M. Messana and his firm Messana P.A..

[3] The Mikles Plaintiffs are Todd Mikles; Etienne Locoh; Sovereign Capital Management Group, Inc.; Sovereign Strategic Mortgage Fund, LLC; Infinity Urban Century, LLC; and GCL, LLC.

[4] ECF No. 128. The Trustee's Affidavit was filed timely pursuant to the Court's *Order Granting Motion to Extend Time* (ECF No. 166).

[5] ECF No. 146.

[6] ECF No. 155.

[7] In violation of the preliminary injunction issued in this adversary proceeding, Mr. Catanzarite filed a Complaint in the Superior Court of California, San Diego County, on behalf of Edward Henkin, Jonmar Partnership, Katherine Looper, Pat McRoberts, Chicago Houston Partners, LLC, William E. Bump, Thomas F. Scheidt, Ellen B. Friedman, Lawrence F. Leventon, and Paul L. Cohen against Mr. Mikles, GCL, LLC, Global Lending Resources, LLC, and Does 1-100. *See* Case No. 37-2019-00059373 (the "Henkin-Looper Complaint").

[8] ECF No. 95.

directed the Mikles Plaintiffs and the Trustee to file, within fourteen days of entry of the Sanctions Order, affidavits of their fees and expenses, and provided Mr. Catanzarite a deadline to object to the affidavits.[9]

The Court entered the Sanctions Order on January 15, 2020.[10] The Mikles Plaintiffs timely filed the Mikles Affidavits on January 29, 2020.[11] The Trustee properly and timely moved for an extension of time to file his affidavit,[12] which the Court granted.[13] The Trustee then timely filed his Affidavit on February 5, 2020.[14] Mr. Catanzarite, however, failed to timely object to either affidavit.[15] He also failed to timely move for an extension of time to object. Instead, on February 25, 2020, Mr. Catanzarite filed his Notice of Late Filing, to which he attached his Objection.[16] His Notice of Late Filing cited Local Rule 5005-1(F)(2)[17] and offered a variety of excuses for missing the deadline, none of which rise to the level of excusable neglect. Mr.

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[9] Sanctions Order, ¶¶ 9-10.

[10] Although Mr. Catanzarite has appealed the Sanctions Order to the District Court, this Court retains jurisdiction to liquidate the amount of the sanctions as the amount of sanctions is not an issue on appeal. "The filing of a proper notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the appellate court and divests the trial court of its control *over those aspects of the case involved in the appeal*." *In re Walker*, 515 F.3d 1204, 1211 (11th Cir.2008) (emphasis added) (citation omitted); *see also, In re Barnwell Cty. Hosp.*, 491 B.R. 408, 413 (Bankr. D.S.C. 2013) (noting that an appeal does not divest a lower court of jurisdiction over issues not involved in the appeal).

[11] ECF No. 118.

[12] ECF No. 117.

[13] ECF No. 166.

[14] ECF No. 128.

[15] The Sanctions Order required objections to be filed within 7 days after the filing of the affidavits. Sanctions Order, ¶ 10.

[16] ECF No. 146.

[17] As noted by the Court at the hearing in this matter on March 5, 2020, Local Rule 5005-1(F)(2) governs submission of papers in matters *already* set for hearing and has absolutely no applicability to a deadline to file an objection set by a court order.

Catanzarite's Objection is therefore untimely, and – as the Court explained at a hearing on March 5, 2020 – will not be considered.

Even though the Court is not considering Mr. Catanzarite's Objection, the Court has carefully reviewed the Affidavits and time records submitted by the Mikles Plaintiffs and the Trustee. The Court finds the Mikles Plaintiffs' attorneys' fees of $49,020.50[18] were properly incurred in connection with responding to the Henkin-Looper Complaint and filing and prosecuting the MTE, and are not excessive. The Court will therefore award $49,020.50 to the Mikles Plaintiffs as compensatory sanctions.

As to the Trustee, certain time entries include time for both main case issues as well as the pertinent issues in this adversary proceeding.[19] The Court does not fault the Trustee's counsel for failing to separate these time entries. At the time, the Trustee could not have known that the Court was going to award him fees in connection with the Henkin-Looper Complaint and the MTE. Nevertheless, because the Court is unable to determine which portion of the following entries may be

[18] This amount included an estimated 10 hours of work on preparing and filing the Mikles Affidavits. Noting that Mr. Catanzarite failed to timely object to these fees, the Court finds this fee estimate to be reasonable considering the detailed nature of the Mikles Affidavits.

[19] The Trustee is not a party to this adversary proceeding. But in light of the pending settlement motion in the main bankruptcy case and the intent of the injunctive relief in this adversary proceeding – to maintain the status quo pending the hearing to consider approval of that settlement – the Court found it appropriate to compensate the bankruptcy estate, in addition to the Mikles Plaintiffs, for any attorneys' fees and expenses incurred in connection with this matter. Sanctions Order at 12, n.15.

attributable to the Henkin-Looper Complaint and the MTE, the Court will exercise its discretion and award only 50% of the fees billed for the following time entries:

12/03/19 CBH	Preparation of hearing notebook for status conference on 12/6/19; schedule E. Jacobs for courtcall appearance; review of hearing in Mikles case; update notebook.	1.30	195.00	253.50
12/05/19 BPG	Preparation for and attendance at hearings on Order Setting Status Conference on Order Taking Motion to Establish Procedures Under Advisement, Setting Deadlines, and Postponing Hearing on Motion to Approve Settlement and Motion to Enforce Preliminary Injunction and for Sanctions and (2.0); interoffice conferences with E. Jacobs, J. Delgado and Trustee re :preparation for hearings in connection with Motion to Approve Settlement Motion and Establishing Notice Procedures and Motion to Enforce Preliminary Injunction and for Sanctions (.5).	2.50	525.00	1,312.50
031/General Litigation				
12/11/19 JAD	Attended Status Conference and hearing on injunction violation.	1.10	265.00	291.50

Date	Lawyer	Work Description	Time	Rate	Value
001/ Asset Analysis and Recovery					
12/04/19-	EJ	Attention to file in preparation for hearing on status conference and injunction motion (.7).	0.70	425.00	297.50
12/05/19	EJ	Prepare for and participate 1n hearing on status conference and sanctions for Violating 1n]unct1on (2.6). Post hearing analysis call wtih Barry Gruher (. 3).	2.90	425.00	1,232.50
005/Case Administration					

The remainder of the Trustee's counsel's time entries, however, are appropriately related to the Henkin-Looper Complaint and the MTE, and are not duplicative. Accordingly, and pursuant to the Sanctions Order, the Court will award the Trustee $11,639.25 in attorneys' fees as compensatory sanctions.

Therefore, for the reasons discussed in detail above and in accordance with the Sanctions Order, it is

ORDERED that:

1. The Mikles Plaintiffs are awarded $49,020.50 as compensatory sanctions for attorneys' fees incurred in connection with the Henkin-Looper Complaint and filing and prosecuting the MTE.

2. The Trustee is awarded $11,639.25 as compensatory sanctions for attorneys' fees incurred in connection with the Henkin-Looper Complaint and the MTE.

3. Mr. Catanzarite must pay $49,020.50 to the Mikles Plaintiffs within fourteen days of the entry of this Order.

4. Mr. Catanzarite must pay $11,639.25 to the Trustee within fourteen days of the entry of this Order

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Copies furnished to:

All interested parties

EXHIBIT 5

ORDERED in the Southern District of Florida on January 15, 2020.

Scott M. Grossman

Scott M. Grossman, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:

Daymark Realty Advisors Inc.,
Daymark Properties Realty, Inc.,
Daymark Residential Management Inc.,
Debtor(s).
_____/

Chapter 7

Case No. 18-23750-SMG
Case No. 18-23751-SMG
Case No. 18-23752-SMG
(substantively consolidated)

Todd A. Mikles, *et al.*,
Plaintiff(s),
v.

Richard Carlson, *et al.*,
Defendant(s).
_____/

Adv. No.: 19-1291-SMG

ORDER GRANTING IN PART MOTION TO ENFORCE PRELIMINARY INJUNCTION AND IMPOSING SANCTIONS

This matter came before the Court for a hearing on December 5, 2019 (the "Hearing"), upon the *Motion to Enforce the Preliminary Injunction and for Sanctions against Defendants' Counsel* (ECF No. 95) filed by the Plaintiffs (the "Mikles

Plaintiffs").[1] The Court has considered the Motion, the judicially noticed court filings,[2] the *Declaration of Todd Mikles* (ECF No. 97) filed in support of the Motion, the *Response* (ECF No. 107)—including the Declaration and Exhibits attached thereto—filed by attorney Kenneth J. Catanzarite,[3] counsel for the Defendants (the "Carlson Defendants"),[4] and the arguments made at the Hearing by counsel for the Mikles Plaintiffs and by Mr. Catanzarite on behalf of himself. For the reasons that follow, the Court grants the Motion in part, and awards compensatory sanctions against Mr. Catanzarite[5] and in favor of the Mikles Plaintiffs and Chapter 7 Trustee Chad S. Paiva.

PROCEDURAL BACKGROUND

I. The Daymark Bankruptcy

On November 4, 2018, Daymark Realty Advisors Inc. ("DRA"), Daymark Residential Management Inc. ("DRM"), and Daymark Properties Realty Inc. ("DPR"

[1] The Mikles Plaintiffs include Todd A. Mikles, Etienne Locoh, Sovereign Capital Management Group, Inc., Sovereign Strategic Mortgage Fund, LLC, Infinity Urban Century, LLC, and GCL, LLC.

[2] The Plaintiffs filed a *Request for Judicial Notice* (ECF No. 96), which the Court granted.

[3] Although licensed only in California, Mr. Catanzarite was admitted in this Court *pro hac vice* by *Order* (Case No. 18-23750, ECF No. 29) dated December 7, 2018, with Todd Frankenthal, Esq. as designated local counsel. In his Affidavit attached as Exhibit 1 to the *Motion to Appear Pro Hac Vice* (Case No. 18-23750-SMG, ECF No. 27), Mr. Catanzarite affirmed that he is "familiar with and shall be governed by the local rules of this court, the rules of professional conduct, and all other requirements governing the professional behavior of members of the Florida Bar."

[4] The Carlson Defendants include Richard Carlson; Milton O. Brown; Tyrone Wynfield; Dennis Dierenfield; William B. Gilmer; NNN 1600 Barberry Lane 8, LLC; NNN 1600 Barberry Lane 9, LLC; NNN Plantations at Haywood 1, LLC; NNN Plantations at Haywood 2, LLC; NNN Plantations at Haywood 13, LLC; and NNN Plantations at Haywood 23, LLC.

[5] At the Hearing, counsel for the Plaintiffs informed the Court that they would not be proceeding against the Defendants' local counsel, Todd Frankenthal.

and together with DRA and DRM, the "Debtors") each filed voluntary chapter 11 bankruptcy petitions. Later, the cases were substantively consolidated, and on April 2, 2019, the consolidated cases were converted to chapter 7. *See Order Granting Mot. to Convert Case* (Case No. 18-23750-SMG, ECF No. 248).

Before the Mikles Plaintiffs filed this adversary proceeding, the Carlson Defendants had each filed adversary complaints against the Debtors (the "Carlson Adversaries").[6] In the Carlson Adversaries, the Carlson Defendants allege that the Mikles Plaintiffs were alter egos, co-conspirators, and aiders and abettors of the Debtors. Thereafter, the Mikles Plaintiffs instituted this adversary proceeding seeking injunctive relief against the Carlson Defendants. *See Complaint* (ECF No. 1) (the "Injunction Adversary").

In the Injunction Adversary, the Mikles Plaintiffs seek injunctive relief enjoining the prosecution of various lawsuits and threatened lawsuits (the "Subject Lawsuits") during the pendency of the Debtors' bankruptcy cases. The Subject Lawsuits were each brought outside of bankruptcy by certain Carlson Defendants through their shared attorney, Mr. Catanzarite, against certain Mikles Plaintiffs and the Debtors. The Mikles Plaintiffs allege that an injunction is appropriate here because (1) the Subject Lawsuits are inextricably intertwined with actions asserted against the Debtors; (2) the common nexus between the Carlson Defendants and the Mikles Plaintiffs is through the Debtors; and (3) for any claims to be proven against

[6] *See* Case Numbers 19-1048-SMG (Carlson), 19-1049-SMG (Brown and NNN Congress Center, LLC), 19-1051-SMG (Wynfield and NNN Capital Fund I, LLC), 19-1052-SMG (the 1600 Barberry Lane entities), 19-1053-SMG (the Plantations at Haywood entities), and 19-1053-SMG (Dierenfield and Gilmer).

the Mikles Plaintiffs, the Carlson Defendants must establish some basis for liability, or must prove claims, against the Debtors—who are not participating in the Subject Lawsuits due to the chapter 7 cases.

II. The Preliminary Injunction

On July 31, 2019, the Mikles Plaintiffs filed their first *Emergency Motion for Temporary Restraining Order and Preliminary Injunction* (ECF No. 2). After conducting a hearing, the Court entered an *Order* (ECF No. 18) on August 27, 2019 (the "First Preliminary Injunction Order") granting the Mikles Plaintiffs' Motion and providing that:

> Plaintiffs are hereby granted a preliminary injunction for a period of sixty (60) days effective as of the Hearing, enjoining continuation of the Subject Lawsuits or the commencement of any further actions under same or similar facts or circumstances to the Subject Lawsuits, by these Defendants.

First Prelim. Inj. Order at 3.

On October 18, 2019, the Mikles Plaintiffs filed a *Motion to Extend the Preliminary Restraining Order* (ECF No. 49), seeking an extension of the preliminary injunction for 75 days to maintain the status quo while allowing the Court to consider approval of the settlement reached in the Debtors' consolidated chapter 7 cases, which – if approved – would be dispositive of the Subject Lawsuits. After conducting a hearing on the Motion, the Court entered an *Order* (ECF No. 61) on October 23, 2019 (the "Second Preliminary Injunction Order"), granting the Motion to Extend the Preliminary Restraining Order and ordering that:

> The preliminary injunction is extended for an additional period through and including December 11, 2019, effective as of the Hearing, enjoining continued prosecution of the Subject Lawsuits or the commencement of

> any further actions under same or similar facts or circumstances to the subject lawsuits by these Defendants.

Second Prelim. Inj. Order at 3. It was the Second Preliminary Injunction Order that was in effect on November 7, 2019—the date Mr. Catanzarite allegedly violated the preliminary injunction.

On November 8, 2019, the Mikles Plaintiffs filed a second *Motion to Extend the Preliminary Restraining Order* (ECF No. 65). Again, the Court conducted a hearing on the Motion and entered an *Order* (ECF No. 92) (the "Third Preliminary Injunction Order") on November 18, 2019, further extending the preliminary injunction through and including February 28, 2020, and "enjoining continued prosecution of the Subject Lawsuits or the commencement of any further actions under the same or similar facts or circumstances to the subject lawsuits by these Defendants." Third Prelim. Inj. Order at 3.

Mr. Catanzarite appeared telephonically and presented argument at all three preliminary injunction hearings.[7]

III. The Motion to Enforce Preliminary Injunction

On November 19, 2019, the Mikles Plaintiffs filed the Motion to Enforce the Preliminary Injunction and for Sanctions against Defendants' Counsel now before the Court. The Mikles Plaintiffs contend that notwithstanding the preliminary injunction covering both the Subject Lawsuits and "the commencement of any further actions under the same or similar facts or circumstances to the subject lawsuits by these

[7] Todd Frankenthal, designated local counsel for Mr. Catanzarite, also appeared at all three preliminary injunction hearings.

Defendants," Mr. Catanzarite violated the injunction by initiating a new lawsuit on behalf of certain clients against Mr. Mikles and GCL, LLC[8] purportedly based on the same facts and circumstances as the Subject Lawsuits, and by filing a *lis pendens* against property owned by GCL, LLC (the "GCL Property").

Specifically, the Mikles Plaintiffs allege that on November 7, 2019, Mr. Catanzarite filed a Complaint in the Superior Court of California, San Diego County, on behalf of Edward Henkin, Jonmar Partnership, Katherine Looper, Pat McRoberts, Chicago Houston Partners, LLC, William E. Bump, Thomas F. Scheidt, Ellen B. Friedman, Lawrence F. Leventon, and Paul L. Cohen (the "Henkin-Looper Parties")[9] against Mr. Mikles, GCL, LLC, Global Lending Resources, LLC, and Does 1-100. *See* Case No. 37-2019-00059373 (the "Henkin-Looper Case"). In connection with the Henkin-Looper Case, Mr. Catanzarite filed the *lis pendens* at issue.[10]

The Henkin-Looper Complaint, attached to the *Request for Judicial Notice* (ECF No. 96) as Exhibit 7, alleges causes of action for avoidance and recovery of fraudulent transfers and conspiracy to defraud. The Henkin-Looper Parties allege that at all relevant times, they have had a claim against Mr. Mikles "which arises from his August 2011 acquisition of entities which owned Daymark Properties Realty, Inc. . . . , at the time the asset and property manager of [the Henkin-Looper Parties']

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[8] Mr. Mikles and GCL, LLC are two of the Mikles Plaintiffs in the Injunction Adversary.

[9] All individuals and entities are named as plaintiffs in their capacities as successors in interest to various limited liability companies.

[10] According to Mr. Mikles' *Declaration* (ECF No. 97), on November 11, 2019, Mr. Mikles received from Catanzarite Law Corporation a copy of the *lis pendens* filed against the GCL Property in connection with the Henkin-Looper Case. A copy of the *lis pendens* is attached to the Declaration as Exhibit 1.

ownership of the real estate project commonly known as the Congress Center," an office tower located in Chicago, Illinois (the "Congress Center Property"). Henkin-Looper Compl., ¶ 26. Tellingly, the Henkin-Looper Parties allege that they "learned for the first time of [Mr. Mikles'] fraudulent scheme . . . on November 1, 2019, from review of a Motion for Approval of Settlement and Compromise filed by Chad S. Paiva, as Chapter 7 Trustee . . . for the substantively consolidated bankruptcy estates of the Debtors." Henkin-Looper Compl., ¶¶ 58, 73.

The Henkin-Looper Case involves nearly identical allegations and plaintiffs as the adversary proceeding initiated by Mr. Catanzarite in this Court on March 4, 2019 (the "Looper Adversary). *See Looper v. Daymark Realty Advisors, Inc.*, Case No. 19-1050-SMG). In that adversary, it is alleged that:

> This complaint is on behalf of [the Looper] Plaintiffs . . . who invested their Internal Revenue Code Section 1031 tax deferred exchange funds . . . to acquire membership interests in various Special Purpose Entities ("SPEs") . . . in order to purchase an aggregate 16.511% tenant in common ("TIC") interest in that certain "Congress Center Property" . . . , a commercial real estate project commonly known as the "Congress Center" a 524,784 square foot Class A office tower located in Chicago, Illinois.

Looper Adv. Compl. (Case No. 19-1050-SMG, ECF No. 1), ¶ 1.[11] The Looper Plaintiffs also allege that Debtors DRA and DPR managed the Congress Center Property and DRA and DPR, through Mr. Mikles, defrauded the Looper Plaintiffs. Looper Adv. Compl., ¶¶ 21-22, 67-70.

Additionally, and particularly relevant to the Motion now before the Court, Mr. Catanzarite filed a class action in the Superior Court of Orange County,

[11] The Looper Adversary Complaint is also attached to the Request for Judicial Notice as Exhibit 2.

California, Case No. 30-2018-00982195 (the "Carlson Class Action"), on behalf of Richard Carlson as beneficiary of G REIT Liquidating Trust (the "G REIT Trust"), and all other similarly situated individuals, against Mr. Mikles, Etienne Locoh, DPR, and several other individuals and entities, alleging breach of fiduciary duty and fraudulent transfer claims. *See* Second Am. Class Action Compl. (filed March 23, 2018), Req. for Judicial Notice, Ex. 3. The plaintiffs in the Carlson Class Action alleged that the G REIT Trust owned an interest in the Congress Center Property; that the Debtors, through Mr. Mikles and Mr. Locoh, breached their fiduciary duties with respect to the Congress Center Property; and that the Debtors, Mr. Mikles, and Mr. Locoh are alter egos of each other. *See generally,* Second Am. Class Action Compl. ¶¶ 67-115. The Carlson Class Action—one of the matters explicitly enjoined by the Second Preliminary Injunction Order—is primarily based upon tenant in common ("TIC") ownership interests in the Congress Center Property, precisely the same TIC ownership interests held by the Henkin-Looper Parties that form the basis of the Henkin-Looper Case. The NNN Congress Center case, Case No. 30-2018-01015717 (the "NNN Congress Center Case"), filed by Mr. Catanzarite in the Superior Court of Orange County, California on behalf of different plaintiffs[12] also contains the same allegations regarding TIC ownership interests in the Congress Center Property as the Carlson Class Action and as the Henkin-Looper Case. *See* First Am. Compl., Req. for Judicial Notice, Ex. 5. Like the Carlson Class Action, the NNN Congress Center

[12] The NNN Congress Center Case involves defendants who are all defendants in the Carlson Class Action.

Case is one of the matters explicitly enjoined by the Second Preliminary Injunction Order.

CONCLUSIONS OF LAW

I. Mr. Catanzarite Violated the Court's Preliminary Injunction Order

For the reasons that follow, the Court finds that the filing of the Henkin-Looper Case and the associated *lis pendens* by Mr. Catanzarite constitutes "the commencement of any further actions under same or similar facts or circumstances to the subject lawsuits by these Defendants," which violates the Court's preliminary injunction that was in effect on November 7, 2019—the date the Henkin-Looper Case was filed. *See* Second Prelim. Inj. Order.

The Court has the power to issue sanctions for civil contempt pursuant to both its inherent powers and § 105 of the Bankruptcy Code, and the statutory power of bankruptcy courts to issue contempt sanctions is particularly broad. *See In re Tate*, 521 B.R. 427, 439 (Bankr. S.D. Ga. 2014). Indeed, § 105(a) grants bankruptcy courts statutory authority to "issue any order, process, or judgment that is necessary and appropriate to carry out the provisions of this title," and the Eleventh Circuit has noted that "Congress expressly grants [courts] independent statutory powers in bankruptcy proceedings to 'carry out the provisions of' the Bankruptcy Code through 'any order, process, or judgment that is necessary or appropriate.'" *Jove Eng'g, Inc. v. I.R.S.*, 92 F.3d 1539, 1553 (11th Cir. 1996).

"In a civil contempt proceeding, the petitioning party bears the burden of establishing by 'clear and convincing' proof that the underlying order was violated."

PlayNation Play Sys., Inc. v. Velex Corp., 939 F.3d 1205, 1212 (11th Cir. 2019) (quoting *Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990)). The Court's focus "is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue." *Id.* at 1212–13 (citation omitted). This standard is an objective one. *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1802 (2019).

The Second Preliminary Injunction Order prohibits the Carlson Defendants from prosecuting or commencing "any further actions under same *or similar facts or circumstances* to the subject lawsuits by these Defendants." (emphasis added). To begin with, the filing of the Henkin-Looper Case constitutes the commencement of an action "under the same or similar facts and circumstances to the Subject Lawsuits." As discussed in the preceding section, the Carlson Class Action and the NNN Congress Center Case—two of the matters explicitly enjoined by the Second Preliminary Injunction Order—are largely based upon TIC ownership interests in the Congress Center Property, precisely the same TIC ownership interests held by the Henkin-Looper Parties that form the basis of the Henkin-Looper Case. It is thus clear that the Henkin-Looper Case and the *lis pendens* filed in connection with the Henkin-Looper Case are actions based on the same or similar facts or circumstances as some, if not all, of the Subject Lawsuits.

Mr. Catanzarite points out, and it is not disputed, that none of the Henkin-Looper Parties are specifically included with the Carlson Defendants and thus are not enjoined on the face of the Second Preliminary Injunction Order. Based on their

own allegations, however, the Henkin-Looper Parties and the Carlson Defendants are all TIC owners with similar complaints against the Debtors and the Mikles Plaintiffs arising from a common nucleus of facts. More importantly, the Henkin-Looper Parties and the Carlson Defendants all share the same attorney—Mr. Catanzarite. Indeed, Mr. Catanzarite is attempting to gain class certification with respect to the claims common to the Henkin-Looper Parties, the Carlson Defendants, and other similarly situated parties.

Rule 65(d)(2) of the Federal Rules of Civil Procedure[13] provides that an order granting an injunction or a restraining order binds not only the parties specifically named in the order, but also the parties' officers, agents, servants, employees, and attorneys and any other persons who are in active concert or participation with the named parties or their officers, agents, servants, employees, and attorneys. *See* Rule 65(d)(2)(B) and (C).

Mr. Catanzarite is the attorney for the Carlson Defendants—the parties specifically enjoined in the Second Preliminary Injunction Order. He is thus prohibited under Rule 65(d)(2)(B) from engaging in conduct in which the Carlson Defendants themselves could not engage. Moreover, it cannot be reasonably disputed that Mr. Catanzarite, the Henkin-Looper Parties, and the Carlson Defendants are in active participation with each other through Mr. Catanzarite—the attorney and the driving force behind these lawsuits he hopes to have certified as a class action. Mr. Catanzarite and the Henkin-Looper Parties are thus enjoined under Rule 65(d)(2)(C)

[13] Rule 65 is made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7065.

just as the Carlson Defendants are enjoined on the face of the Second Preliminary Injunction Order.

Having determined that the commencement of the Henkin-Looper Case along with the filing of the *lis pendens* constitute the commencement of actions "under the same or similar facts and circumstances to the Subject Lawsuits" and that Mr. Catanzarite is subject to the Second Preliminary Injunction Order pursuant to subsections (B) and (C) of Rule 65(d)(2), the Court finds that Mr. Catanzarite violated the Second Preliminary Injunction Order by filing the Henkin-Looper Case and the associated *lis pendens*.[14]

II. Sanctions

Once a court determines that its order has been violated, the court has broad discretion to fashion an appropriate sanction. *See In re Fatsis*, 405 B.R. 1, 10 (B.A.P. 1st Cir. 2009) (sanctions are reviewed for abuse of discretion); *In re Kooyomjian*, No. 11-43408-CJP, 2018 WL 6920219, at *7 (Bankr. D. Mass. Dec. 31, 2018). "Sanctions in civil contempt proceedings may be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *In re McLean*, 794 F.3d 1313, 1323 (11th Cir. 2015) (citation omitted). Monetary sanctions assessed for the purpose of compensating for losses sustained are particularly appropriate in civil contempt proceedings. *In re*

[14] This is not the first time this Court has had to sanction Mr. Catanzarite. On April 4, 2019, this Court entered an *Order Granting Debtors' Motion for an Injunction Against False and Misleading Statements by Catanzarite Law Corporation and Sanctions for Violation of 11 U.S.C. §§1121 and 1125* (Case No. 18-23750-SMG, ECF No. 251).

Fatsis, 405 B.R. at 10 (noting that "'make-whole relief' is a commonplace sanction for civil contempt"). Like any monetary sanction that is remedial in nature, "the amount of such a sanction must be established by competent evidence, and must bear a reasonable relationship to the actual losses sustained by the injured party." *Id.*; *see also, In re TLFO, LLC*, 571 B.R. 880, 886 (Bankr. S.D. Fla. 2017).

Here, the Court finds that compensatory sanctions are appropriate in order to compensate the Mikles Plaintiffs and Trustee Paiva[15] for any actual attorneys' fees and expenses incurred in connection with the filing of the Henkin-Looper Case, including the fees and expenses, if any, incurred in responding to the Henkin-Looper Complaint and filing and prosecuting this Motion to Enforce the Preliminary Injunction and for Sanctions.

ORDER

Based on the foregoing, it is **ORDERED** that:

1. The Motion to Enforce Preliminary Injunction and for Sanctions is **GRANTED** in part, with respect to the relief sought against Mr. Catanzarite.

2. Pursuant to counsel's stipulation at the Hearing, the Motion to Enforce Preliminary Injunction and for Sanctions is denied with respect to the relief sought against Mr. Frankenthal.

[15] Although Trustee Paiva is not a party to this particular adversary proceeding, in light of the pending settlement motion in the main bankruptcy case and the intent of the injunctive relief in this adversary proceeding – to maintain the status quo pending the hearing to consider approval of that settlement – the Court finds it appropriate to compensate the bankruptcy estate, in addition to the Mikles Plaintiffs, for any attorneys' fees and expenses incurred in connection with this matter.

3. The filing of the Henkin-Looper Case and the associated *lis pendens* violated the Court's Second Preliminary Injunction Order.

4. Any further prosecution of the Henkin-Looper Case by Mr. Catanzarite or by the Henkin-Looper Parties is enjoined by the Third Preliminary Injunction Order and by any order continuing the preliminary injunction issued by this Court.

5. Within 7 days of the entry of this Order, Mr. Catanzarite is directed to file a copy of this Order in the Henkin-Looper Case.

6. Within 7 days of the entry of this Order, Mr. Catanzarite is directed to cause the *lis pendens* to be removed from the San Diego County property records and to file a copy of this Order in the San Diego County property records.

7. Mr. Catanzarite must file proof of compliance with paragraphs 5 and 6 above within 7 days of the entry of this Order.

8. The Mikles Plaintiffs and Trustee Paiva are awarded compensatory sanctions, to be paid by Mr. Catanzarite, for attorneys' fees and expenses incurred in connection with responding to the Henkin-Looper Complaint and filing and prosecuting this Motion to Enforce the Preliminary Injunction and for Sanctions.

9. Within 14 days of the entry of this Order, the Mikles Plaintiffs and Trustee Paiva must each file an affidavit, including redacted time records, as to the fees and expenses, if any, that they are seeking as compensatory sanctions.

10. Any objections to the affidavits described in paragraph 9 must be filed within 7 days after the filing of the affidavits.

11. Any further violations of this Court's Orders, the Bankruptcy Code, Bankruptcy Rules, or the Local Rules will result in an order requiring Mr. Catanzarite to show cause why his *pro hac vice* status should not be revoked.

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Copies furnished to:

Thomas M. Messana, Esq., who shall serve a copy of this Order on all interested parties, including Trustee Chad S. Paiva and his counsel, and file a certificate of service pursuant to the Bankruptcy Rules and this Court's Local Rules.

EXHIBIT 6

ORDERED in the Southern District of Florida on May 8, 2020.

Scott M. Grossman, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:	Chapter 7
Daymark Realty Advisors, Inc., *et al.*,	Case No. 18-23750-SMG (substantively consolidated)
Debtors.	

/

ORDER TO SHOW CAUSE WHY ATTORNEY KENNETH CATANZARITE, ESQ.'S *PRO HACE VICE* STATUS SHOULD NOT BE REVOKED

This matter came before the Court for a hearing on March 5, 2020 upon the *Motion for Order to Show Cause as to Why Attorney Kenneth Catanzarite, Esq.'s Pro Hac Vice Status Should Not Be Revoked* (the "Motion for Order to Show Cause")[1] filed

[1] ECF No. 377. Several parties in interest joined in the Motion for Order to Show Cause and filed supporting declarations. *See Joinder* (ECF No. 378) (the "Northwood Joinder") filed by Northwood Investors, LLC; NW Congress Center Owner, LLC; NW Congress Center, LLC; Northwood Employees, LP; Northwood Real Estate Partners TE LP; and Northwood Real Estate Partners LP (collectively, the "Northwood Entities"); *Joinder* (ECF No. 381) filed by Sovereign Capital Management Group, Inc.; Sovereign Strategic Mortgage Fund, LLC; GCL, LLC ("GCL"); Infinity Urban Century, LLC; Todd Mikles; and Etienne Locoh (collectively, the "Sovereign Group"); *Notice of Filing Decl. of Todd A. Mikles filed in Support of the Joinder* (ECF No. 382) filed by the Sovereign Group; *Notice of Filing*

by Chapter 7 Trustee Chad S. Paiva (the "Trustee") and the *Opposition to Trustee's Motion for Order to Show Cause* (the "Response in Opposition")[2] filed by Attorney Kenneth J. Catanzarite.

Despite sufficient notice[3] and an opportunity to appear and be heard in person at a hearing as serious and consequential as this one, Mr. Catanzarite decided to appear by telephone at the March 5, 2020 hearing. His local counsel, Todd S. Frankenthal, Esq., however, did appear in person at the hearing. For the reasons set forth in detail below, the Court will grant the Motion for Order to Show Cause and give Mr. Catanzarite one last opportunity to show cause, in writing, why his *pro hac vice* privileges should not be revoked.

I. BACKGROUND.

Daymark Realty Advisors Inc., Daymark Residential Management Inc., and Daymark Properties Realty Inc. each filed voluntary chapter 11 bankruptcy petitions on November 4, 2018.[4] Shortly thereafter, Mr. Frankenthal filed a *Motion to Appear Pro Hac Vice*[5] on behalf of Mr. Catanzarite, seeking his admission *pro hac vice* in this bankruptcy case (the "Daymark Case") and related adversary proceedings, with Mr.

Decl. of Adam T. Kent filed in Support of the Joinder (ECF No. 383) (the "Kent Declaration") filed by the Sovereign Group; *Suppl. to Joinder* (ECF No. 415) filed by the Sovereign Group; and *Suppl. to the Northwood Joinder* (ECF No. 424) filed by the Northwood Entities.

[2] ECF No. 417. The Court has also considered the *Objection to Joinders by Northwood Entities and Sovereign Group* (ECF No. 418) (the "Objection to Joinders") and the *Declaration of Kenneth J. Catanzarite* (ECF No. 419) (the "Catanzarite Declaration") filed by Mr. Catanzarite.

[3] ECF No. 380.

[4] The cases were later substantively consolidated, and then – upon motion by the Objecting Creditors – the consolidated cases were converted to chapter 7 on April 2, 2019. *See Order Granting Mot. to Convert Case* (ECF No. 248).

[5] ECF No. 27.

Frankenthal acting as his designated local counsel, on behalf of twenty-three clients listed in the motion.[6] In the notarized Affidavit of Proposed Visiting Attorney, signed by Mr. Catanzarite attached to the Motion to Appear Pro Hac Vice, Mr. Catanzarite made the following certifications:[7]

- "I certify that I have never been disbarred, that I am not currently suspended from the practice of law in the State of Florida or any other state, and that I am not currently suspended from the practice of law before any United States Court Of Appeals, United States District Court, or United States Bankruptcy Court."

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[6] Since this case has progressed, Mr. Catanzarite and Mr. Frankenthal have referred to some or all of their clients at various times and in various capacities as "objecting creditors." For purposes of the pending Settlement Motion (*see* note 10, *infra*) that is the main dispute in the Daymark Case, clients of Mr. Catanzarite and Mr. Frankenthal have filed three objections (ECF Nos. 416, 421 and 423):

> (a) in ECF No. 416, the following clients have objected: Richard Carlson as Beneficiary of G REIT Liquidating Trust, a terminated trust, on behalf of himself and all others similarly situated; NNN Congress Center, LLC and the Tenant In Common Owners of the Congress Center Property described in *Edward Henkin, et al. v. Todd A. Mikles et al.*, Superior Court of California, San Diego County, Case No. 37- 2019-00059373-CU-OR-CTL;
>
> (b) in ECF No. 421, the following client objected: NNN Capital Fund I, LLC, a Delaware limited liability company derivatively and through its liquidating trustee Mary Jo Saul; and
>
> (c) in ECF No. 423, the following clients have objected: 1600 Barberry Lane 8, LLC and 1600 Barberry Lane 9, LLC; Plantations at Haywood 1, LLC, Plantations at Haywood 2, LLC, Plantations at Haywood 13, LLC, and Plantations at Haywood 23, LLC; and Dennis Dierenfield, William B. Gilmer, NNN 1818 Market Street 13, LLC, a Delaware Limited Liability Company; and Mary Jo Saul as successor in interest to Tye Wynfield and all other [*sic*] similarly situated.

In the Response in Opposition, however, Mr. Catanzarite defined the "Objecting Creditors" as only the following six clients:

> Richard Carlson; NNN Capital Fund I, LLC; NNN Congress Center, LLC; 1600 Barberry Lane 9, LC; Plantations at Haywood 1, LLC; and NNN 1818 Market Street 13, LLC.

But then in the Objection to Joinders, Mr. Catanzarite defined the Objecting Creditors as:

> Richard Carlson as Beneficiary of GREIT Liquidating Trust and terminated trust on behalf of himself and all others similarly situated; Tyrone Wynfield derivatively on behalf of and as liquidating trustee for NNN Capital Fund I, LLC; Milton O. Brown as liquidating trustee for NNN Congress Center, LLC; Dennis Dierenfield, individually and in his capacity as trustee of the Dennis Dierenfield Living Trust; 350 Seventh Avenue Associates, L.P. and co-plaintiffs, Willowbrook Apartments, LLC and co-plaintiffs, Plantations at Haywood 1, LLC and co-plaintiffs, 1600 Barberry Lane 8, LLC and co-plaintiff, Dennis Dierenfield and co-plaintiffs.

While Mr. Catanzarite has filed several putative class actions in various venues, no class has been certified by any court to date.

[7] ECF No. 27, Ex. 1, ¶¶ 1, 3.

- "I certify that I am familiar with and shall be governed by the local rules of this court, the rules of professional conduct, and all other requirements governing the professional behavior of members of the Florida Bar."

The Court granted the Motion and admitted Mr. Catanzarite *pro hac vice* on December 7, 2018.[8]

On November 1, 2019, the Trustee filed a motion to approve settlement agreements with the Sovereign Group, the Cottonwood Entities,[9] and the Northwood Entities, which included a request for entry of bar orders (the "Settlement Motion").[10] Anticipating that the Settlement Motion would be contested, the Trustee also filed a motion to establish procedures for notice and service of the Settlement Motion and to set a final hearing on the Settlement Motion (the "Procedures Motion").[11] The Objecting Creditors objected to the Procedures Motion and, among other relief, sought to have the Court apply the class action procedures of Federal Rule of Civil Procedure 23 to litigation of this contested matter.

The Court conducted a preliminary hearing on the Procedures Motion on November 13, 2019, at which the Court declined the Objecting Creditors' request to apply class action procedures to a bankruptcy settlement approval motion. By Order entered on November 15, 2019,[12] the Court took the Procedures Motion under

[8] ECF No. 29.

[9] The Cottonwood Entities are Cottonwood Residential, O.P., LP; Cottonwood Capital Property Management II, LLC; Cottonwood Capital Management, Inc.; and Daniel Shaeffer.

[10] ECF No. 319.

[11] ECF No. 321.

[12] ECF No. 325.

advisement and directed the Trustee and the Objecting Creditors to meet and confer on the proposed notice procedures, a discovery plan for litigation of the Settlement Motion, and potential dates for an evidentiary hearing on the Settlement Motion in January or February of 2020.

The parties were unable to agree on proposed notice procedures, a discovery plan or dates for an evidentiary hearing, so the Court resolved those issues on its own. On December 10, 2019, the Court entered an order[13] approving notice procedures with respect to the Settlement Motion, and on December 11, 2019, the Court issued a scheduling order for litigation of the Settlement Motion (the "Scheduling Order").[14] In the Scheduling Order, the Court scheduled an evidentiary hearing for March 18-19, 2020, and set various deadlines for discovery and other pretrial matters leading up to that evidentiary hearing. The Court also implemented an expedited procedure to hear discovery disputes on shortened notice, in order to keep this contested matter moving along in a timely and efficient manner.[15]

II. MR. CATANZARITE'S MULTIPLE TRANSGRESSIONS.

Throughout the course of the Daymark Case and its related adversary proceedings,[16] Mr. Catanzarite has acted contrary to the norms of accepted practice

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[13] ECF No. 344.

[14] ECF No. 347.

[15] Unfortunately, due to the COVID-19 pandemic, the Court had to cancel the March 18-19 evidentiary hearing (ECF No. 449). It has since been rescheduled for August 31-September 2, 2020 (ECF No. 472).

[16] In addition to their representation of the Objecting Creditors in the main bankruptcy case, Mr. Catanzarite and Mr. Frankenthal have filed seven related adversary proceedings as plaintiffs' counsel, and they represent the defendants in an eighth pending adversary proceeding (the Mikles Adversary Proceeding, *see* note 24, *infra*.).

in this District, has committed numerous transgressions, and has been sanctioned on multiple occasions, as detailed below.

A. False Affidavit of Proposed Visiting Attorney.

To begin, Mr. Catanzarite submitted a false certification of good standing in his Affidavit of Proposed Visiting Attorney. While he certified that he was not suspended from the practice of law in any state, it has been alleged – and Mr. Catanzarite has not disputed – that he was indeed suspended from practice by the state of New York[17] at the time he sought *pro hac vice* admission in this Court. His explanation – that his suspension was due to "failure to pay fees"[18] – does not render the certification in his affidavit any less false.

It is also clear from his subsequent conduct (as discussed in more detail below) that Mr. Catanzarite is ***not*** familiar with – and refuses to be governed by – "the local rules of this court, the rules of professional conduct, and all other requirements governing the professional behavior of members of the Florida Bar," as he certified in his affidavit.

B. Sanctions for Unauthorized and Misleading Website.

Then, about four months after he was granted the privilege of appearing in this Court, on April 5, 2019, the Court entered an *Order* sanctioning Mr. Catanzarite for creating a website (the "Catanzarite Website")[19] that contained misleading information related to the Daymark Case, improperly sought to solicit objections to

[17] Transcript of March 5, 2020 hearing (ECF No. 468) at 76:17-77:2; *see also* ECF No. 416 at 6.

[18] *Id.*

[19] The Court also ordered Mr. Catanzarite to take down the website— www.daymarkbankruptcy.com.

confirmation of the debtors' chapter 11 plan, was confusingly similar to the official notice website in the Daymark Case, and otherwise sought to undermine the bankruptcy process.[20]

C. Numerous Discovery Violations and Sanctions.

Shortly after the Court took the Procedures Motion under advisement, Mr. Catanzarite filed a *Notice of Service of Special Interrogatories*[21] and a *First Set of Requests for Production of Documents to Chad S. Paiva, as Chapter 7 Trustee*[22] on the docket in violation of Local Rule 7026-1(C), which provides that discovery, including written interrogatories and requests for production of documents, "shall not be filed with the court, nor shall proof of service be filed, unless upon order of the court." On November 25, 2019, the Court entered an order striking these filings, stating that "[t]he Court did not order the parties to file discovery with the Court, and in fact *specially directed the parties not to do so* at the hearing conducted on November 13, 2019."[23] (emphasis added).

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[20] ECF No. 251. The April 5, 2019 Order was entered by Judge Ray prior to his retirement.

[21] ECF No. 328. The Court further notes that "Special Interrogatories" are not a recognized form of discovery in Federal Court.

[22] ECF No. 336.

[23] ECF No. 339.

Similarly, in the Mikles Adversary Proceeding,[24] Mr. Catanzarite filed thirteen *Notices of Deposition*[25] on the docket in violation of both Local Rule 7026-1(C) and Federal Rule of Civil Procedure 5(d)(1)(A), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7005. The Court entered an *Order* striking these filings as well.[26]

The Court also sanctioned Mr. Catanzarite, pursuant to Federal Rule of Civil Procedure 26(g)(3), in connection with contested matter discovery related to the Settlement Motion, for issuing discovery to both the Cottonwood Entities and the Northwood Entities that grossly exceeded the permissible scope of discovery under Rule 26(b)(1).[27] In addition (and consistent with the Court's procedure for hearing and resolving discovery disputes in an expedited matter), the Court heard and resolved three other discovery disputes, each time ruling against Mr. Catanzarite and the Objecting Creditors.[28]

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[24] *Mikles, et al. v. Carlson, et al.*, Adv. No. 19-1291-SMG (the "Mikles Adversary Proceeding"). In the Mikles Adversary Proceeding, plaintiffs Todd A. Mikles; Etienne Locoh; Sovereign Capital Management Group, Inc.; Sovereign Strategic Mortgage Fund, LLC; Infinity Urban Century, LLC; and GCL (collectively, the "Mikles Plaintiffs") are seeking injunctive relief against certain of the "Objecting Creditors," specifically Richard Carlson; Milton O. Brown; Tyrone Wynfield; Dennis Dierenfield; William B. Gilmer; NNN 1600 Barberry Lane 8, LLC; NNN 1600 Barberry Lane 9, LLC; NNN Plantations at Haywood 1, LLC; NNN Plantations at Haywood 2, LLC; NNN Plantations at Haywood 13, LLC; and NNN Plantations at Haywood 23, LLC.

[25] Mikles Adv. Pro. ECF Nos. 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 94.

[26] Mikles Adv. Pro. ECF No. 103.

[27] ECF No. 395. By Order entered on May 8, 2020, the Court liquidated those sanctions in the amount of $15,253.43 (ECF No. 476).

[28] ECF Nos. 363, 392, 393.

D. Unilaterally Noticing Depositions at an Inconsiderate and Inconvenient Time and Place.

At a hearing on December 5, 2019, it was disclosed to the Court that Mr. Catanzarite had unilaterally noticed depositions of representatives of the Northwood Entities for the days immediately before and immediately after Christmas – December 24 and 26, 2019 – in New York.[29] The Court promptly admonished Mr. Catanzarite that it did not look kindly on these litigation tactics, which attorneys regularly practicing in this Court generally do not employ.[30]

The Trustee, the Northwood Entities, and the Sovereign Group, also allege that Mr. Catanzarite has since continued to engage in a "pattern of noncooperation, abuse of discovery rules, and violating both the actual rules of procedure and the norms of practicing in the Southern District of Florida," particularly with respect to noticing of depositions.[31] For example, it is alleged that on January 30, 2020, Mr. Catanzarite unilaterally noticed the deposition of Steven Kries to take place on February 20, 2020 in Aurora, Colorado.[32] Mr. Kries is former general counsel to the debtors and former counsel to the Sovereign Group. Despite this, Mr. Kent – counsel for the Sovereign Group in the Daymark Case and a related adversary proceeding – asserts that Mr. Catanzarite made no effort to meet and confer with him regarding

[29] Transcript of December 5, 2019 Hearing (ECF No. 399) at 21:8-12, 43:15-44:5.

[30] *Id.*

[31] *See* Mot. for Order to Show Cause, ¶¶ 16-30.

[32] *See* Kent Decl., ¶ 6.

noticing Mr. Kries' deposition so that Mr. Kent "could attend and assert the appropriate privilege objection[s] on behalf of the Sovereign Group[.]"[33]

Additionally, according to the Northwood Entities, Mr. Catanzarite served subpoenas duces tecum under Federal Rule of Civil Procedure 45 on each of the six non-party Northwood Entities. Each subpoena included 54 separate requests for production of documents.[34] The Northwood Entities timely served detailed written objections and responses to each request and agreed to produce certain responsive documents upon the entry of a protective order.[35] Despite this, the Northwood Entities allege that Mr. Catanzarite failed to meet and confer with respect to their objections and responses to the subpoenas and failed to obtain or even propose a protective order.[36] Instead, on December 31, 2019, Mr. Catanzarite served each of the Northwood Entities with 17 interrogatories and 55 document requests under Rules 33 and 34 of the Federal Rules of Civil Procedure "as if they were parties to these bankruptcy proceedings."[37] According to the Northwood Entities, these document requests were nearly identical to the Rule 45 subpoenas Mr. Catanzarite previously served on the Northwood Entities.[38] Mr. Catanzarite then filed an "emergency" motion to deem the Northwood Entities, among others, as "parties" to the contested

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[33] *Id.*

[34] Northwood Joinder at 1.

[35] *Id.* at 2.

[36] *Id.* at 3.

[37] *Id.*

[38] *Id.* The only additional request was for all documents identified in the "special interrogatories," which he concurrently served on the Northwood Entities.

matter created by the Settlement Motion.[39] The Court denied the motion[40] after conducting a hearing on an expedited basis, and cautioned all parties that discovery must be proportionately and narrowly tailed to the Settlement Motion. Mr. Catanzarite then served yet another set of Rule 45 subpoenas on the Northwood Entities requesting the same documents he sought in the previous two requests, despite – according to the Northwood Entities – already having received objections and responses to these subpoenas upon which he failed to follow up.[41]

E. Violation of Preliminary Injunction.

On November 19, 2019, the Mikles Plaintiffs filed a *Motion to Enforce the Preliminary Injunction and for Sanctions* (the "Motion to Enforce Injunction")[42] in the Mikles Adversary Proceeding. The Mikles Plaintiffs asserted that Mr. Catanzarite violated the preliminary injunction issued in that adversary proceeding[43] by initiating a new state court lawsuit on behalf of certain clients against Mr. Mikles and GCL[44] based on the same facts and circumstances as the enjoined lawsuits, and by filing a *lis pendens* against property owned by GCL. After conducting a hearing on

[39] ECF No. 352.

[40] ECF No. 363.

[41] Northwood Joinder at 3-4.

[42] Mikles Adv. Pro., ECF No. 95.

[43] Judge Ray entered the first preliminary injunction on August 27, 2019, in which he temporarily enjoined prosecution of several pending lawsuits and arbitrations, and the commencement of any further actions under the same or similar facts or circumstances. (Mikles Adv. Pro., ECF No. 18). The Court subsequently extended the preliminary injunction three separate times on October 23, 2019, November 18, 2019, and March 2, 2020, pending a final hearing on approval of the Settlement Motion. (Mikles Adv. Pro., ECF Nos. 61, 92, 152).

[44] Mr. Mikles and GCL are two of the Mikles Plaintiffs in the Mikles Adversary Proceeding.

the Motion to Enforce Injunction on December 5, 2019,[45] the Court entered an *Order* finding that Mr. Catanzarite violated the Court's preliminary injunction, sanctioning him for doing so,[46] and cautioning that "[a]ny further violations of this Court's Orders, the Bankruptcy Code, Bankruptcy Rules, or the Local Rules will result in an order requiring Mr. Catanzarite to show cause why his *pro hac vice* status should not be revoked."[47]

F. False Emergency.

Most recently, on the afternoon of April 7, 2020, Mr. Catanzarite filed an emergency *Motion to Modify Temporary Restraining Order and Preliminary Injunction*[48] in the Mikles Adversary Proceeding, seeking a hearing on or before April 9, 2020.[49] Not only was this motion completely meritless as the Court had made its

[45] Mr. Catanzarite did not appear in person at this hearing, instead opting to participate by telephone.

[46] The Court has since liquidated those sanctions in the total amount of $60,659.75 (Mikles Adv. Pro., ECF No. 182), after Mr. Catanzarite failed to timely object to the affidavits of attorneys' fees and costs filed by the Mikles Plaintiffs and the Trustee. In yet another example of Mr. Catanzarite's complete disregard of our Local Rules, after his deadline to object had passed, Mr. Catanzarite tried to file a tardy objection attached to a Notice of Late Filing of Paper Pursuant to Local Rule 5005-1(F)(2). (Mikles Adv. Pro., ECF No. 146.) As noted by the Court at a hearing in this matter on March 5, 2020, however, Local Rule 5005-1(F)(2) governs submission of papers in matters *already* set for hearing and has absolutely no applicability to a deadline to file an objection set by a court order. Accordingly, the Court did not consider his tardy objection in liquidating this sanctions award.

[47] Mikles Adv. Pro., ECF No. 112, at 15. Mr. Catanzarite appealed that Order (Mikles Adv. Pro., ECF No. 116), but that appeal was dismissed because he failed to timely file a designation of record or statement of issues (Mikles Adv. Pro., ECF No. 130). Mr. Catanzarite then moved to vacate that dismissal because he – once again in violation of applicable rules – filed his designation and statement in the wrong court (the District Court) (Mikles Adv. Pro., ECF No. 139). After considering the excusable neglect standard set forth in *Pioneer Inv. Servs. v. Brunswick Assocs.*, 507 U.S. 380 (1993), as applied by the Eleventh Circuit in *Chege v. Georgia Department of Juvenile Justice*, 787 F. App'x 595, 598–99 (11th Cir. 2019), the Court granted the motion to vacate based primarily on the absence of prejudice to the nonmoving party. That appeal is now pending before the District Court.

[48] Mikles Adv. Pro., ECF No. 173.

[49] At the April 9, 2020 hearing, the Court noted that there was no reason for Mr. Catanzarite to have waited until the last minute to file this emergency motion, when the auction at issue — scheduled to take place from April 7 through 9, 2020 — was undoubtedly set sometime before April 7, 2020.

position on the matter abundantly clear in earlier rulings,[50] but it was filed without the Local Rule 9075-1(B) certification[51] on an expedited basis in the midst of the global COVID-19 pandemic – in which court operations throughout the country have been disrupted – and during the week of both Passover and Easter. After conducting a telephonic hearing on April 9, 2020, the Court denied the emergency motion.[52]

III. GOVERNING LAW.

"The ability to appear pro hac vice is a privilege, not a right, and may be revoked by the Court upon a finding of misconduct."[53] Where an attorney has already been admitted to appear *pro hac vice*, the standards governing revocation of that privilege differ, depending on the circumstances.[54] For conduct that threatens disruption of the court proceedings or is a deliberate challenge to the Court's authority, the Court is given great deference to disqualify the recalcitrant attorney.[55] "If, however, the conduct at issue does not threaten the orderly administration of justice but is allegedly unethical," the Court must rest its "disqualification decisions on the violation of specific Rules of Professional Conduct, not on some 'transcendental

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[50] The Court also noted at the April 9, 2020 hearing that it had twice before considered and dismissed the argument Mr. Catanzarite raised in his Emergency Motion to Modify Injunction.

[51] Local Rule 9075-1(B) requires "a certification that the proponent has made a bona fide effort to resolve the matter without hearing."

[52] Mikles Adv. Pro., ECF No. 180.

[53] *Blitz Telecom Consulting, LLC v. Peerless Network, Inc.*, Case No. 6:14-cv-307-Orl-40GJK, 2016 WL 6125585, at *2 (M.D. Fla. Oct. 20, 2016); *cf. Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it.").

[54] *Schlumberger Techs., Inc. v. Wiley*, 113 F.3d 1553, 1561 (11th Cir. 1997).

[55] *Id.*

code of conduct . . . that . . . exist[s] only in the subjective opinion of the court.'"[56] Except in certain circumstances not present here, an attorney's *pro hac vice* privileges may not be revoked "without notice of the charge against him or an opportunity to explain."[57]

The Florida Rules of Professional Conduct provide that a lawyer must not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."[58] It is also improper for an attorney to, "in pretrial procedure, make a frivolous discovery request."[59] The Florida Bar Guidelines for Professional Conduct further provide that "[a]ttorneys must, except in extraordinary circumstances, communicate with opposing counsel before scheduling depositions . . . to schedule them at times that are mutually convenient for all interested persons."[60] The Guidelines go on to state that "[w]hen scheduling depositions, reasonable consideration should be given to accommodating schedules of opposing counsel and deponents, when it is possible to do so without prejudicing the client's rights."[61]

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[56] *Id.* (quoting *In re Finkelstein*, 901 F.2d 1560, 1565 (11th Cir. 1990)).

[57] *Kirkland v. Nat'l Mortg. Network, Inc.*, 884 F.2d 1367, 1371 (11th Cir. 1989) (quoting *Kleiner v. First Nat'l Bank*, 751 F.2d 1193, 1211 (11th Cir. 1985)).

[58] FL ST BAR Rule 4-3.4(c).

[59] FL ST BAR Rule 4-3.4(d).

[60] Florida Bar Guidelines for Professional Conduct, Section B(1).

[61] *Id.*, Section F(2).

IV. ANALYSIS.

As this Court has previously found, Mr. Catanzarite deliberately violated this Court's preliminary injunction entered in the Mikles Adversary Proceeding. The Court sanctioned Mr. Catanzarite for this misconduct and warned him that further transgressions would result in an order to show cause why his *pro hac vice* status should not be revoked. He clearly did not heed the message and continues to deliberately challenge this Court's authority. After being admonished orally and in writing, and being sanctioned several times, Mr. Catanzarite continues to disobey local rules, federal rules, and court orders warning him that further misconduct will bring about the consequences now before the Court. Accordingly, his repeated violation of this Court's local rules and orders constitute deliberate challenges to this Court's authority, warranting revocation of his *pro hac vice* privileges.

Moreover, Mr. Catanzarite's violation of the preliminary injunction was also a violation of FL ST BAR Rule 4-3.4(c), and his numerous discovery transgressions – all of which resulted in rulings against him and his clients – violated FL ST BAR Rule 4-3.4(d). Additionally, his noticing of depositions – particularly the Northwood Entities' depositions that he unilaterally noticed for December 24 and 26 in New York – violated Florida Bar Guidelines for Professional Conduct, Sections B(1) and F(2).

V. CONCLUSION.

Mr. Catanzarite has abused his privilege to appear *pro hac vice* in this Court. This Court expects the attorneys who practice and appear before it to be civil, courteous, and cooperative. All attorneys licensed to practice law in Florida are required to swear an oath to "maintain the respect due to courts of justice and judicial

officers," and "to opposing parties and their counsel, [to] pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications."[62] As a visiting attorney granted the privilege to practice in this Court, Mr. Catanzarite was expected to abide by these principles. His actions in the Daymark Case, however, have been inconsistent with these principles.[63] An attorney whose *pro hac vice* application was false when filed, who has thrice been sanctioned, who has repeatedly ignored our Local Rules, and who has continually failed to grasp the concept that discovery is a tool, not a weapon[64] will forfeit the privilege of appearing in this Court.

If – after giving Mr. Catanzarite a final opportunity to respond to the charges against him – the Court decides to immediately revoke his *pro hac vice* privileges, the Court still intends to proceed with the August 31-September 2, 2020 evidentiary hearing on the Settlement Motion.[65] Mr. Frankenthal, as Local Counsel to the Objecting Creditors, is certainly capable of trying this matter without Mr. Catanzarite, as he has been involved in the case from the outset. Thus, the revocation

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[62] The Oath of Admission to the Florida Bar was amended September 12, 2011 to add this civility pledge.

[63] Mr. Catanzarite's behavior has also been inconsistent with Rule 1001 of the Federal Rules of Bankruptcy Procedure, which provides that the Rules should be "construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding." Mr. Catanzarite's tactics and behavior during this case have been contrary to this mandate.

[64] Discovery must also be "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit" Fed. R. Civ. P. 26(b)(1).

[65] Public health and safety conditions permitting, of course.

of Mr. Catanzarite's *pro hac vice* privileges will not serve as a basis for any continuance of the hearing.

Accordingly, upon consideration of the Motion for Order to Show Cause, the Response in Opposition, the Joinders, the Objection to Joinders, the Catanzarite Declaration, the Kent Declaration, the arguments made at the March 5, 2020 hearing, and the record in the Daymark Case and its related adversary proceedings, it is

ORDERED that:

1. The Trustee's Motion for Order to Show Cause is **GRANTED**.

2. Attorney Kenneth J. Catanzarite is directed to show cause why his *pro hac vice* privileges should not immediately be revoked.

3. Mr. Catanzarite must file a written response to this Order to Show Cause **on or before May 29, 2020**. His response must include any legal citations, citations to the record, and affidavits or declarations Mr. Catanzarite would like the Court to consider in deciding whether to revoke his *pro hac vice* privileges.[66]

4. Failure to file a written response on or before May 29, 2020, will result in the immediate revocation of Mr. Catanzarite's *pro hac vice* privileges without further notice or hearing.

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[66] In light of the extensive briefing on the Motion for Order to Show Cause and all related filings, including Mr. Catanzarite's Response in Opposition, Objection to Joinders and his Declaration, and the extensive arguments at the March 5, 2020 hearing (which Mr. Catanzarite elected to attend by telephone), and the final opportunity afforded to Mr. Catanzarite by this Order to file another written response, affidavit or declaration, the Court finds that a further hearing on this matter is unnecessary and intends to rule on the papers. Mr. Catanzarite has had more than ample notice of the charges against him and multiple opportunities to respond and appear in person before the Court.

5. Any interested party wishing to reply to Mr. Catanzarite's response must file a reply **on or before June 12, 2020**. Any reply must likewise include any legal citations, citations to the record, and affidavits or declarations the party would like the Court to consider.

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Copies furnished to:

Barry P. Gruher, Esq., who must serve a copy of this Order on all interested parties and file a certificate of service thereof.

EXHIBIT 7

No. 21-12766
United States Court of Appeals, Eleventh Circuit

Catanzarite v. GCL, LLC (In re Daymark Realty Advisors, Inc.)

Decided Mar 9, 2022

21-12766

03-09-2022

In re: DAYMARK REALTY ADVISORS, INC., DAYMARK PROPERTIES REALTY, INC., DAYMARK RESIDENTIAL MANAGEMENT, INC., Debtors. v. GCL, LLC, INFINITY URBANCENTURY, LLC, ETIENNE LOCOH, TODD A. MIKLES, SOVEREIGN CAPITAL MANAGEMENT GROUP, LLC, et al., Defendants-Appellees. KENNETH J. CATANZARITE, Plaintiff-Appellant,

PER CURIAM.

2 DO NOT PUBLISH *2

Appeal from the United States District Court for the Southern District of Florida D.C. Docket No. 0:20-cv-61032-RS

Before William Pryor, Chief Judge, Luck, and Lagoa, Circuit Judges.

PER CURIAM.

Kenneth Catanzarite appeals the denial of relief from a judgment of the bankruptcy court. The district court affirmed the award of sanctions against Catanzarite for violating a preliminary injunction that barred "the commencement of any further actions under the same or similar facts or circumstances to" lawsuits he had filed against bankruptcy creditors. The district court also ruled that Catanzarite forfeited his opportunity to object to the amount of sanctions imposed. We affirm.

In 2018, Daymark Realty Advisors, Incorporated, Daymark Properties Realty, Incorporated, and Daymark Residential Management, Incorporated, 3 filed separate petitions for bankruptcy *3 under Chapter 11 of the Bankruptcy Code, which the bankruptcy court consolidated. Catanzarite, an attorney licensed in California and admitted to appear *pro hac vice* in the bankruptcy court, filed adversary complaints against the Daymark companies for Richard Carlson and eleven other plaintiffs (the Carlson plaintiffs) and for Katherine Looper and six other plaintiffs. Those plaintiffs complained of breach of fiduciary duties and other wrongdoing in handling their investments in several properties, including their interests as tenants-in-common in the Congress Center, an office tower in Chicago, Illinois. Later, Catanzarite moved successfully to convert the bankruptcy petition to an action under Chapter 7 of the Bankruptcy Code.

Catanzarite also sued Daymark creditors, including Todd Mikles, Etienne Locoh, GCL, LLC, and other entities related to the Daymark companies (the Mikles creditors). Catanzarite filed nine putative class action complaints for the Carlson plaintiffs in California and Utah courts against various combinations of the Mikles creditors. The complaints alleged that the creditors were alter egos of and shared common control of and culpability for the Daymark companies' mishandling of investments in the Congress Center and other properties.

The Mikles creditors entered an agreement to settle their claims with the bankruptcy trustee, Chad Paiva, and obtained an injunction that stayed the nine lawsuits. *See* 11 U.S.C. § 105(a); Fed.R.Bankr.P. 7001(7). After a hearing attended by Catanzarite, the creditors, and the Trustee on
4 August 27, 2019, the bankruptcy *4 court issued an order that "enjoin[ed] continuation of the [nine] Subject Lawsuits or the commencement of any further actions under [the] same or similar facts or circumstances to the Subject Lawsuits" for 60 days. On the Mikles creditors' motion, and after a second hearing, the bankruptcy court issued a second preliminary injunction that extended the stay to December 11, 2019.

On November 7, 2019, Catanzarite, as counsel for Katherine Looper and nine other plaintiffs (the Looper plaintiffs), filed in a California court a complaint alleging that Mikles and GCL assisted the Daymark companies to defraud investors in connection with the Congress Center and another property. Catanzarite also filed a notice of lis pendens on GCL property.

The Mikles creditors moved to enforce the injunction and to impose sanctions. The bankruptcy court held a hearing on the motion attended by the creditors, Catanzarite, and the Trustee. The Trustee testified about Catanzarite's actions, the effect on the stay, and maintaining control of the property of the estate.

The bankruptcy court granted the motion and sanctioned Catanzarite. The bankruptcy court ruled that Catanzarite, as counsel for and in active concert with the Carlson plaintiffs, *see* Fed. R. Civ. P. 65(d)(2)(B), violated the injunction by filing a civil action and lis pendens for the Looper plaintiffs "based upon TIC ownership interests in the Congress Center," which was the same subject "matter[] explicitly enjoined by the Second Preliminary Injunction Order." And the bankruptcy court stated that it earlier had sanctioned Catanzarite for creating a website
5 containing false and *5 misleading statements about the Daymark bankruptcy. The bankruptcy court stayed the Looper action and ordered Catanzarite to reimburse the Mikles creditors and "Trustee Paiva for any actual attorneys' fees and expenses incurred in connection with" the Looper action. Although the Trustee was not a party to the motion, the bankruptcy court found "it appropriate to compensate the bankruptcy estate . . . in light of the pending settlement motion in the main bankruptcy case and the intent of the injunctive relief in this adversary proceeding-to maintain the status quo pending the hearing to consider approval of that settlement . . . ."

As directed by the bankruptcy court, the Mikles creditors and the Trustee timely filed affidavits for and redacted time records of the fees and expenses they sought as compensatory sanctions. On January 29, 2020, the Mikles creditors requested $49,020.50 in attorneys' fees, and on February 5, 2020, the Trustee requested $13,333 for similar expenses. On February 25, 2020, almost three weeks after the expiration of the seven-day deadline imposed by the bankruptcy court, Catanzarite objected to the affidavits.

The bankruptcy court denied Catanzarite's objection to the affidavits as untimely. The bankruptcy court found that Catanzarite "failed to timely object to either affidavit" or "to timely move for an extension of time to object" and that his notice of late filing "offered a variety of excuses for missing the deadline, none of which [rose] to the level of excusable neglect." The bankruptcy court awarded the full amount of attorneys' fees that the Mikles creditors requested
6 as "incurred in connection with responding to *6 the [Looper action] and prosecuting the [motion to enforce], and . . . not excessive." As to the Trustee, the bankruptcy court found that "certain time entries include time for both main case issues as well as the pertinent issues in this adversary proceeding" and, being "unable to determine which portion of [specific] entries [were]

attributable to the [Looper action] and the [motion to enforce], . . . [it] exercise[d] its discretion and award[ed] only 50% of the fees billed" on four days in December 2019. The bankruptcy court awarded the Trustee $11,639.25 in attorneys' fees.

The district court affirmed the imposition of sanctions and the fee awards. The district court ruled that, "under the plain language of Rule 65(d)(2)(B), [Catanzarite], as the attorney for the enjoined Carlson [plaintiffs], was bound by the Preliminary Injunction" and violated it by filing an action "based on similar ownership interests and the same or similar facts or circumstances." The district court rejected Catanzarite's argument that he could engage in prohibited conduct for another client. The district court ruled that Catanzarite's "failure to object to the fee affidavit[s] and his conclusory and vague challenges to the reasonableness of the fees . . . [were] fatal to his argument" challenging the accuracy and veracity of the affidavits. The district court also ruled that the bankruptcy court did not abuse its discretion in determining the fee awards after carefully reviewing the affidavits and time records that the Mikles creditors and the Trustee submitted. The district court rejected as refuted by the record Catanzarite's argument that awarding sanctions to the Trustee violated his right to due process. *7

"[A]s [the] second court of review," we "examine[] independently the factual and legal determinations of the bankruptcy court and employ[] the same standard of review as the district court." *In re Ocean Warrior, Inc.*, 835 F.3d 1310, 1315 (11th Cir. 2016) (quoting *In re Fisher Island Invs., Inc.*, 778 F.3d 1172, 1189 (11th Cir. 2015)). We review the imposition of sanctions for abuse of discretion and related findings of fact for clear error. *Id.* Under the abuse-of-discretion standard, we must affirm "unless the [bankruptcy] court made a clear error of judgment, or has applied the wrong legal standard." *Id.* (internal quotation marks omitted). So the bankruptcy court enjoys a "a range of choice within which we will not reverse . . . even if we might have reached a different decision." *Schiavo ex. rel. Schindler v. Schiavo*, 403 F.3d 1223, 1226 (11th Cir. 2005).

The bankruptcy court did not err in determining that Catanzarite was bound by the injunction. Federal Rule of Civil Procedure 65 binds three categories of persons to comply with an injunction: "the parties; the parties' . . . attorneys; and other persons who are in active concert or participation" with persons in the first two categories. Fed.R.Civ.P. 65(d)(2)(B). The Rule binds an attorney to an injunction to the same extent as a party. So, as the bankruptcy court explained, Catanzarite could not "engag[e] in conduct in which [the parties,] the Carlson [plaintiffs,] themselves could not engage."

Catanzarite misinterprets Rule 65(d)(2)(B) as prohibiting attorneys only "from engaging in enjoined conduct *on behalf of an* *8 *enjoined party*." "We are not at liberty to add terms or posit an interpretation that differs from the explicit language of" a federal rule of procedure. *United States v. Orozco*, 160 F.3d 1309, 1316 (11th Cir. 1998). Rule 65(d)(2)(B) plainly bars a party's attorney from engaging in enjoined conduct regardless of his client's situation. Because Catanzarite was bound to obey the injunction, we need not address his argument that the bankruptcy court erred by ruling, in the alternative, that he was bound to the injunction by acting in concert with his clients under Rule 65(d)(2)(C).

Catanzarite violated the injunction. The injunction expressly prohibited "the commencement of any further actions under same or similar facts or circumstances to the Subject Lawsuits." Two of the subject lawsuits involved Mikles creditors mishandling investors' tenancy-in-common interests in the Congress Center. In the complaint and lis pendens, Catanzarite repeated many of the facts and legal arguments made in the subject lawsuits.

The bankruptcy court did not abuse its discretion. "Congress has empowered bankruptcy courts broadly to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code, 11 U.S.C. § 105(a), including sanctions to enforce . . . [an] injunction." *In re McLean*, 794 F.3d 1313, 1319 (11th Cir. 2015). The bankruptcy court sanctioned Catanzarite for the permissible purpose of compensating the Trustee and the Mikles creditors for losses caused by Catanzarite's noncompliance. *See Local 28, Sheet Metal Workers' Int'l Ass'n v. EEOC*, 478 U.S. 421, 443 (1986). The Trustee was entitled to compensation *9 even though he did not move to enforce the injunction or join the Mikles creditors' motion. The Trustee was a party in the bankruptcy case in which the injunction issued for the purpose of maintaining the status quo pending the resolution of a proposed settlement between the estate and the Mikles creditors. *See E.E.O.C. v. Guardian Pools, Inc.*, 828 F.2d 1507, 1514-15 (11th Cir. 1987). Catanzarite's violation of the injunction interrupted the progress of the bankruptcy case and required the Trustee and the Mikles creditors to incur expenses related to the Looper action and to the enforcement of the injunction.

Catanzarite argues that he was denied due process with respect to the award to the Trustee, but he was "given fair notice that his conduct may warrant sanctions and the reasons why" as well as "an opportunity to respond . . . and to justify his actions," *In re Mroz*, 65 F.3d 1567, 1575-76 (11th Cir. 1995). The motion to enforce outlined Catanzarite's willful disobedience of the injunction. During the hearing on the motion, the Trustee testified about the effect that Catanzarite's noncompliance had on the bankruptcy proceedings, and Catanzarite presented a defense. As the district court stated, Catanzarite "was on notice that the bankruptcy court was . . . considering whether and how [his] actions may have affected the Trustee and the estate and whether that should give rise to sanctions." And the bankruptcy court afforded Catanzarite the opportunity to object to the Trustee's affidavit and time records, but Catanzarite delayed filing a response. This process was sufficient to satisfy due process. *10

The bankruptcy court also did not abuse its discretion in determining the fee awards. The bankruptcy court ensured that its awards were "calibrated to the damages caused by" Catanzarite's noncompliance by limiting the award to "cover[ing] the legal bills that the litigation abuse occasioned." *Goodyear Tire & Rubber Co. v. Haeger*, 137 S.Ct. 1178, 1186 (2017) (internal quotation marks omitted and alterations adopted). The bankruptcy court "carefully reviewed the Affidavits and time records" the Trustee and the Mikles creditors submitted and found that the fees were "incurred in connection with responding to the [Looper action] and in prosecuting" the motion to enforce the injunction. The bankruptcy court noticed an inadvertent duplication of fees by the Trustee and adjusted the amount requested to account for the error. Catanzarite contests the amounts of the awards, but he forfeited the opportunity to challenge those amounts by failing timely to object to the affidavits, *see Green v. Graham*, 906 F.3d 955, 963 (11th Cir. 2018).

We **AFFIRM** the sanctions against Catanzarite.

EXHIBIT 8

The State Bar
of California

OFFICE OF CHIEF TRIAL COUNSEL

845 S. Figueroa Street, Los Angeles, CA 90017 213-765-1000 ctc.cpra@calbar.ca.gov

Via e-mail only - justintimesd@gmail.com

June 14, 2022

Justin S. Beck

RE: Request for State Bar Records

Dear Mr. Beck:

This letter is an additional response to your Public Records Act request dated May 7, 2022, addressed to Assistant General Counsel Carissa Andresen and received by the State Bar of California on May 12, 2022. You requested the following:

- Per BPC 6086.10: (c) Notwithstanding the confidentiality of investigations, the State Bar shall disclose to any member of the public so inquiring, any information reasonably available to it pursuant to subdivision (o) of Section 6068, and to Sections 6086.7, 6086.8, and 6101, concerning a licensee of the State Bar that is otherwise a matter of public record, including civil or criminal filings and dispositions."

  Please send me "any information [from State Bar, from courts in any jurisdiction, from State Bar licensees on mandatory reporting, from insurers on mandatory reporting] reasonably available to [public entity State Bar and its public employees] pursuant to subdivision (o) of Section 6068, and to Sections 6086.7, 6086.8, and 6101, concerning a licensee of the State Bar [see below] that is otherwise a matter of public record, including all judgments, orders, civil or criminal filings and dispositions related to the following:

  1) Kenneth Joseph Catanzarite

Please be advised that State Bar disciplinary complaints and investigatory records are confidential and not subject to disclosure. (Gov. Code, § 6254 subd. (f) [Investigatory files

compiled by a state agency for licensing purposes are not subject to disclosure under the California Public Records Act]; Bus. & Prof. Code, § 6086.1 subd. (b) ["[D]isciplinary investigations … shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act."].)

Without waiving said exemptions, please see the enclosed records.

7) Drexel Bradshaw

State Bar disciplinary complaints and investigatory records are confidential and not subject to disclosure. (Gov. Code, § 6254 subd. (f); Bus. & Prof. Code, § 6086.1 subd. (b).)

Without waiving said exemptions, the State Bar has conducted a diligent search of its records and has located no documents responsive to your request. The State Bar reserves the right to determine whether the requested records are exempt from disclosure pursuant to the California Public Records Act should we later locate responsive documents.

If you wish to discuss this matter further, I can be reached at the telephone number above.

Best regards,

Alex Hackert
Senior Trial Counsel

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1. SANCTIONS AGAINST KENNETH CATANZARITE

(See Attached Cases)

- **Edwards v. Noroski (2013) $14,000 sanction** + $1,200-SLO order (11/25/12)

In this case that is ongoing, the Court punished Catanzarite for saying one thing, then switching his story. The court stated that Catanzarite's case was a "sham." First, Catanzarite claimed that the dental practice run by Dr. Noroski and Dr. Schneider should give back money to patients who had been treated at the dental office, but did not say anything was wrong with the dentistry. Then, Catanzarite realized he had no case, because the plaintiffs who were former patients had their depositions and said they were happy with Dr. Noroski and happy with Dr. Schneider. (See attached.) The plaintiffs dropped out and Catanzarite had no case. Catanzarite asked to file an amended complaint that now said that the dental services were bad. The Court punished Catanzarite by sanctioning him $14,000 for wasting everybody's time.

- **Alexandros v. Cole (2011) $10,000 sanction**

Catanzarite violated court rules by making statements to the court without any proof. The court said: "But here plaintiffs [Catanzarite] admit they violated several rules. They also continued to cite the excluded evidence in their reply brief even after defendants noted the error in their briefs." The Court pointed out that Catanzarite's brief made 39 unsupported factual statements, and paragraphs lacking references. Some statements were completely incorrect. Catanzarite does not care about the truth in making statements to the Court. The Court said "Kenneth J. Catanzarite and Laurence M. Rosen are ordered to pay defendants the $10,000 sanctions award…"

- **In Re Perrine (2007) $30,000 or refund of fees**

Catanzarite did not tell the Court that his client, who was declaring bankruptcy, deeded his home to Catanzarite. In bankruptcy, the person declaring bankruptcy cannot sell or give away without telling the Court. Catanzarite took the property to pay for his fees, but did not tell the Court about this, violating this strict rule. The Court took away all of Catanzarite's fees: "Given the gravity of Catanzarite's non-disclosure, the court will deny all fees to Catanzarite for legal services rendered to Perrine to the petition date due to its failure to comply with Section 329(a) and Rule 2016(b). Catanzarite was ordered to give back either his fees, or the property he took. (p. 586)

3	**11-510638 Edwards vs. Noroski**	1. Plt., Edwards and Gans, Motion for Leave to File Fifth Amended Complaint --- Granted; Despite serious reservations as to the sham nature of the pleading at least as to FPS, the court applies the rule of allowing liberal amendments to pleadings. The court finds that it is in the interests of justice for the Plt. to pay monetary compensation to Def.s for the time they spent in the preparation of the summary judgment motions currently pending. The court finds that the delay in filing the amended complaint has caused injustice to the Def. by their filing a motion for summary judgment that Plt. knew would be brought yet Plt. delayed the filing of their request for leave to amend until 1 week before the motion for summary judgment is to be heard. In furtherance of justice the court orders that the ruling granting leave to amend is predicated on the condition that payment by Plt. to Def. the amount of $11,374.85 is to be made for the costs and fees Def. incurred in preparing and filing the summary judgment. CCP 473(a)(1). Plt. delayed filing this motion for leave to amend until after Def.'s filed their motion for summary judgment even though Plt. had knowledge that Def. intended to file such a motion and the cost such a motion would be to Def. Def., Noroski, request for reimbursement for prior investigation and discovery in the amount of $17,915 is denied. This discovery is still useable in this action. All discovery is ordered "stayed" except that discovery related to the Doherty standing issue. The court would like Counsel to submit a time line for briefing schedule as to MSJ re standing of Doherty. Counsel should meet and confer regarding any issues and the amount of discovery needed relating to the Doherty standing. When can Plt. be ready for a motion to certify and what discovery is needed for that motion? **FINAL RULING:** Tentative ruling is final. In addition, Plt. is to pay to Def., Noroski the amount of $2500 for the depositions/discovery for the Edwards and Gans depositions.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE – CIVIL COMPLEX CENTER

JUDITH L. EDWARDS and SCOTT C. GANS, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

DANIEL NOROSKI, D.D.S., an individual; DANIEL A. NOROSKI, D.D.S., INC., A PROFESSIONAL DENTAL CORPORATION, a California Corporation; FIRST PACIFIC CORPORATION, an Oregon corporation; and DOES 1 through 100, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

CASE NO.: 30-2011-00510638-CU-MC-CXC
ASSIGNED TO HON. STEVEN L. PERK, DEPT. CX102

UNLIMITED JURISDICTION

AMENDED ~~[PROPOSED]~~ ORDER GRANTING DEFENDANT DANIEL NOROSKI, D.D.S., INC.'S MOTION TO COMPEL DEPOSITIONS OF PLAINTIFF JUDITH L. EDWARDS AND PLAINTIFF SCOTT C. GANS AND TO PRODUCE RESPONSIVE DOCUMENTS TO DEPOSITION DOCUMENT DEMANDS; AND FOR SANCTIONS IN THE AMOUNT OF $1,200

FILE DATE: September 23, 2011
TRIAL DATE SET: No Date Set

On November 16, 2012 at 10:30 a.m. in Department CX102 of the above-entitled court, located at 751 Civic Center Drive West, Santa Ana, California, 92701, defendant Daniel A. Noroski, D.D.S., Inc. ("Noroski APC") motion to compel depositions of Plaintiffs Judith Edwards and Scott Gans came on for a regularly noticed hearing.

After considering the moving papers, opposing papers, reply papers and oral argument, the Court orders as follows:

1. That Plaintiff Judith Edwards and Plaintiff Scott Gans must attend their depositions at Daniel A. Noroski, D.D.S., Inc.'s counsel's office located at 895 Dove Street, 5th Floor, Newport Beach, California by no later than December 10, 2012.

2. By no later than November 26, 2012, both Plaintiff Judith Edwards and Scott Gans are to produce all responsive documents to Request Nos. 1-34 with respect to the deposition document demands that are attached to the notices of deposition of plaintiffs. If a protective order is needed, Defendants' counsel will prepare a draft protective order and circulate the same to all and file it with the Court. Plaintiff will have five days from receipt of the protective order to submit any objections.

3. The Court awards sanctions in the amount of $1,200 to Daniel Noroski, D.D.S., Inc. against Plaintiffs' Judith Edwards and Scott Gans, jointly and severally. The sanctions shall be paid in full on or before December 7, 2012 to Daniel Noroski, D.D.S. Inc., to be made payable to Newmeyer & Dillion, LLP. The Court finds that there was no substantial justification presented for the objections raised by Plaintiffs. There is no authority supporting Plaintiffs theory of "priority" setting of depositions. *Young vs. Rosenthal*, 212 Cal. App. 3d 96 does not stand for the proposition cited by Plaintiffs in their opposing papers. *Young* involved a priority established by express agreement which is lacking in this case. Nothing in this case triggers the application of the "priority" contemplated in *Weil and Brown* either. The objections to these depositions and documents production are not well taken and are stricken.

4. Defendants' counsel is to give notice.

Dated: 11/28/2012

JUDGE OF SUPERIOR COURT
STEVEN L. PERK

NEWMEYER & DILLION LLP

PROOF OF SERVICE

Judith L. Edwards, et al. v. Daniel Noroski, D.D.S., et al.
OCSC Case No. 30-2011-00510638-CU-MC-CXC

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, DEE NOVOA, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 895 Dove Street, 5th Floor, Newport Beach, California 92660. On November 20, 2012, I served a copy of the within document(s):

[PROPOSED] AMENDED ORDER GRANTING DEFENDANT DANIEL NOROSKI, D.D.S., INC.'S MOTION TO COMPEL DEPOSITIONS OF PLAINTIFF JUDITH L. EDWARDS AND PLAINTIFF SCOTT C. GANS AND TO PRODUCE RESPONSIVE DOCUMENTS TO DEPOSITION DOCUMENT DEMANDS; AND FOR SANCTIONS IN THE AMOUNT OF $1,200

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as set forth below.

☐ by placing the document(s) listed above in a sealed NORCO OVERNITE/FEDERAL EXPRESS envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a NORCO OVERNITE/FEDERAL EXPRESS agent for delivery.

☐ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

PLEASE SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 20, 2012, at Newport Beach, California.

Dee Novoa
DEE NOVOA

NEWMEYER & DILLION LLP

SERVICE LIST

Judith L. Edwards, et al. v. Daniel Noroski, D.D.S., et al.
OCSC Case No. 30-2011-00510638-CU-MC-CXC

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NEWMEYER & DILLION LLP

IN RE PERRINE

369 B.R. 571 (2007)

In re Eugene H. PERRINE, Jr., Debtor.

No. RS 05-13979 PC.

United States Bankruptcy Court, C.D. California, Riverside Division.

April 13, 2007.

Kenneth J. Catanzarite, Anaheim, CA, for Debtor.

Thomas H. Casey, Rancho Santa Margarita, CA, for Chapter 7 Trustee.

AMENDED MEMORANDUM DECISION

PETER H. CARROLL, Bankruptcy Judge.

Steven M. Speier, Chapter 7 Trustee ("Speier") seeks an order compelling Kenneth J. Catanzarite, Richard Vergel de Dios and the Catanzarite Law Corporation (collectively, "Catanzarite"), attorneys for Debtor, Eugene H. Perrine, Jr. ("Perrine") to disgorge undisclosed fees received by Catanzarite within one year before the filing of Perrine's bankruptcy petition allegedly "in contemplation of or in connection with" his bankruptcy case. Catanzarite objects to the disgorgement of the fees, claiming that the compensation was not received for services rendered either "in contemplation of or in connection with" Perrine's bankruptcy case. At the continued hearing, Kathleen Goldberg appeared for Speier and Richard Vergel de Dios appeared for Catanzarite and Perrine. The court, having considered Speier's motion and the opposition of Catanzarite and Perrine thereto, the evidentiary record, and arguments of counsel, makes the following findings of fact and conclusions of law[1] pursuant to Fed.R.Civ.P. 52, as incorporated into Fed. R. Bankr.P. 7052 and made applicable to contested matters by Fed. R. Bankr.P. 9014 (c).

I. STATEMENT OF FACTS

Prior to August 8, 2003, Perrine owned as his separate property a 30.32 acre tract of land located in Klamath Falls, Oregon ("Oregon Property"). On August 8, 2003, Perrine transferred the Oregon Property to the Eugene H. Perrine and Vicki L Perrine Family Trust dated August 8, 2003 ("Perrine Trust") by Trust Transfer Grant Deed recorded on August 22, 2003, at Volume M03, Page 61460, Real Property Records, Klamath County, Oregon.

The Perrine Trust is an *intervivos* revocable trust established in the name of Perrine and his wife, Vicki. Perrine is the trustor, co-trustee and beneficiary of the Perrine Trust. In addition to the Oregon Property, the assets of the Perrine Trust ostensibly included at its inception the following marital property:

> *Community Property:* "All items of tangible personal property, including, but not limited to, furniture and furnishings, silverware, clothing, books, collections of tangible personal property, and
>
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>
> other tangible personal property usually kept at the Trustor's residence."[2]

Perrine's Separate Property: (a) Real property and improvements located at 285 West Skyline Drive, La Habra Heights, California ("La Habra Property"), transferred into the Trust by Trust Transfer Grant Deed recorded on September 26, 2003, as Instrument No. 03-2864459, Official Records, Los Angeles County, California; (b) 50 shares of stock in Perrine Electric Company, Inc. and (c) a pension at Schwab & Company, Inc.[3]

Section 1.02 of the Perrine Trust states, in pertinent part:

"All property now or hereafter conveyed or transferred to the [Trust] . . . shall remain, respectively, community property, quasi-community property, or the separate property of the Trustor transferring such property to the Trustee."

Perrine is also the president of Perrine Electric Company, Inc. ("Perrine Electric"). On April 29, 2004, Perrine was sued by AAA Electrical Supply, Inc. ("AAA") in Case No. BC 324665, styled *AAA Electrical Supply, Inc. v. Perrine Electric Company, Inc. and Eugene H. Perrine, Jr.,* in the Superior Court of Los Angeles County, for the sum of $71,167.05, plus attorneys fees and costs, based upon his personal guaranty of the debts of Perrine Electric. Catanzarite was the attorney of record for Perrine and Perrine Electric in the state court action.

On January 11, 2005, Perrine and Vicki Perrine, Individually and as trustee, executed a document entitled "Retainer Agreement and Application of In Kind Payment" agreeing to transfer the Oregon Property to Catanzarite at a stipulated value of $30,000 for payment of accrued attorneys fees and costs and as a credit for future attorneys fees and costs to be incurred by Perrine and Vicki Perrine. The Retainer Agreement states specifically that the payment is "for the purpose of securing the continued representation of the Trust and the individuals in future litigation including without limitation, with creditors and to protect the home equity of Vicki and the pension of Eugene." On January 13, 2005, Perrine and Vicki Perrine, as Co-Trustees of the Trust, executed a Statutory Bargain and Sale Deed conveying the Oregon Property to Kenneth J. Catanzarite for $30,000. The deed was recorded on January 14, 2005, at Volume M05, Page 03482, Real Property Records, Klamath County, Oregon. Ten days later, Perrine stipulated to entry of a judgment in the state court action in favor of AAA in the amount of $76,767.

On April 21, 2005, Perrine filed his voluntary petition under chapter 7 of the Bankruptcy Code.[4] Speier was appointed as trustee. In his schedules filed on May 6, 2005, Perrine disclosed assets valued at $415,740 and liabilities in excess of $174,073.[5] According to Schedule A, Perrine

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did not own an interest in any real property on the petition date. Perrine's assets, as disclosed in Schedule B, consisted of cash, clothing, two vehicles, and his interest in a profit sharing plan valued at $400,000. Perrine declared under penalty of perjury that he neither owned stock or an interest in a business at the time of bankruptcy[6] nor any interest in a trust on the petition date.[7]

In his Statement of Financial Affairs filed on May 6, 2005, Perrine declared under penalty of perjury that he had not made any payments to creditors within 90 days preceding the commencement of the case[8] nor transferred any property (other than in the ordinary course of business or financial affairs of the debtor) within one year preceding the date of bankruptcy.[9] In response to Question # 9 of the Statement of Financial Affairs, Perrine disclosed that he had paid the sum of $3,000 to Catanzarite on January 14, 2005, for debt counseling or bankruptcy.

On May 6, 2005, Catanzarite filed a document entitled "Disclosure of Compensation of Attorney for Debtor" ("Rule 2016(b) Statement") signed by Richard Vergel de Dios on behalf of Catanzarite, stating:

Pursuant to 11 U.S.C. § 329(a) and Fed. Bankr.P.2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in

bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$3,000.00
Prior to the filing of this statement I have received	$3,000.00
Balance Due	$ 0.00

Mr. de Dios further certified that Catanzarite had agreed to accept $3,000 for the following legal services in the case:

a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;

b. Preparation and filing of any petition, schedules, statements of affairs and plan which may be required;

c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof; [and]

d. Representation of the debtor in adversary proceedings and other contested bankruptcy matters.[10]

Mr. de Dios's signature on the Rule 2016(b) Statement appears beneath the following certification:

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceedings.[11]

On May 23, 2005, Perrine appeared and was examined by Speier under oath at a meeting of creditors conducted pursuant to § 341(a).[12] Based upon the examination

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and his investigation of Perrine's actions before bankruptcy, Speier filed a complaint in Adversary No. RS-05-01243 PC, styled *Steven M. Speier, Chapter 7 Trustee v. Vicki L. Perrine, et. al.,* on June 15, 2005, seeking, in part, to recover as a fraudulent conveyance funds received by Perrine from the sale of the La Habra Property prior to bankruptcy, which were then transferred to Vicki and used to purchase, as her separate property, certain real property located at 4025 Prarie Dunes Drive, Corona, California.

On July 15, 2005, Perrine filed a motion to dismiss his case pursuant to § 707(a), alleging that Speier's fraudulent conveyance claims were unfounded and that the unsecured non-priority creditors holding claims in excess of $174,000 would not suffer significant legal prejudice by a dismissal of the case.[13] Perrine's dismissal motion was opposed by Speier and Perrine's largest creditor, AAA.[14] On August 15, 2005, the court denied Perrine's motion to dismiss finding that dismissal of the case would be prejudicial to creditors.[15] An Order Denying Debtor's Motion for Voluntary Dismissal of Case was entered on September 20, 2005. Shortly thereafter, Speier filed a complaint in Adversary No. RS 05-01473 PC, styled *Steven M. Speier, Chapter 7 Trustee v. Eugene H. Perrine, Jr.,* objecting to Perrine's discharge pursuant to § 727(a)(2)(A), (a)(3), (a)(4)(A) and (a)(5).

On November 2, 2006, Speier filed a motion seeking an order compelling Catanzarite to amend its Rule 2016(b) Statement to disclose the transfer of the Oregon Property claiming that the property was received for services "in contemplation of or in connection with" Perrine's bankruptcy case. Perrine and Catanzarite opposed the motion, asserting that the fees incurred "in contemplation of or in connection with" the bankruptcy case were limited to the $3,000 disclosed in the Rule 2016(b) Statement on May 6, 2005, and that the Oregon Property was transferred to Catanzarite primarily for non-bankruptcy services. Catanzarite explained that there

was an outstanding balance of $12,000 due the Catanzarite firm when it received the Oregon Property on January 14, 2005. After payment of the outstanding balance, the $18,000 credit was used to pay $3,000 in fees for preparation of the bankruptcy petition and "the remaining amount was used to pay fees incurred pre-bankruptcy related to the AAA Electric

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litigation."[16]

At a hearing on December 4, 2006, the court determined that Perrine's transfer of the Oregon Property to Catanzarite on January 14, 2005, within 97 days prior to the filing of Perrine's bankruptcy petition, was made "in contemplation of or in connection with" Perrine's bankruptcy case. Catanzarite was ordered to amend its Rule 2016(b) Statement to disclose all facts concerning its receipt of the Oregon Property. A hearing on the issue of disgorgement was continued to February 26, 2007.

On December 15, 2006, Catanzarite filed an Amended Disclosure of Compensation of Attorney for Debtor ("Amended Rule 2016(b) Statement"). Catanzarite's Amended Rule 2016(b) Statement did not mention the Oregon Property nor explain the method used by Catanzarite and Perrine to arrive at the $30,000 "stipulated" value. Catanzarite's Amended Rule 2016(b) Statement stated only that "payments and credits received from the Debtor in the amount of $30,000 were paid on behalf of the following categories: $21,000 in defense of the AAA Electrical litigation; $3,000 with regard to the dispute with MBNA, $3,000 for pension work and $3,000 for preparation of bankruptcy petition and schedules."[17] Prior to the continued hearing, Speier and Catanzarite filed supplemental memorandums of points and authorities on the issue of disgorgement. At the continued hearing on February 26, 2007, the matter was taken under submission.

II. DISCUSSION

This court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157(b) and 1334(b). This matter is a core proceeding under 28 U.S.C.

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§ 157(b)(2)(A), (B), (E) and (O). Venue is appropriate in this court. 28 U.S.C. § 1409(a).

A. *Strict Duty of Disclosure*

Section 329(a) requires a debtor's attorney to disclose to the court the amount of compensation paid or promised for services rendered "in contemplation of or in connection with the case."[18] Section 329(a) is implemented by Rule 2016(b) which requires the filing of the statement required by § 329(a) not later than 15 days after the order for relief.[19] Rule 2016(b) imposes a continuing duty on debtor's counsel to supplement the original statement pursuant to § 329(a).[20] The disclosure requirements of § 329(a) apply "whether or not the attorney ever applies for compensation" *Consumer Seven Corp. v. United States Trustee (In re Fraga),*210 B.R. 812, 822 (9th Cir. BAP 1997).

Rule 2017(a) directs the court to determine, either *sua sponte* or upon motion by a party in interest, whether any payment or transfer of property to an attorney "in contemplation of" the filing of the bankruptcy petition is excessive.[21] Taken together, § 329(a) and Rule 2017(a) "furnish the court with express power to review payments to attorneys for excessiveness and to restore the status quo when assets have improvidently been bartered for legal services[.]" *In re Martin,*817 F.2d 175, 180 (1st Cir.1987).

Section 329's disclosure requirements are "`mandatory, not permissive.'" *Turner v. Davis, Gillenwater & Lynch (In re Investment Bankers, Inc.),*4 F.3d 1556, 1565 (10th Cir.1993) (quoting *In re Bennett,*133 B.R. 374, 378 (Bankr. N.D.Tex.1991)); *In re Keller Fin. Servs. of Fla., Inc.,*248 B.R. 859, 883 (Bankr. M.D.Fla.2000). Section 329(a), which is derived from § 60(d) of the Bankruptcy Act of 1898,[22] seeks to prevent over-reaching

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by debtor's attorneys and serves to counteract the temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in view of financial reverses and probable failure.'" *Conrad, Rubin & Lesser,* 289 U.S. at 477-78, 53 S.Ct. 703 (quoting *In re Wood,*210 U.S. 246, 28 S.Ct. 621, 52 L.Ed. 1046 (1908)). Section 329(a) demands that an attorney be forthright in disclosing "the precise nature of the fee arrangement" with the debtor. *Neben & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park — Helena Corp.),*63 F.3d 877, 881 (9th Cir.1995) (quoting *In re. Glenn Elec. Sales Corp.,*99 B.R. 596, 600 (D.N.J.1988)). "Counsel's fee revelations must be direct and comprehensive. Coy or incomplete disclosures which leave the court to ferret out pertinent information from other sources are not sufficient." *In re Saturley,*131 B.R. 509, 517 (Bankr.D.Me.1991).

Congress intended to permit bankruptcy courts to reexamine the reasonableness of fees within the one-year look back period, irrespective of the nature of the services rendered. *See Keller Fin. Servs.,* 248 B.R. at 878 (concluding that § 329 permits the court to review fees paid for services "performed at a time when the debtor was contemplating bankruptcy," regardless of the nature of the services (internal quotations omitted)); *Wootton v. Ravkind (In re Dixon),*143 B.R. 671, 678 (Bankr.N.D.Tex.1992) (stating that § 329 "imposes no restriction on the nature of the services rendered . . ."); *Rheuban,* 121 B.R. at 378 (observing that § 329 does not limit the nature of the legal services that are subject to reexamination). Absent complete disclosure, the court is unable to make an informed judgment regarding the nature and amount of compensation paid or promised by the debtor for legal services in contemplation of bankruptcy.

The failure to satisfy the disclosure requirements of § 329(a) and Rule 2016(b) may result in sanctions, "even if proper disclosure would have shown that the attorney had not actually violated any Bankruptcy Code provision or any Bankruptcy Rule." *Park-Helena Corp.,* 63 F.3d at 880; *Fraga,* 210 B.R. at 822. An attorney who violates § 329(a) and Rule 2016(b)

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forfeits any right to receive compensation for services rendered on behalf of the debtor and may be ordered to disgorge fees already received. *See, e.g., Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis),*113 F.3d 1040, 1045 (9th Cir. 1997) (concluding that "[a]n attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees"); *Park-Helena Corp.,* 63 F.3d at 882 ("Even a negligent or inadvertent failure to disclose fully relevant information [in a Rule 2016 statement] may result in a denial of all requested fees."); *Jensen v. U.S. Trustee (In re Smitty's Truck Stop, Inc.),*210 B.R. 844, 849 (10th Cir. BAP 1997) (stating that an attorney's failure to disclose a retainer in his Rule 2016(b) statement is sufficient to deny all fees, even if the non-disclosure was negligent or inadvertent); *Fraga,* 210 B.R. at 822 ("The consequences of an attorney's violation of the disclosure requirements regarding fees include denial of all fees requested.").

B. *Services "In Contemplation of" the Bankruptcy Case*

Courts broadly apply a *subjective test* to determine whether attorneys fee payments were made "in contemplation of" bankruptcy. *Dixon,* 143 B.R. at 675 n. 3 (observing that "[a] subjective and not an objective test applies in determining whether payments to attorneys were

made `in contemplation of bankruptcy.'"); *Rheuban,* 121 B.R. at 378 (stating that a "*subjective* review [is] embodied in the `in contemplation of' language of § 329 and its predecessors, § 60(d) and Bankruptcy Rule 220"). The subjective inquiry is "whether the debtor was influenced by the possibility or imminence of a bankruptcy proceeding in making the transfer." *Brown v. Luker (In re Zepecki),*258 B.R. 719, 724 (8th Cir. BAP 2001), *aff'd,*277 F.3d 1041 (8th Cir.2002); *see Dixon,* 143 B.R. at 675 n. 3 (articulating the standard as "whether, in making the transfer, the debtor is influenced by the possibility or imminence of a bankruptcy proceeding"). The "controlling question," as the Supreme Court explained in *Conrad, Rubin & Lesser,* "is with respect to the state of mind of the debtor and whether the thought of bankruptcy was the impelling cause of the transaction." 289 U.S. at 477, 53 S.Ct. 703.

> If the payment or transfer was thus motivated, it may be re-examined and its reasonableness be determined. Undoubtedly, while the question thus relates to the debtor's motive, the nature of the services which he seeks and for which he pays may be taken into consideration as it may throw light upon his motive. It is not impossible that the services may have been so wholly separate from any exigency of bankruptcy as to indicate that the thought of bankruptcy was in no sense controlling. But, given the fact that the payment or transfer was in contemplation of bankruptcy, the inducement of the transaction affords, from the standpoint of the statute, sufficient ground for authorizing a summary inquiry into its reasonableness. The manifest purpose of the provision is to safeguard the assets of those who are acting in contemplation of bankruptcy, so that these assets may be brought quickly and without unnecessary expense into the hands of the trustee, and to provide a restraint upon opportunities to make an unreasonable disposition of property through arrangement for excessive payments for prospective legal services.

Id.

Services aimed at the *prevention* of bankruptcy likewise necessarily contemplate bankruptcy, and compensation received

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for such services falls within the ambit of § 329(a). *See, e.g., Conrad, Rubin & Lesser,* 289 U.S. at 479, 53 S.Ct. 703 (holding that the court had jurisdiction to review fees paid to an attorney retained by debtor to negotiate a 50% cash settlement with creditors prior to bankruptcy, and opining that "[a] man is usually very much in contemplation of a result which he employs counsel to avoid"); *Matter of Prudhomme,*43 F.3d 1000, 1004 (5th Cir. 1995) (holding that evidence suggesting that the debtors, who in desperate financial straits, consulted an attorney for representation to restructure debt and resolve disputes with their largest creditor supported a finding that the fee was paid in contemplation of or in connection with the case); *In re Greco,*246 B.R. 226, 231 (Bankr.E.D.Pa.2000) (holding that a $2,200 payment to an attorney two months before bankruptcy for legal research concerning the effect of bankruptcy on the debtor's student loans was "in contemplation of" bankruptcy); *Rheuban,* 121 B.R. at 379 (finding that debtor acted "in contemplation of bankruptcy" upon entering into a fee agreement with a firm to represent him in connection with investigation and litigation of possible criminal and regulatory matters arising out of debtor's business relationship with a savings & loan); *GIC Gov't Sec.,* 92 B.R. at 533 (concluding that payments made to attorneys retained on the eve of bankruptcy to resist efforts by the State of Florida to revoke the debtor's securities registration were "in contemplation of" bankruptcy). Those cases in which a debtor's counsel has received undisclosed non-exempt assets shortly before bankruptcy as compensation primarily for future services have merited particularly close scrutiny by bankruptcy courts.

In *Dixon,* an attorney, William H. Ravkind ("Ravkind") was employed by Don Ray Dixon ("Dixon") in November 1986, to represent him in criminal matters arising out of his association with Dondi Financial Corporation and Vernon Savings & Loan Association for a flat fee of $450,000. 143 B.R. at 673. Ravkind ultimately received $200,000 in cash and certain artwork valued at $100,000 as payment in full. *Id.* at 674. The cash and artwork, which were Dixon's non-exempt assets, were paid for future services to be rendered by Ravkind. *See id.* At the time he

received the transfer, Ravkind was aware that Dixon was considering bankruptcy. *Id.* Ravkind and Dixon were concerned that the federal government was planning to seize Dixon's assets pursuant to the Racketeer Influenced and Corrupt Organizations Act.[23] *Id.* Ravkind immediately deposited the $200,000 cash in his operating account and used the funds to pay business expenses. *Id.* Ravkind then sold most of the artwork for less than $25,000. *Id.* at 675.

On April 22, 1987, Dixon filed a voluntary petition under chapter 11 of the Code. *Id.* at 673. Ravkind was not Dixon's general counsel in the bankruptcy case, but continued to represent him on criminal matters after the petition date. *Id.* at 674. Dixon disclosed the $300,000 transfer to Ravkind in his statement of financial affairs. *See id.* at 675. However, Ravkind failed to timely disclose the $300,000 fee and his agreement with Dixon pursuant to § 329(a) and Rule 2016(b). *Id.* Furthermore, Ravkind neither sought authorization to act as special counsel for Dixon under § 327(e) nor authorization to use any unearned portion of the $300,000 retainer in his possession. *Id.*

On October 14, 1987, Dale Wooten, as chapter 11 trustee, filed a complaint seeking to recover the $300,000 fee from Ravkind as a fraudulent transfer under

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§ 548(a). *Id.* at 673. It was undisputed that at all material times, Dixon was insolvent within the meaning of § 548(a). *See id.* at 674. Ravkind had not kept time records, but the evidence supported a finding that he had earned approximately $35,000 for legal services rendered to Dixon prior to bankruptcy. *Id.* It was also undisputed that the reasonable value of Ravkind's post-petition criminal defense work, which accounted for the majority of his services to Dixon, exceeded the amount that he had been paid. *Id.*

Although relief was sought by the trustee under § 548(a), the bankruptcy court concluded that "the more appropriate standard" for review of Ravkind's fee arrangement with Dixon was § 329(a) and § 330. *Id.* at 673. Applying a subjective test, the bankruptcy court found that Dixon's $300,000 transfer to Ravkind was made in contemplation of bankruptcy, stating:

> Prior to the filing of the bankruptcy proceedings, Dixon was the target of several major criminal investigations, and had received national media attention as an alleged central figure in the savings and loan scandal. At the time [Ravkind] received the money and art as a payment from Dixon, both he and Dixon were concerned that Dixon's assets might be seized under a RICO seizure. Bankruptcy counsel had already been retained for the Debtors in California, and Debtors were insolvent. From the testimony adduced at trial, it was clear the cash payment and art represented part of the last liquid and available assets of the Debtors. At the time [Ravkind] was engaged, he undertook representation of Dixon in several criminal investigations, and related civil suits with the Federal Deposit Insurance Corporation (the "FDIC"). In addition, he participated with Dixon's California bankruptcy lawyers in some bankruptcy planning. At the time [Ravkind] received the transfers of Dixon's money and property, Dixon's general counsel Simmons was parceling out funds and property for retainers. The Court finds that the transfers were received by [Ravkind] within a year of the filing of bankruptcy, in contemplation of a bankruptcy proceeding, and that, therefore, [Ravkind's] fee arrangement is subject to review under § 329 of the Code.

Id. at 675 n. 3. The court then ordered Ravkind to disgorge all but $35,000 of the payment received from Dixon, *i.e.,* the remaining art on hand, $160,000 of the cash received, and $90,000 representing the value of the artwork disposed of, finding that the fee arrangement was excessive and violated § 329 and § 330. *Id.* at 679. The court also determined that Ravkind's failure to disclose the $300,000 fee and agreement with Dixon pursuant to § 329(a) and Rule 2016(b) constituted "an independent and alternative basis" for disgorgement of the fees. *Id.* at 680. In ordering the disgorgement, the court concluded that Ravkind's criminal defense work was personal to Dixon and resulted in no benefit to creditors or the estate, stating "the only thing the transfers to [Ravkind] achieved was to further deplete the assets of the bankruptcy estate." *Id.* at 679.

In *Zepecki,* Robert Zepecki ("Zepecki") filed a voluntary chapter 7 petition on February 7, 1996. 277 F.3d at 1043. Three months earlier, Zepecki's attorney, Steven C.R. Brown ("Brown") had received the net proceeds of $102,989 from the sale of certain real property owned by Zepecki in Illinois pursuant to a "1031 Exchange of Property Escrow Agreement."[24] *Id.* at 1044. Acting as escrow agent under the

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agreement, Brown disbursed the sum of $65,000 to the bank account of a third party, Ted Holder ("Holder") prior to Zepecki's bankruptcy. *Id.* The balance was disbursed by Brown to Holder shortly after the petition date. *Id.* Brown received $40,000 in attorneys fees as part of the transaction, $20,000 following each payment to Holder. *Id.*

Zepecki failed to disclose in his schedules and statements either the sale of the Illinois property or the transfer of the sale proceeds to Brown. *Id.* at 1043. The bankruptcy court denied Zepecki's discharge under § 727(a)(4), and *sua sponte* ordered Brown to account for the $40,000 fee received under the agreement. *Id.* at 1043-44. Brown documented attorneys fees and expenses totaling $7,160 incurred prior to Zepecki's bankruptcy in conjunction with the tax-free exchange. *Id.* at 1044. Ultimately, the bankruptcy court determined that the $40,000 fee was paid to Brown in contemplation of or in connection with Zepecki's bankruptcy. *Id.* at 1046. Brown was ordered to disgorge fees of $32,840 to the estate, representing the entire post-petition fee of $20,000 and $12,840 of the $20,000 fee, received prior to the petition date. *Id.* at 1044. Brown appealed and the Bankruptcy Appellate Panel for the Eighth Circuit affirmed. *Zepecki,* 258 B.R. at 726. The Eighth Circuit then affirmed the judgment of the Bankruptcy Appellate Panel, holding:

> We also find no clear error in the bankruptcy court's finding that Brown's representation was in connection with or in contemplation of the possibility or imminence of a bankruptcy proceeding. The Illinois land transaction occurred within one month after Zepecki's divorce from Ms. Kania, who was Zepecki's largest creditor, and within four months prior to the bankruptcy filing. The proceeds of the land sale constituted Zepecki's largest asset with which to satisfy Ms. Kania's judgment. The bankruptcy court found that the land transaction was a sham and was performed in an effort to prevent the asset from becoming property of Zepecki's bankruptcy estate and prevent his ex-wife from recovering on her judgment. Zepecki lost his right to a bankruptcy discharge because he failed to identify the transaction or its proceeds on his bankruptcy schedules, which further supports the court's conclusion that Zepecki was trying to keep the asset from his wife. These facts support the bankruptcy court's conclusion that Zepecki was contemplating bankruptcy when he transferred the Illinois property and when Brown assisted in the attempted section 1031 transfer of that same property.

Zepecki, 277 F.3d at 1046.

C. Perrine Transferred the Oregon Property to Catanzarite In Contemplation of Bankruptcy

As the Supreme Court explained in *Conrad, Rubin & Lesser,* the test for determining if a payment or transfer was made "in contemplation of' bankruptcy hinges upon the debtor's state of mind and, more precisely, "whether the thought of bankruptcy was the impelling cause of the transaction." 289 U.S. at 477, 53 S.Ct. 703. Four months prior to bankruptcy, Perrine was embroiled in a lawsuit with AAA, his largest creditor. On the eve of trial, Perrine transferred the Oregon Property from the Perrine Trust to his attorney, Catanzarite. The Perrine Trust specifically provided that the Oregon Property remained Perrine's separate property,

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notwithstanding its inclusion in the trust. The Oregon Property was Perrine's last and most significant non-exempt asset. At the time of the transfer, Catanzarite and Perrine had to have been concerned that the Oregon Property would be seized by AAA to satisfy any judgment that might be entered against Perrine in the state court action. Catanzarite concedes that once it received the Oregon Property, there was "no property remaining in the trust to satisfy

creditors."[25] With the Oregon Property in the hands of Catanzarite, Perrine stipulated to a judgment with AAA ten days later.

Moreover, the language of Catanzarite's retainer agreement belies any notion that the Oregon Property was not transferred in contemplation of bankruptcy. Like *Dixon,* the transfer was intended to barter non-exempt assets primarily for future legal services to be rendered by Catanzarite. Perrine transferred the Oregon Property to Catanzarite 97 days prior to his bankruptcy, after exhausting efforts to litigate with his largest creditor, and for the stated purpose of "securing the continued representation of the Trust and the individuals in future litigation including without limitation, with creditors and to protect the home equity of Vicki and the pension of Eugene."[26] The Oregon Property was given a "stipulated" value of $30,000 by Perrine to Catanzarite, but Catanzarite was owed only $12,000 at the time of the transfer. As in *Dixon,* the effect of the transfer was to further deplete the assets of the estate.

Catanzarite argues that Perrine did not contemplate or intend to file bankruptcy at the time he was sued by AAA on April 29, 2004.[27] The critical date, however, is the date of the transfer of the Oregon Property. The only direct evidence of Perrine's state of mind on January 14, 2005, is Perrine's deposition testimony that he "never really wanted to declare bankruptcy" and, in response to a question as to whether he was thinking about filing bankruptcy in January 2005, Debtor responded "I don't know." Even Perrine's deposition testimony lacks credibility when weighed against the facts as they existed 97 days prior to bankruptcy.

At the hearing on December 4, 2006, Catanzarite conceded that Perrine "wanted to avoid bankruptcy." Catanzarite explained that Perrine's business "operated from one large job to another," and that his client had been "down in the hole before" but he would receive "the golden phone call . . . where it was a big job would come in and it, pull his company out of its abyss, financial abyss." Taken together, these facts support a finding that Perrine was contemplating the possibility or imminence of bankruptcy when he transferred the Oregon Property to Catanzarite on January 14, 2005, and that the transfer is subject to review under § 329(a) and Rule 2017(a).

D. *Catanzarite Failed to Disclose Property Transferred to Catanzarite in Payment for Legal Services Rendered, or To Be Rendered, in Contemplation of Perrine's Bankruptcy Case*

Section 329(a) and Rule 2016(b) required that Catanzarite's disclosures be

full, candid and complete. Catanzarite timely filed a Rule 2016(b) Statement in this case, but failed to disclose fully and candidly in its Rule 2016(b) Statement the precise nature of its fee agreement with Perrine. Catanzarite's failure to disclose its complete relationship with Perrine was neither negligent or inadvertent. Notwithstanding its receipt of the Oregon Property pursuant to its retainer agreement with Perrine, Catanzarite made a purposeful calculation of the amount that it chose to disclose in its Rule 2016(b) Statement. Catanzarite did not receive the sum of $3,000 from Perrine for legal services, as certified in its Rule 2016(b) Statement. On the contrary, Catanzarite received a transfer of the Oregon Property from the Perrine Trust on January 14, 2005, with a stipulated value of $30,000. Catanzarite then apportioned a value of $3,000 from the $30,000 transfer for legal services ostensibly rendered to Perrine in contemplation of or in connection with his bankruptcy case. No facts concerning Catanzarite's retainer agreement nor its receipt of the Oregon Property 97 days prior to bankruptcy were disclosed in either the Rule 2016(b) Statement or the Amended Rule 2016(b) Statement. Nor did Catanzarite disclose the method used to calculate the $30,000 "stipulated" value of the Oregon Property. Neither the retainer agreement nor the transfer of the Oregon Property to Catanzarite were disclosed by Perrine in the statement of financial affairs prepared by Catanzarite and filed with the court.

An attorney who neglects to satisfy the disclosure requirements of § 329(a) and Rule 2016 (b), whether willfully or inadvertently, forfeits any right to receive compensation for services rendered on behalf of the debtor and may be ordered to return fees already received. *See Keller Fin. Servs.*, 248 B.R. at 885 (stating that "[t]here are no measurable damages which result from the non-disclosure of compensation required by § 329"). Given the gravity of Catanzarite's non-disclosure, the court will deny all fees to Catanzarite for legal services rendered to Perrine to the petition date due to its failure to comply with § 329(a) and Rule 2016(b).[28] Catanzarite will be ordered to disgorge and turn over to Speier either the Oregon Property or its stipulated value of $30,000, at the election of the trustee, for the benefit of the estate.

III. CONCLUSION

Ninety-seven days prior to bankruptcy, Perrine transferred the Oregon Property to Catanzarite for legal services rendered, or to be rendered, in contemplation of his bankruptcy case. Catanzarite's failure to disclose both its retainer agreement with Perrine and its receipt of the Oregon

[369 B.R. 587]

Property pursuant to such retainer agreement, as mandated by § 329(a) and Rule 2016(b), warrants disgorgement of the Oregon Property and denial of fees.

A separate order will be entered consistent with this opinion.

Footnotes

1. To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such. To the extent that any conclusion of law is construed to be a finding of fact, it is hereby adopted as such. On March 30, 2007, Perrine filed a Notice of Request by Debtor's Counsel for Additional Findings of Fact and Conclusions of Law Re: Memorandum Decision Filed and Entered March 23, 2007 ("Notice"). The court has supplemented its findings of fact in this Amended Memorandum Decision in response to the Notice to clarify the factual basis for the court's decision. Insofar as the additional findings of fact and conclusions of law set forth in the Notice have not been incorporated into this Amended Memorandum Decision, Perrine's request is denied.

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2. The Eugene H. Perrine Jr. and Vicki L. Perrine Family Trust Declaration of Trust, Schedule A.

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3. *See* The Eugene H. Perrine Jr. and Vicki L. Perrine Family Trust Declaration of Trust, Schedule B.

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4. Unless otherwise indicated, all "Code," "chapter" and "section" references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 prior to its amendment by the Bankruptcy Abuse and Consumer Prevention Act of 2005, Pub.L. 109-8, 119 Stat. 23 (2005). "Rule" references are to the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr.P."), which make applicable certain Federal Rules of Civil Procedure ("Fed. R. Civ.P.").

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5. In Schedule F, Perrine listed 9 creditors holding unsecured non-priority claims totaling $174,073.53. According to Schedules D and E, Perrine did not have any secured creditors or unsecured priority creditors on the petition date.

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6. Schedule B, # 12.

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7. Schedule B, # 19.

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8. Statement of Financial Affairs, Question # 3.

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9. Statement of Financial Affairs, Question # 10.

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10. Rule 2016(b) Statement, p. 1.

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11. Rule 2016(b) Statement, p. 2.

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12. The Code requires a debtor to appear and submit to examination under oath at a meeting of creditors. 11 U.S.C. § 343; Fed. R. Bankr.P.2003. The examination focuses on the debtor's acts, conduct, property, liabilities and financial condition, as well as any matter which might affect the administration of the bankruptcy estate and the debtor's right to a discharge. Fed. R. Bankr.P.2004(b).

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13. In fact, Perrine's unsecured debt was substantially in excess of the amount disclosed in Schedule F. On January 13, 2006, Perrine filed an Amended Schedule F disclosing 12 holders of unsecured non-priority claims totaling $202,277.65.

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14. On November 29, 2005, AAA filed a proof of claim in the amount of $76,767 based upon the Stipulation for Entry of Judgment entered in the state court action.

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15. A debtor has no absolute right to dismiss a chapter 7 case. *Bartee v. Ainsworth (In re Bartee),* 317 B.R. 362, 366 (9th Cir. BAP 2004); *Leach v. U.S. (In re Leach),* 130 B.R. 855, 857 n. 5 (9th Cir. BAP 1991). In the Ninth Circuit, "a voluntary Chapter 7 debtor is entitled to dismissal of his case so long as such dismissal will cause no `legal prejudice' to interested parties." *Leach,* 130 B.R. at 857. The debtor bears the burden of proving that dismissal will not prejudice creditors. *Bartee,* 317 B.R. at 366. In this case, Speier anticipated that there would be funds available to pay unsecured creditors, at least in part. Dismissal would have resulted in prejudice to creditors because there was no guarantee that Perrine would have paid their claims outside of bankruptcy. *Id.*

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16. Catanzarite's Opposition to Trustee's Motion to Compel Disclosure of Compensation and Disgorgement of Compensation for Failure to Disclose on Statement 2016, p. 3, 1.6-10. In a letter to Speier's attorney, Thomas H. Casey dated December 15, 2005, Catanzarite enclosed a document entitled "Client Ledger Report" reflecting amounts billed to Perrine for legal services rendered by Catanzarite for the period from May 3, 2004 through April 26, 2005. In the letter, Catanzarite explained that the ledger report demonstrated that

> "[A]s of December 22, 2004, the sum of $11,857.91 was due. After receipt and credit of the land transfer amount on January 13, 2005 for $30,000, there was an $18,000 credit balance. However, fees incurred pre-bankruptcy related to the then pending litigation, as through the statement dated April 26, 2005, consumed all but $1,040.44. The statement dated April 26, 2005 did not cover the services for the period of April 15, 2005 through April 20, 2005. . . . the total amount accrued pre-petition was the sum of $2,615."
>
> As such, on the date of petition, there was no credit balance. In fact, Perrine actually owed the firm approximately $1,600 at that point in time.

Trustee's Motion to Compel Disgorgement of Compensation for Failure to Disclose on Statement 2016, Ex. 10. In his statement of financial affairs, Perrine stated under penalty of perjury that he paid the $3,000 fee to Catanzarite on January 14, 2005. The Client Ledger Report does not contain a specific billing entry for the $3,000 fee disclosed in the Rule 2016(b) Statement nor is the absence of the entry explained in Catanzarite's letter of December 15, 2005.

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17. Amended Rule 2016(b) Statement, p. 3, 1.14-18. Catanzarite actually received payments and credits totaling $33,616.50 between April 22, 2004 and April 21, 2005, for legal services rendered and costs advanced on behalf of Perrine. This amount included the sum of $3,616.50 received by Catanzarite on August 18, 2004, for services rendered in conjunction with certain accounting and compliance issues that arose under a stipulated order concerning the division of a qualified retirement plan previously entered in Perrine's divorce case. At the hearing on December 4,

2006, the court determined that the sum of $3,616.50 was not paid to Catanzarite on August 18, 2004, in contemplation of Perrine's bankruptcy case.

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18. Section 329(a) states:

> Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329(a).

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19. Rule 2016(b) provides:

> Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

Fed. R. Bankr.P.2016(b).

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20. *Id.*

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21. Rule 2017(a) states, in pertinent part:

> On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money *or any transfer of property by the debtor,* made directly or indirectly and *in contemplation of the filing of a petition under the Code* by or against the debtor or before entry of the order for relief in an involuntary case, *to an attorney for services rendered or to be rendered is excessive.*

Fed. R. Bankr.P.2017(a) (emphasis added).

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22. Section 60(d) of the Bankruptcy Act of 1898 provided:

> If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be reexamined by the court on petition of the trustee or any creditor, and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

Bankruptcy Act of 1898, ch. 541, 30 Stat. 544, § 60(d), *superceded by* Bankruptcy Reform Act of 1978, Pub.L.No. 95-598, 11 U.S.C. § 329. In *Conrad, Rubin & Lesser v. Pender,* the Supreme Court discussed the scope of § 60 (d), explaining:

> It contains no intimation of an intention to limit the jurisdiction to re-examine to a particular sort of legal services for the payment of which the debtor has disposed of his property. The point of the provision conferring jurisdiction for a summary reexamination is not the specific nature of the legal services to be rendered, but that the payment or transfer to provide for them is made "in contemplation of" bankruptcy. The purpose is shown by the sweeping description of payments or transfers "to an attorney and counselor at law, solicitor in equity, or proctor in admiralty."

289 U.S. 472, 476-77, 53 S.Ct. 703, 77 L.Ed. 1327 (1933) (quoting Bankruptcy Act of 1898, § 60(d)). This broad scope of review survives in the language of Rule 2017(a). *See In re Rheuban,*121 B.R. 368, 376 (Bankr.C.D.Cal. 1990) (concluding that "decisions interpreting and applying predecessors of § 329 and Bankruptcy Rule 2017(a) remain persuasive and, in certain instances, are controlling. . . ."); *rev'd in Part on other grounds,*124 B.R. 301 (C.D.Cal.1990), *on remand,*128 B.R. 551 (Bankr.C.D.Cal.1991); *In re GIC Gov't Sec., Inc.,*92 B.R. 525, 530 (Bankr.M.D.Fla. 1988) (stating that "the principles enunciated by pre-Code cases interpreting § 60(d) of the Bankruptcy Act of 1898 are still controlling").

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23. 18 U.S.C. § 1961, *et. seq.*

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4. Zepecki sought avoid capital gains on the sale of the Illinois property by effectuating a tax-free exchange of roperty under § 1031 of the Internal Revenue Code. 26 U.S.C. § 1031. The parties to the 1031 Exchange of Property scrow Agreement drafted by Brown included *Zepecki, B & B Diversified* Resources, Inc., Zepecki's closely held orporation, Brown, and the purchaser of the real estate identified as James Burch. *Zepecki,* 277 F.3d at 1044.

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5. Reply in Support of Supplemental Memorandum of Points and Authorities in Support of Reasonableness of Fees curred By Catanzarite Law Corporation, p. 3, l.19-20.

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26. Retainer Agreement and Application of In Kind Payment, executed on January 11, 2005, Eugene H. Perrine and Vicki L. Perrine, Individually and as Trustee and Kenneth J. Catanzarite, Individually and as President of Catanzarite Law Corporation.

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27. Opposition to Trustee's Motion to Compel Disclosure of Compensation and Disgorgement of Compensation for Failure to Disclose on Statement 2016, p. 2, 23-24.

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28. In reaching its conclusion, the court makes no finding as to the reasonableness of the fees sought by Catanzarite for legal services rendered on behalf of Perrine prior to bankruptcy. *See Lewis,* 113 F.3d at 1046 (holding that where non-disclosure results in an order for disgorgement of all fees, an inquiry into the appropriate amount of the fee is not required). The court notes, however, that the bulk of Catanzarite's pre-petition fees were incurred defending Perrine in the AAA litigation for which Catanzarite ultimately disclosed a fee of $21,077.93. Under § 329(b), Catanzarite bore the burden of establishing the reasonableness of its fees. *Hale v. United States Trustee (In re Basham),*208 B.R. 926, 931 32 (9th Cir. BAP 1997) (stating that "[t]he burden is on the applicant to demonstrate that the fees are reasonable"). he court questions the reasonableness of Catanzarite's fee for the AAA litigation, particularly in light of the results btained. AAA sued Perrine for $71,167.05, plus interest, attorneys fees and costs. The AAA litigation was concluded, /ith a stipulated judgment for $75,000-10 days after Catanzarite received the Oregon Property. Moreover, Catanzarite dmitted that, at the time of the transfer, fees attributable to the AAA litigation were only $12,000.

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MIKE ALEXANDROS et al., Plaintiffs and Appellants, v. JAMES A. COLE et al., Defendants and Respondents.

G043715 (Consol. with G044362)

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

2011 Cal. App. Unpub. LEXIS 9984

December 30, 2011, Filed

PRIOR HISTORY: [*1]

Appeal from a judgment of the Superior Court of Orange County. Super. Ct. No. 06CC07881. Gary L. Taylor, Temporary Judge. (Pursuant to *Cal. Const., art. VI, § 21.*).

DISPOSITION: Motion for sanctions. Judgment affirmed. Motion granted.

COUNSEL: The Rosen Law Firm, Laurence M. Rosen; Catanzarite Law Corporation and Kenneth J. Catanzarite for Plaintiffs and Appellants.

Foley & Lardner, Sonia Salinas, Roger A. Lane, and Courtney Worcester for Defendants and Respondents New Enterprise Associates IV, L.P. and Spectra Enterprise Associates, L.P.

DLA Piper, Robert Brownlie, Gerard A. Trippitelli, David F. Gross, and Francesca Cicero for Defendants and Respondents James A. Cole, Kevin M. Carnino, Albert Jicha, Eugene Hovanec, Gregory T. George, Robert Kohler and KOR Electronics.

JUDGES: RYLAARSDAM, ACTING P. J.; BEDSWORTH, J., O'LEARY, J. concurred.

OPINION BY: RYLAARSDAM

OPINION

Plaintiffs Mike Alexandros, Richard Damon, Mike Maridakis, Rick Jensen, Vincent Battaglia, James Struble, Douglas Dwyer, David Schwartz, Mike Thielen, Howard Arnold Lefevre, Dean Groce, Susan Lovern Kahaunaele, Young Lu, Charles D. Cartledge, and David Conrad are minority shareholders owning common stock in defendant KOR Electronics (KOR), a privately held company. In 2006 [*2] they sued defendants New Enterprise Associates IV, L.P. (NEA IV), Spectra Enterprise Associates, L.P. (Spectra), and KOR's directors James Cole, Kevin Carnino, Albert Jicha, Eugene Havanec, Gregory George, and Robert Kohler for breach of fiduciary duty and related claims.

Following a bench trial, the court entered judgment in favor of defendants. It also awarded costs to defendants as the prevailing party under *Code of Civil Procedure section 1032.*

Plaintiffs appeal from both the judgment and the order awarding costs. We consolidated the appeals. (Conrad separately appeals from the order awarding attorney

fees and the denial of his motion to vacate that order in consolidated case Nos. G044682 and G044457.)

Plaintiffs contend the court erred in (1) applying the business judgment rule to two interested directors (Cole and Carnino), (2) finding the independent directors were properly informed and acted in good faith, (3) requiring plaintiffs to show "control and abuse of that control" by the controlling shareholders, and (4) failing to rule on Carnino's claim for breach of fiduciary duty as KOR's CEO and the issues of inherent unfairness, gross mismanagement, waste of corporate assets, and [*3] unjust enrichment. They also assert the court may have erroneously relied on Delaware law, California's public policy in "protect[ing] the public from fraud and deception in securities transactions" supports reversal, and if the underlying judgment is reversed so should the award of costs. Finding no error, we affirm the judgment and the award of costs.

Defendants filed a joint motion for sanctions based on plaintiffs' numerous violations of the California Rules of Court (all further rule references are to these rules) governing appendices and record citations. We grant the motion.

FACTS

Plaintiffs rely on "the undisputed facts and the [s]uperior court's factual findings." Accordingly, the facts are taken from the statement of decision, the joint list of uncontroverted issues, and trial testimony. We construe any disputed facts and all reasonable inferences in the light most favorable to defendants as the prevailing parties. (*Cuiellette v. City of Los Angeles (2011) 194 Cal.App.4th 757, 765.*)

Between 1987 and 1999, "NEA IV and Spectra made venture capital investments in KOR . . . and received convertible participating preferred stock[, which among other things,] had demand registration [*4] rights, permitting it to require KOR to undertake a public offering." "[I]n late 2005, NEA IV advised [KOR's] board [it] would exercise its demand registration rights or negotiate a KOR recapitalization to buy out NEA IV." "To evaluate NEA IV's proposal, KOR's board appointed a Special Committee (Committee) of four directors [George, Jicha, Kohler, and Havanec] who owned no preferred stock, but held KOR common stock or options for common stock."

Because Carnino and Spectra both owned preferred stock, and Cole was affiliated with Spectra, neither Carnino nor Cole was a member of the Committee. Nevertheless, Carnino, with his knowledge, background, and document access as KOR's CEO, carried out certain tasks for the Committee, such as preparing financial analyses and negotiating with third parties. Carnino did not participate in the Committee's decisions.

"In early 2006, on the recommendation of the . . . Committee to KOR's board of directors, KOR recapitalized by repurchasing all the shares of its preferred stock for $40.3 million cash and $9 million in promissory notes, and selling new preferred stock at $40.3 million to new NEA venture capital investment groups" (transaction). Carnino [*5] and Cole abstained from voting. In a shareholder vote, a majority of KOR's preferred stockholders and common stockholders with no preferred stock voted to approve the transaction.

Plaintiffs sued defendants, asserting direct claims for breach of fiduciary duty against KOR's board of directors, breach of fiduciary duty against NEA IV, Spectra, Cole, and Carnino in their capacities as "controlling shareholders," and constructive fraud against all defendants, as well as derivative claims on KOR's behalf (not at issue in this appeal). During trial, plaintiffs voluntarily dismissed the constructive fraud count.

The court ruled in favor of defendants on all causes of action. In its statement of decision, it noted plaintiffs' claims were all premised on the same factual basis involving breach of fiduciary duty in approving the transaction. Applying the business judgment rule, it found "the evidence shows no conflict of interest, fraud, bad faith, or gross overreaching contaminated the . . . Committee's decision. On the contrary, the evidence shows the Committee members acted appropriately, using a process that was rational and used in a good faith effort to advance corporate interests."

"Faced [*6] with NEA IV's decision to conclude its investment by exercising its demand registration rights if KOR did not take it out by recapitalization, the KOR board of directors was compelled to study the alternatives and make what then appeared to be in the best business decision on what to do. This was a delicate and controversial issue because different interests would be impacted adversely, and there were different views about the best long-range plan."

"Considering all factors, the evidence shows the . . . Committee acted diligently and independently, and its members acted in good faith. Their testimony revealed a sincere and earnest interest in seeking to do the right thing for the long-term interests of the company and the common shareholders. At first, they disliked the NEA IV proposal. They viewed their task as a negotiation to buy NEA IV's demand registration rights and keep the company unsold and private, which they viewed as the best long range course. The evidence shows, and the Court finds, the . . . Committee and its members performed their task with due care and without negligence, they made reasonable inquiry into the facts and alternatives,

and they weighed the advantages [*7] and disadvantages. They rejected [a] proposal alternative for what they found to be good and sufficient reasons. The evidence did not show that alternatives were ignored or brushed aside, and there was no evidence of a purpose or plan to give a special deal to favored persons."

"Carnino was an interested party, being a preferred shareholder, but he was the person most familiar with the details of the business. He was not a . . . Committee member, but he was used by the Committee to look for other options, provide data, and act as Committee secretary. Although there might have been a better choice than to have him connected to the . . . Committee, there is no evidence his involvement tainted the Committee's work or decision. He was the CEO with connections to possible alternatives. His stocks interests would probably have benefited from any alternative that was selected, and he was not a decision-maker on the Committee. To use him was within the range of reason.

" . . . Cole had interests which would have disqualified him from sitting on the independent . . . Committee. But, there is no evidence he improperly influenced the Committee."

As to plaintiffs' breach of fiduciary duty claim against [*8] "controlling shareholders," the court ruled that "[t]o establish . . . liability, control and abuse of that control must be shown." Assuming without deciding "the preferred shareholders were a controlling shareholder group, in the sense that they had the power to control certain aspects of the corporation's life," including "the lawful power to exercise 'veto' power and negotiation leverage because of the preferred shareholder rights they had" "the evidence does not show they abused that power. The evidence does not support a finding that they abused their relationship with the . . . Committee, tainted its work, or improperly used their corporate rights. On the contrary, the evidence shows the . . . Committee made its own independent decision about what to do."

The court concluded the Committee's decision to have KOR pay "a premium rate to retire NEA IV and chart its new course . . . had an immediate stock value disadvantage to the common shareholders, but the . . . Committee and full board concluded it was in the best long range interest of the company and the common stockholders. The decision making process used, and the decision that was made, were rational, in good faith, and within [*9] the range of reason. [¶] In addition to the rulings already made, the [c]ourt finds that, for the same reasons, the evidence does not support [p]laintiffs on the theories of gross mismanagement, waste of corporate assets, or unjust enrichment."

DISCUSSION

1. Plaintiffs' Appeal

a. Erroneous Application of Business Judgment Rule

(1) General Legal Principles

The business judgment rule "'establishes a presumption that directors' decisions are based on sound business judgment, and it prohibits courts from interfering in business decisions made by the directors in good faith and in the absence of a conflict of interest. [Citations.]' [Citation.]" (*Berg & Berg Enterprises, LLC v. Boyle (2009) 178 Cal.App.4th 1020, 1045.*) ""A hallmark of the business judgment rule is that a court will not substitute its judgment for that of the board if the latter's decision can be "attributed to any rational business purpose.' [Citation.]"' [Citation.]" (*Ibid.*)

"An exception to the presumption afforded by the business judgment rule . . . exists in 'circumstances which inherently raise an inference of conflict of interest' and the rule 'does not shield actions taken without reasonable inquiry, with improper motives, [*10] or as a result of a conflict of interest.' [Citations.] But . . . more is needed than 'conclusory allegations of improper motives and conflict of interest. Neither is it sufficient to generally allege the failure to conduct an active investigation, in the absence of (1) allegations of facts which would reasonably call for such an investigation, or (2) allegations of facts which would have been discovered by a reasonable investigation and would have been material to the questioned exercise of business judgment.' [Citation.] In most cases, 'the presumption created by the business judgment rule can be rebutted only by affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching or an unreasonable failure to investigate material facts. [Citation.] Interference with the discretion of directors is not warranted in doubtful cases.' [Citation.]" (*Berg & Berg Enterprises, LLC v. Boyle, supra, 178 Cal.App.4th at p. 1045.*) "Once it is shown a director received a personal benefit from the transaction, . . . the burden shifts to the director to demonstrate not only the transaction was entered in good faith, but also to show its inherent fairness from the viewpoint [*11] of the corporation and those interested therein. [Citations.]" (*Heckmann v. Ahmanson (1985) 168 Cal.App.3d 119, 128.*)

(2) Cole and Carnino

Plaintiffs contend the business judgment rule should not have been applied to Carnino and Cole because they "voted with the full board to approve the transaction" and "also participated in the negotiating process, even though they stood on both sides of the transaction." But plaintiffs' failure to provide any supporting citations to the

record forfeits the argument. (*Nwosu v. Uba (2004) 122 Cal.App.4th 1229, 1246* [argument not supported by record citations treated as waived]; *City of Lincoln v. Barringer (2002) 102 Cal.App.4th 1211, 1239, fn. 16* [record citations in statement of facts do not cure lack of citations in argument].) Even if not waived, the contention lacks merit.

Contrary to plaintiffs' claim, the record affirmatively shows Carnino and Cole abstained from voting on the transaction. Accordingly, they "are not subject to liability on the ground of having approved the [subject] agreement[]." (*Gaillard v. Natomas (1989) 208 Cal.App.3d 1250, 1268.*)

Plaintiffs acknowledge this but argue that under *Gaillard,* Carnino and Cole were not entitled [*12] to rely on the business judgment rule because of their participation in the negotiation process. But *Gaillard* reversed the summary judgment in the defendant's favor because there were issues of fact regarding "the nature and extent of [one defendant's] participation in the events" leading to the subject agreement's adoption, which "raise[d] . . . the inference that the agreement was not in the [corporation's] best interests . . . at the time of its adoption." (*Gaillard v. Natomas, supra, 208 Cal.App.3d at p. 1268.*) The judgment here, in contrast, occurred after a 12-day trial following which the court specifically found "no evidence [Carnino's] involvement tainted the Committee's work or decision" or that Cole "improperly influenced the Committee." Plaintiffs have not challenged these findings.

Plaintiffs maintain *Jones v. H. F. Ahmanson & Co. (1969) 1 Cal.3d 93* required Carnino and Cole, "as conflicted directors, . . . to prove . . . their transaction with KOR was inherently fair." But that rule only applies to "[m]ajority shareholders . . . [who] use their power to control corporate activities to benefit themselves alone or in manner detrimental to the minority. Any use to which they [*13] put the corporation or their power to control the corporation must benefit all shareholders proportionately and must not conflict with the proper conduct of the corporation's business. [Citations.]" (*Id. at p. 108.*) In that event, "'the burden is on the director or stockholder not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein.'" [Citation.]" (*Ibid.*)

At trial, plaintiffs' counsel conceded this standard does not apply unless interested directors "exercise control in connection with the transaction" or "use their position in connection with assisting that transaction to come to fruition." In this case, it was unnecessary to reach the question of inherent fairness given the court's determination neither defendant had used any power or control in a manner that affected the Committee's ultimate decision to approve the transaction.

For the same reason, *Tenzer v. Superscope, Inc. (1985) 39 Cal.3d 18* does not aid plaintiffs. There, Tenzer, a member of Superscope's board of directors, helped secure a purchaser for the corporation's property and requested a 10 percent finder's fee. Tushinsky, [*14] Superscope's president, orally agreed but after the deal was consummated the board denied Tenzer a finder's fee. The Supreme Court reversed the summary judgment granted in favor of Superscope.

Among other things, Superscope argued that given Tenzer's fiduciary duties as a board member any reliance on Tushinsky's promise was unreasonable. Although the Court agreed Tenzer owed fiduciary duties, it concluded triable issues of material fact precluded summary judgment: "As a corporate director, Tenzer is charged with the knowledge that any contract he entered into with his own corporation, even if valid and enforceable in all other respects, could be avoided at the corporation's option if it were determined to be unfair or unreasonable to the corporation. Thus, in order to prove that his reliance upon Tushinsky's promise was justifiable, Tenzer will be required to prove that the arrangement was fair and reasonable to the corporation. [¶] Establishing whether Tenzer's agreement with Superscope was fair and reasonable involves determination of the particular factual circumstances of the agreement, and application of the standards of fairness and good faith required of a fiduciary to these [*15] facts. These are functions mainly for the trier of facts. [Citations.]" (*Tenzer v. Superscope, Inc., supra, 39 Cal.3d at p. 32.*)

Here, in contrast, because the trier of fact determined Cole and Carnino did not participate in the transaction in any manner that affected the Committee's decision, it had no occasion to determine whether their conduct was fair and reasonable. Plaintiffs maintain that under *Tenzer,* Cole and Carnino's "fiduciary duties imposed on them a duty not to use [their additional bargaining] leverage in a way that was not inherently fair." But the court's finding shows they did not do that.

(3) Directors on Committee

Plaintiffs argue the directors on the Committee were not entitled to the business judgment presumption because they were "not properly informed and not acting in good faith." (Underscoring omitted.) They assert "[t]he directors on the [C]ommittee wrongfully abdicated their duty to inform themselves by relying on Carnino, who, as a directly interested, conflicted, preferred stockholder, was not . . . someone whom any director could 'believe[] to be reliable.'" We are not persuaded, given the findings the Committee members "performed their task with due

care [*16] and without negligence, . . . ma[king] reasonable inquiry into the facts and alternatives, and . . . weigh[ing] the advantages and disadvantages," and that Carnino's actions in "look[ing] for other options, provid[ing] data, and act[ing] as Committee secretary" did not affect their evaluation.

Nor does the case plaintiffs cite, *Everest Investors 8 v. McNeil Partners (2003) 114 Cal.App.4th 411, 430*, support their claim it was "unreasonable as a matter of law" for the Committee to have Carnino assist them. Rather, as plaintiffs' acknowledge, that case merely held the business judgment rule "does not shield actions taken without reasonable inquiry . . . ." (*Ibid.*)

As to the good faith requirement, plaintiffs contend the court applied the wrong standard by limiting it "to an 'effort to advance corporate interests'" when in fact "directors, officers, and controlling shareholders owe a duty of good faith to all shareholders." (Underscoring omitted.) But none of the cases on which they rely--*Small v. Fritz Companies, Inc. (2003) 30 Cal.4th 167*; *Kennerson v. Burbank Amusement Co. (1953) 120 Cal.App.2d 157*, and *Remillard Brick Co. v. Remillard-Dandini Co. (1952) 109 Cal.App.2d 405*--involve application [*17] of the business judgment rule.

The argument further lacks merit in that the court specifically found the Committee members had "a sincere and earnest interest in seeking to do the right thing for[, and based its decision on,] the long-term interests of the company *and the common shareholder*" (italics added), despite its "immediate stock value disadvantage to the" latter. Plaintiffs cite certain evidence to purportedly show the Committee members "knowingly acted in bad faith in approving a transaction that they knew was not fair to the common shareholders . . . ." Such resolutions of fact were for the trial court and we will not reweigh the evidence. (*Cuiellette v. City of Los Angeles, supra, 194 Cal.App.4th at p. 765.*)

Plaintiffs also argue the court applied the wrong burden of proof in finding the Committee members "us[ed] a process that was rational and used in a good faith effort to advance corporate interests." They reason that after the directors carry their "initial burden of proving . . . the business judgment rule affirmatively applies (i.e., that the director[s have] no conflict of interest)" and plaintiffs rebut that "presumption by proving any one of the four bases for rebuttal," [*18] "the burden shifts back to the director[s] to prove inherent fairness." In their view, "the court reversed the burden of proof . . . [by] plac[ing] the burden on [p]laintiffs to prove . . . the process used was not 'rational.'" It did no such thing.

To the contrary, the court determined plaintiffs had failed to carry their burden of rebutting the business judgment presumption in "that the evidence shows no conflict of interest, fraud, bad faith, or gross overreaching contaminated the . . . Committee's . . . decision." Although it could have ended its analysis there, it went on to find "the evidence shows the Committee members acted appropriately, using a process that was rational and used in a good faith effort to advance corporate interests." In other words, defendants affirmatively showed they used a rational process, as plaintiffs contend they were obligated to do. But in no event did the court require plaintiffs to prove the process was not rational.

b. NEA IV and Spectra

As to NEA IV and Spectra, plaintiffs assert that because the business judgment rule does not apply to shareholders, and the court found NEA IV and Spectra were controlling shareholders and "the transaction disadvantaged [*19] the common shareholders," the court erred in requiring plaintiffs to prove "'control and abuse of that control.'" Rather, they claim, once they proved control, the burden shifted to the controlling shareholders to prove "the transaction is inherently fair to the minority shareholders." We disagree.

The court assumed NEA IV and Spectra "were a controlling shareholder group, in the sense . . . they had the power to control certain aspects of [KOR's] life[,] . . . includ[ing] the lawful power to exercise 'veto' power and negotiation leverage." Even so, it found the "Committee made its own independent decision about what to do" and there is no evidence NEA IV and Spectra "abused that power [or] . . . their relationship with the . . . Committee, tainted its work, or improperly used their corporate rights." Thus, as in the case of Carnino and Cole, there was no need to establish inherent fairness because any use by NEA IV and Spectra of their asserted powers as controlling shareholders did not influence the Committee's decision. Because the court did not err in declining to reach the issue of inherent fairness as plaintiffs contend, we reject their claim the case should be remanded for a [*20] trial on damages for that reason.

c. Failure to Address Carnino's Breach of Fiduciary Duties as CEO

Plaintiffs argue the court erred in failing to analyze Carnino's breach of fiduciary duties in his capacity as CEO, separate from his capacity as a director and preferred stockholder, as alleged in their first cause of action for breach of fiduciary duty against KOR's officers and directors. But if there was error plaintiffs invited it by failing to litigate the issue at trial or identifying it to the court during opening or closing arguments. (*Portola Hills Community Assn. v. James (1992) 4 Cal.App.4th 289, 294*, disapproved of on other grounds in *Nahrstedt v. Lakeside Village Condominium Assn. (1994) 8 Cal.4th 361, 386* [error, if any, in not addressing issue invited

where "subject . . . was not included in the stipulated facts or plaintiff's trial brief and was not presented orally during the evidentiary phase or argued to the court"].) As such, they are "'estopped from asserting it as a ground for reversal' on appeal. [Citation.]" (*Norgart v. Upjohn Co. (1999) 21 Cal.4th 383, 403.*)

Moreover, plaintiffs' failure to either request a statement of decision on this issue, or specifically note, [*21] in their objections to the proposed statement of decision, the court's omission of the issue, "absolutely forecloses any consideration of it now [citation]." (*Portola Hills Community Assn. v. James, supra, 4 Cal.App.4th at p. 294*; *In re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1138* ["It is clearly unproductive to deprive a trial court of the opportunity to correct such a purported defect by allowing a litigant to raise the claimed error for the first time on appeal"].)

Plaintiffs maintain Carnino is liable as a matter of law for breach of fiduciary duty in his capacity as CEO based on the court's undisputed factual findings he was the CEO and "an interested party" who was "used by the Committee to look for other options, provide data, and act as Committee secretary." From this, plaintiffs jump to the conclusion "Carnino violated his fiduciary duties to the common shareholder . . . ." But at most these demonstrate Carnino owed fiduciary duties as CEO. They do not prove breach of those duties or proximate damages. (*Pierce v. Lyman (1991) 1 Cal.App.4th 1093, 1101* [absence of damage proximately caused by breach defeats claim for breach of fiduciary duty].) Nor do plaintiffs cite any [*22] evidence showing Carnino proximately caused their damages by breaching his fiduciary duties as CEO.

d. Remaining Issues

We reject plaintiffs' remaining claims. First, as to their contention the court erroneously "relied on Delaware law of special committees," they failed to show the court actually did so, as no out of state authority was referenced in its statement of decision. Their own reliance upon Delaware law and the fact plaintiffs never claimed California does not recognize special committees in the trial court also precludes them from asserting it for the first time on appeal. (*Portola Hills Community Assn. v. James, supra, 4 Cal.App.4th at p. 294.*)

Second, plaintiffs cite "California's policy . . . to protect the public from fraud and deception in security transactions." (*Hall v. Superior Court (1983) 150 Cal.App.3d 411, 417.*) But they voluntarily dismissed their constructive fraud claim and have not shown the court's findings were inconsistent with public policy.

Third, plaintiffs assert the court committed reversible error in "failing to reach [their] claims for gross mismanagement, waste of corporate assets, and unjust enrichment." (Capitalization, bold and underscoring omitted.) [*23] This is belied by the statement of decision's express ruling those claims failed on the same grounds as the breach of fiduciary duty causes of action.

Plaintiffs' final argument is that if the underlying judgment is reversed so should the award of costs. We affirm both the judgment and the costs award.

2. Defendants' Motion for Sanctions

Defendants filed a combined motion for sanctions on the grounds plaintiffs failed to comply with various Rules of Court by including in their appendix documents never admitted at trial and documents unnecessary to the appeal, the majority of which was not referenced in their briefs, and by failing to include record references for many factual statements. Plaintiffs acknowledge their "technical rule violations" but claim they "did not cause the degree of prejudice, confusion or additional work for the clerk's office or for [defendants] as to warrant the imposition of sanctions." We disagree.

a. Appendix

Under rule 8.124(b)(3), "[a]n appendix must not: [¶] (A) Contain documents or portions of documents filed in superior court that are unnecessary for proper consideration of the issues." Including in an "appendix . . . all of the parties' proposed trial exhibits, [*24] without any accompanying indication as to which exhibits were actually admitted in evidence" violates this rule (*Kreutzer v. City and County of San Francisco (2008) 166 Cal.App.4th 306, 319, fn. 8*, italics omitted), as does including "documents never referenced by plaintiffs" and those that are "not necessary to our determination of the issues" (*Evans v. Centerstone Development Co. (2005) 134 Cal.App.4th 151, 167).*

Here, plaintiffs included 76 documents in their 12-volume appendix, consisting of 2,958 pages, but only cited to 16 in their opening brief and 12 in their reply. Of those 76 documents, 39 were not admitted at trial.

Plaintiffs concede neither those 39 nonadmitted documents nor the volumes of foreign authorities lodged in the trial court were necessary to the appeal and should not have been included in the appendix, and that "they should have exercised more discretion and selected a smaller number of documents . . . ." But they ask sanctions not be imposed because although sanctions may be imposed for filing a faulty appendix (rule 8.124(g)), the Advisory Comment states such "sanctions do not depend on the degree of culpability of the filing party--i.e., on whether the party's [*25] conduct was willful or negligent--but on the nature of the inaccuracies and the importance of the documents they affect." (Advisory Com.

com., 23 pt. 2 West's Ann. Codes, Rules (2006 ed.) foll. rule 8.124, p. 552.)

Plaintiffs conclusorily assert "the nature of the over-inclusiveness, while regrettably contributing to the bulk of papers filed, did not substantially hamper the [c]ourt or [defendants]," there were no inaccuracies that affected important documents, and that defendants' authorities suggest their "technical violations" were not "so egregious that sanctions should be imposed." They are correct *Evans v. Centerstone Development Co., supra, 134 Cal.App.4th 151* is the only case cited by defendants in which sanctions were awarded. They seek to distinguish *Evans* on the basis it involved violations of many rules and the prosecution of a frivolous appeal, whereas this case was meritorious and the "12-[volume] . . . [a]ppendix, though excessive, should not have hampered or caused confusion . . . ."

But here plaintiffs admit they violated several rules. They also continued to cite the excluded evidence in their reply brief even after defendants noted the error in their briefs. As for [*26] hampering, defense counsel's declarations supporting the sanctions motion state plaintiffs' deficient appendix required them to "review[] all documents submitted . . . to determine which documents were admitted trial exhibits, which documents were actually cited by [a]ppellants[] in their briefs, what additional admitted exhibits were necessary to the issues on appeal, and the selection of additional documents to be included in [r]espondents' [j]oint [a]ppendix." This is sufficient to support an award, especially given plaintiffs failure to cite any contrary evidence.

b. Plaintiffs' Briefs

Rule 8.204(a)(1)(C) requires parties to "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." Rule8.204(a)(2)(C) also requires appellants to "[p]rovide a summary of the significant facts limited to matters in the record."

Plaintiffs' opening brief makes 39 unsupported factual statements, including full paragraphs lacking record references. Some assertions are contradicted by the record. The reply brief similarly contains 34 statements, and full paragraphs, without citations to the record.

Plaintiffs' counsel Laurence M. [*27] Rosen acknowledges noncompliance with these rules but claims "[t]he factual assertions in all material respects were accurate and can be supported by proper citations to the record." Because he "will be mindful of the [r]ules . . . in the future" and the violations were neither unintentional nor misleading, he states "there is no need for an imposition of monetary or other sanctions . . . ." According to him, the infractions were the fault of his "overwrought" associate who made some mistakes and the hampering of his supervision by two serious emergencies--his mother's admission to the hospital and subsequent death, and his emergency back surgery to repair two herniated discs. He asserts the reply brief "supplies a better, more focused summary and substantial additional citations to the record" and goes on to address each of the unsupported factual statements identified by defendants. These efforts "at this point [were] too little, too late. Although we are not required to plow through mounds of appendices, at times we did, and we have no doubt defendants had to expend substantial additional and unnecessary time because of this violation." (*Evans v. CenterStone Development Co., supra, 134 Cal.App.4th at p. 167.*) [*28] We thus deny his request for leniency.

Plaintiffs maintain that because they "challenge[d] . . . the sufficiency of the evidence" the court's obligation to review the entire record "reduce[d] somewhat the otherwise burdensome efforts of [the] violations. But although plaintiffs assert "[t]he [statement of d]ecision is riddled with demonstrably false factual findings," the opening brief never actually claimed the evidence was insufficient to support the judgment. Even if they had, the burdens of their violations would not have been decreased.

c. Sanctions Amount

The repeated violation of appellate rules, compounded by the failure to correct the infractions in the reply brief after respondents brought the deficiencies to his attention, justifies imposition of sanctions in this case. *(Pierotti v. Torian (2000) 81 Cal.App.4th 17, 30-31* [sanctions warranted for "unreasonable infraction of the rules" made worse by further violations in reply brief after respondents pointed out violations].) Defendants request $30,000 in monetary sanctions. Plaintiffs contend this amount is "grossly inflated" (bold and capitalization omitted) because defendants double billed for the same tasks, erroneously included [*29] time spent to prepare the respondents' appendix, needlessly "spent time in determining which factual statements were supported by admitted evidence and which documents were admitted trial documents" and "spent an inordinate amount of time preparing charts and their motion for sanctions . . . ."

Attorney fees are a common measure of sanctions payable to an opposing party. (See, e.g., *Periotti v. Torian, supra, 81 Cal.App.4th at p. 33.*) Of the $30,000 in sanctions requested by defendants, only $10,000 appears to be for attorney fees. The remaining $20,000 is for "[a] portion of the costs incurred" by defendants. We conclude a sanction of in the amount of $10,000 is appropriate in this case to compensate defendants for additional burdens imposed on it and to deter similar conduct in the future.

Defendants request the sanctions be payable by plaintiffs, their counsel, or both. Plaintiffs' attorneys should be held liable for the sanctions, as they were the ones who failed to comply with the rules of the appellate court. (See *Pierotti v. Torian, supra, 81 Cal.App.4th at pp. 36-37.*) The $10,000 sanctions award shall be payable joint and severally by plaintiffs' attorneys, Kenneth J. Catanzarite [*30] and Laurence M. Rosen, to defendants. Although we could order the sanctions be paid instead to this court, or impose additional sanctions, to defray the extra cost to taxpayers to process the appeal (*Alicia T. v. County of Los Angeles (1990) 222 Cal.App.3d 869, 885)*, we decline to do so. Because we did not rely on any documents that were not admitted at trial or any of the unsupported factual statements in the opening or reply briefs, we deny defendants' request to strike these items.

DISPOSITION

The judgment is affirmed. The motion for sanctions is granted in the amount of $10,000. Counsel for plaintiffs, Kenneth J. Catanzarite and Laurence M. Rosen, are ordered to pay defendants the $10,000 sanctions award jointly and severally individually without contribution from plaintiffs, within 30 days of the filing of the remittitur. They shall provide this court with an affidavit stating they have not and will not bill their clients for any portion of the sanctions and are ordered to report the sanctions to the State Bar. (*Bus. & Prof. Code, § 6068, subd. (o)(3).*) The clerk of this court is directed to forward a copy of this opinion to the State Bar. (*Bus. & Prof. Code, § 6086.7, subd. (a)(3).*) [*31] Defendants shall recover their costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

O'LEARY, J.

EXHIBIT 9

FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants*

I. Introduction

States craft regulatory policy through a variety of actors, including state legislatures, courts, agencies, and regulatory boards. While most regulatory actions taken by state actors will not implicate antitrust concerns, some will. Notably, states have created a large number of regulatory boards with the authority to determine who may engage in an occupation (*e.g.*, by issuing or withholding a license), and also to set the rules and regulations governing that occupation. Licensing, once limited to a few learned professions such as doctors and lawyers, is now required for over 800 occupations including (in some states) locksmiths, beekeepers, auctioneers, interior designers, fortune tellers, tour guides, and shampooers.[1]

In general, a state may avoid all conflict with the federal antitrust laws by creating regulatory boards that serve only in an advisory capacity, or by staffing a regulatory board exclusively with persons who have no financial interest in the occupation that is being regulated. However, across the United States, "licensing boards are largely dominated by active members of their respective industries . . ."[2] That is, doctors commonly regulate doctors, beekeepers commonly regulate beekeepers, and tour guides commonly regulate tour guides.

Earlier this year, the U.S. Supreme Court upheld the Federal Trade Commission's determination that the North Carolina State Board of Dental Examiners ("NC Board") violated the federal antitrust laws by preventing non-dentists from providing teeth whitening services in competition with the state's licensed dentists. *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015). NC Board is a state agency established under North Carolina law and charged with administering and enforcing a licensing system for dentists. A majority of the members of this state agency are themselves practicing dentists, and thus they have a private incentive to limit

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* This document sets out the views of the Staff of the Bureau of Competition. The Federal Trade Commission is not bound by this Staff guidance and reserves the right to rescind it at a later date. In addition, FTC Staff reserves the right to reconsider the views expressed herein, and to modify, rescind, or revoke this Staff guidance if such action would be in the public interest.

[1] Aaron Edlin & Rebecca Haw, *Cartels By Another Name: Should Licensed Occupations Face Antitrust Scrutiny*, 162 U. PA. L. REV. 1093, 1096 (2014).

[2] *Id.* at 1095.

competition from non-dentist providers of teeth whitening services. NC Board argued that, because it is a state agency, it is exempt from liability under the federal antitrust laws. That is, the NC Board sought to invoke what is commonly referred to as the "state action exemption" or the "state action defense." The Supreme Court rejected this contention and affirmed the FTC's finding of antitrust liability.

In this decision, the Supreme Court clarified the applicability of the antitrust state action defense to state regulatory boards controlled by market participants:

> "The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* [*Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980)] active supervision requirement in order to invoke state-action antitrust immunity." *N.C. Dental*, 135 S. Ct. at 1114.

In the wake of this Supreme Court decision, state officials have requested advice from the Federal Trade Commission regarding antitrust compliance for state boards responsible for regulating occupations. This outline provides FTC Staff guidance on two questions. *First*, when does a state regulatory board require active supervision in order to invoke the state action defense? *Second*, what factors are relevant to determining whether the active supervision requirement is satisfied?

Our answers to these questions come with the following caveats.

- Vigorous competition among sellers in an open marketplace generally provides consumers with important benefits, including lower prices, higher quality services, greater access to services, and increased innovation. For this reason, a state legislature should empower a regulatory board to restrict competition only when necessary to protect against a credible risk of harm, such as health and safety risks to consumers. The Federal Trade Commission and its staff have frequently advocated that states avoid unneeded and burdensome regulation of service providers.[3]

- Federal antitrust law does <u>not</u> require that a state legislature provide for active supervision of any state regulatory board. A state legislature may, and generally should, prefer that a regulatory board be subject to the requirements of the federal antitrust

[3] *See, e.g.*, Fed. Trade Comm'n Staff Policy Paper, *Policy Perspectives: Competition and the Regulation of Advanced Practice Registered Nurses* (Mar. 2014), https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf; Fed. Trade Comm'n & U.S. Dept. of Justice, Comment before the South Carolina Supreme Court Concerning Proposed Guidelines for Residential and Commercial Real Estate Closings (Apr. 2008), https://www.ftc.gov/news-events/press-releases/2008/04/ftcdoj-submit-letter-supreme-court-south-carolina-proposed.

laws. If the state legislature determines that a regulatory board should be subject to antitrust oversight, then the state legislature need not provide for active supervision.

- Antitrust analysis – including the applicability of the state action defense – is fact-specific and context-dependent. The purpose of this document is to identify certain overarching legal principles governing when and how a state may provide active supervision for a regulatory board. We are not suggesting a mandatory or one-size-fits-all approach to active supervision. Instead, we urge each state regulatory board to consult with the Office of the Attorney General for its state for customized advice on how best to comply with the antitrust laws.

- This FTC Staff guidance addresses only the active supervision prong of the state action defense. In order successfully to invoke the state action defense, a state regulatory board controlled by market participants must also satisfy the clear articulation prong, as described briefly in Section II. below.

- This document contains guidance developed by the staff of the Federal Trade Commission. Deviation from this guidance does not necessarily mean that the state action defense is inapplicable, or that a violation of the antitrust laws has occurred.

II. Overview of the Antitrust State Action Defense

"Federal antitrust law is a central safeguard for the Nation's free market structures . . . . The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market." *N.C. Dental*, 135 S. Ct. at 1109.

Under principles of federalism, "the States possess a significant measure of sovereignty." *N.C. Dental*, 135 S. Ct. at 1110 (*quoting Community Communications Co. v. Boulder*, 455 U.S. 40, 53 (1982)). In enacting the antitrust laws, Congress did not intend to prevent the States from limiting competition in order to promote other goals that are valued by their citizens. Thus, the Supreme Court has concluded that the federal antitrust laws do not reach anticompetitive conduct engaged in by a State that is acting in its sovereign capacity. *Parker v. Brown*, 317 U.S. 341, 351-52 (1943). For example, a state legislature may "impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives." *N.C. Dental*, 135 S. Ct. at 1109.

Are the actions of a state regulatory board, like the actions of a state legislature, exempt from the application of the federal antitrust laws? In *North Carolina State Board of Dental Examiners*, the Supreme Court reaffirmed that a state regulatory board is not the sovereign. Accordingly, a state regulatory board is not necessarily exempt from federal antitrust liability.

More specifically, the Court determined that "a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates" may invoke the state action defense only when two requirements are satisfied: first, the challenged restraint must be clearly articulated and affirmatively expressed as state policy; and second, the policy must be actively supervised by a state official (or state agency) that is not a participant in the market that is being regulated. *N.C. Dental*, 135 S. Ct. at 1114.

- The Supreme Court addressed the clear articulation requirement most recently in *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003 (2013). The clear articulation requirement is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals." *Id*. at 1013.

- The State's clear articulation of the intent to displace competition is not alone sufficient to trigger the state action exemption. The state legislature's clearly-articulated delegation of authority to a state regulatory board to displace competition may be "defined at so high a level of generality as to leave open critical questions about how

and to what extent the market should be regulated." There is then a danger that this delegated discretion will be used by active market participants to pursue private interests in restraining trade, in lieu of implementing the State's policy goals. *N.C. Dental*, 135 S. Ct. at 1112.

- The active supervision requirement "seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming [antitrust] immunity." *Id.*

Where the state action defense does not apply, the actions of a state regulatory board controlled by active market participants may be subject to antitrust scrutiny. Antitrust issues may arise where an unsupervised board takes actions that restrict market entry or restrain rivalry. The following are some scenarios that have raised antitrust concerns:

- A regulatory board controlled by dentists excludes non-dentists from competing with dentists in the provision of teeth whitening services. *Cf. N.C. Dental,* 135 S. Ct. 1101.

- A regulatory board controlled by accountants determines that only a small and fixed number of new licenses to practice the profession shall be issued by the state each year. *Cf. Hoover v. Ronwin*, 466 U.S. 558 (1984).

- A regulatory board controlled by attorneys adopts a regulation (or a code of ethics) that prohibits attorney advertising, or that deters attorneys from engaging in price competition. *Cf. Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).

III. Scope of FTC Staff Guidance

A. This Staff guidance addresses the applicability of the state action defense under the federal antitrust laws. Concluding that the state action defense is inapplicable does not mean that the conduct of the regulatory board necessarily violates the federal antitrust laws. A regulatory board may assert defenses ordinarily available to an antitrust defendant.

1. **Reasonable restraints on competition do not violate the antitrust laws, even where the economic interests of a competitor have been injured.**

Example 1: A regulatory board may prohibit members of the occupation from engaging in fraudulent business practices without raising antitrust concerns. A regulatory board also may prohibit members of the occupation from engaging in untruthful or deceptive advertising. *Cf. Cal. Dental Ass'n v. FTC*, 526 U.S. 756 (1999).

Example 2: Suppose a market with several hundred licensed electricians. If a regulatory board suspends the license of one electrician for substandard work, such action likely does not unreasonably harm competition. *Cf. Oksanen v. Page Mem'l Hosp.*, 945 F.2d 696 (4th Cir. 1991) (en banc).

2. **The ministerial (non-discretionary) acts of a regulatory board engaged in good faith implementation of an anticompetitive statutory regime do not give rise to antitrust liability. See 324 Liquor Corp. v. Duffy, 479 U.S. 335, 344 n. 6 (1987).**

Example 3: A state statute requires that an applicant for a chauffeur's license submit to the regulatory board, among other things, a copy of the applicant's diploma and a certified check for $500. An applicant fails to submit the required materials. If for this reason the regulatory board declines to issue a chauffeur's license to the applicant, such action would not be considered an unreasonable restraint. In the circumstances described, the denial of a license is a ministerial or non-discretionary act of the regulatory board.

3. **In general, the initiation and prosecution of a lawsuit by a regulatory board does not give rise to antitrust liability unless it falls within the "sham exception." Professional Real Estate Investors v. Columbia Pictures Industries, 508 U.S. 49 (1993); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972).**

Example 4: A state statute authorizes the state's dental board to maintain an action in state court to enjoin an unlicensed person from practicing dentistry. The members of the dental board have a basis to believe that a particular individual is practicing dentistry but does not hold a valid license. If the dental board files a lawsuit against that individual, such action would not constitute a violation of the federal antitrust laws.

B. Below, FTC Staff describes when active supervision of a state regulatory board is required in order successfully to invoke the state action defense, and what factors are relevant to determining whether the active supervision requirement has been satisfied.

1. When is active state supervision of a state regulatory board required in order to invoke the state action defense?

***General Standard*:** "[A] state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity." *N.C. Dental*, 135 S. Ct. at 1114.

***Active Market Participants*:** A member of a state regulatory board will be considered to be an active market participant in the occupation the board regulates if such person (i) is licensed by the board or (ii) provides any service that is subject to the regulatory authority of the board.

- If a board member participates in any professional or occupational sub-specialty that is regulated by the board, then that board member is an active market participant for purposes of evaluating the active supervision requirement.

- It is no defense to antitrust scrutiny, therefore, that the board members themselves are not directly or personally affected by the challenged restraint. For example, even if the members of the NC Dental Board were orthodontists who do not perform teeth whitening services (as a matter of law or fact or tradition), their control of the dental board would nevertheless trigger the requirement for active state supervision. This is because these orthodontists are licensed by, and their services regulated by, the NC Dental Board.

- A person who temporarily suspends her active participation in an occupation for the purpose of serving on a state board that regulates her former (and intended future) occupation will be considered to be an active market participant.

***Method of Selection*:** The method by which a person is selected to serve on a state regulatory board is not determinative of whether that person is an active market participant in the occupation that the board regulates. For example, a licensed dentist is deemed to be an active market participant regardless of whether the dentist (i) is appointed to the state dental board by the governor or (ii) is elected to the state dental board by the state's licensed dentists.

***A Controlling Number, Not Necessarily a Majority, of Actual Decisionmakers*:**

- Active market participants need not constitute a numerical majority of the members of a state regulatory board in order to trigger the requirement of active supervision. A decision that is controlled, either as a matter of law, procedure, or fact, by active participants in the regulated market (*e.g.*, through veto power, tradition, or practice) must be actively supervised to be eligible for the state action defense.

- Whether a particular restraint has been imposed by a "controlling number of decisionmakers [who] are active market participants" is a fact-bound inquiry that must be made on a case-by-case basis. FTC Staff will evaluate a number of factors, including:

  - ✓ The structure of the regulatory board (including the number of board members who are/are not active market participants) and the rules governing the exercise of the board's authority.

  - ✓ Whether the board members who are active market participants have veto power over the board's regulatory decisions.

Example 5: The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of five board members. Thus, no regulation may become effective without the assent of at least one electrician member of the board. In this scenario, the active market participants effectively have veto power over the board's regulatory authority. The active supervision requirement is therefore applicable.

  - ✓ The level of participation, engagement, and authority of the non-market participant members in the business of the board – generally and with regard to the particular restraint at issue.

  - ✓ Whether the participation, engagement, and authority of the non-market participant board members in the business of the board differs from that of board members who are active market participants – generally and with regard to the particular restraint at issue.

  - ✓ Whether the active market participants have in fact exercised, controlled, or usurped the decisionmaking power of the board.

Example 6: The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of a majority of board members. When voting on proposed regulations, the non-electrician members routinely defer to the preferences of the electrician members. Minutes of

board meetings show that the non-electrician members generally are not informed or knowledgeable concerning board business – and that they were not well informed concerning the particular restraint at issue. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

Example 7: The state board of electricians consists of four non-electrician members and three practicing electricians. Documents show that the electrician members frequently meet and discuss board business separately from the non-electrician members. On one such occasion, the electrician members arranged for the issuance by the board of written orders to six construction contractors, directing such individuals to cease and desist from providing certain services. The non-electrician members of the board were not aware of the issuance of these orders and did not approve the issuance of these orders. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

2. What constitutes active supervision?

FTC Staff will be guided by the following principles:

- "[T]he purpose of the active supervision inquiry . . . is to determine whether the State has exercised sufficient independent judgment and control" such that the details of the regulatory scheme "have been established as a product of deliberate state intervention" and not simply by agreement among the members of the state board. "Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy." The State is not obliged to "[meet] some normative standard, such as efficiency, in its regulatory practices." *Ticor*, 504 U.S. at 634-35. "The question is not how well state regulation works but whether the anticompetitive scheme is the State's own." *Id*. at 635.

- It is necessary "to ensure the States accept political accountability for anticompetitive conduct they permit and control." *N.C. Dental*, 135 S. Ct. at 1111. *See also Ticor*, 504 U.S. at 636.

- "The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the 'mere potential for state supervision is not an adequate substitute for a decision by the State.' Further, the state supervisor may not itself be an active market participant." *N.C. Dental*, 135 S. Ct. at 1116–17 (citations omitted).

- The active supervision must precede implementation of the allegedly anticompetitive restraint.

- "[T]he inquiry regarding active supervision is flexible and context-dependent." "[T]he adequacy of supervision . . . will depend on all the circumstances of a case." *N.C. Dental*, 135 S. Ct. at 1116–17. Accordingly, FTC Staff will evaluate each case in light of its own facts, and will apply the applicable case law and the principles embodied in this guidance reasonably and flexibly.

3. What factors are relevant to determining whether the active supervision requirement has been satisfied?

FTC Staff will consider the presence or absence of the following factors in determining whether the active supervision prong of the state action defense is satisfied.

- The supervisor has obtained the information necessary for a proper evaluation of the action recommended by the regulatory board. As applicable, the supervisor has ascertained relevant facts, collected data, conducted public hearings, invited and received public comments, investigated market conditions, conducted studies, and reviewed documentary evidence.

  - ✓ The information-gathering obligations of the supervisor depend in part upon the scope of inquiry previously conducted by the regulatory board. For example, if the regulatory board has conducted a suitable public hearing and collected the relevant information and data, then it may be unnecessary for the supervisor to repeat these tasks. Instead, the supervisor may utilize the materials assembled by the regulatory board.

- The supervisor has evaluated the substantive merits of the recommended action and assessed whether the recommended action comports with the standards established by the state legislature.

- The supervisor has issued a written decision approving, modifying, or disapproving the recommended action, and explaining the reasons and rationale for such decision.

  - ✓ A written decision serves an evidentiary function, demonstrating that the supervisor has undertaken the required meaningful review of the merits of the state board's action.

  - ✓ A written decision is also a means by which the State accepts political accountability for the restraint being authorized.

Scenario 1: Example of satisfactory active supervision of a state board regulation designating teeth whitening as a service that may be provided only by a licensed dentist, where state policy is to protect the health and welfare of citizens and to promote competition.

- The state legislature designated an executive agency to review regulations recommended by the state regulatory board. Recommended regulations become effective only following the approval of the agency.

- The agency provided notice of (i) the recommended regulation and (ii) an opportunity to be heard, to dentists, to non-dentist providers of teeth whitening, to the public (in a newspaper of general circulation in the affected areas), and to other interested and affected persons, including persons that have previously identified themselves to the agency as interested in, or affected by, dentist scope of practice issues.

- The agency took the steps necessary for a proper evaluation of the recommended regulation. The agency:

  - ✓ Obtained the recommendation of the state regulatory board and supporting materials, including the identity of any interested parties and the full evidentiary record compiled by the regulatory board.

  - ✓ Solicited and accepted written submissions from sources other than the regulatory board.

  - ✓ Obtained published studies addressing (i) the health and safety risks relating to teeth whitening and (ii) the training, skill, knowledge, and equipment reasonably required in order to safely and responsibly provide teeth whitening services (if not contained in submission from the regulatory board).

  - ✓ Obtained information concerning the historic and current cost, price, and availability of teeth whitening services from dentists and non-dentists (if not contained in submission from the regulatory board). Such information was verified (or audited) by the Agency as appropriate.

  - ✓ Held public hearing(s) that included testimony from interested persons (including dentists and non-dentists). The public hearing provided the agency with an opportunity (i) to hear from and to question providers, affected customers, and experts and (ii) to supplement the evidentiary record compiled by the state board. (As noted above, if the state regulatory board has previously conducted a suitable public hearing, then it may be unnecessary for the supervising agency to repeat this procedure.)

- The agency assessed all of the information to determine whether the recommended regulation comports with the State's goal to protect the health and

welfare of citizens and to promote competition.

- The agency issued a written decision accepting, rejecting, or modifying the scope of practice regulation recommended by the state regulatory board, and explaining the rationale for the agency's action.

Scenario 2: Example of satisfactory active supervision of a state regulatory board administering a disciplinary process.

A common function of state regulatory boards is to administer a disciplinary process for members of a regulated occupation. For example, the state regulatory board may adjudicate whether a licensee has violated standards of ethics, competency, conduct, or performance established by the state legislature.

Suppose that, acting in its adjudicatory capacity, a regulatory board controlled by active market participants determines that a licensee has violated a lawful and valid standard of ethics, competency, conduct, or performance, and for this reason, the regulatory board proposes that the licensee's license to practice in the state be revoked or suspended. In order to invoke the state action defense, the regulatory board would need to show both clear articulation and active supervision.

- In this context, active supervision may be provided by the administrator who oversees the regulatory board (*e.g.*, the secretary of health), the state attorney general, or another state official who is not an active market participant. The active supervision requirement of the state action defense will be satisfied if the supervisor: (i) reviews the evidentiary record created by the regulatory board; (ii) supplements this evidentiary record if and as appropriate; (iii) undertakes a de novo review of the substantive merits of the proposed disciplinary action, assessing whether the proposed disciplinary action comports with the policies and standards established by the state legislature; and (iv) issues a written decision that approves, modifies, or disapproves the disciplinary action proposed by the regulatory board.

Note that a disciplinary action taken by a regulatory board affecting a single licensee will typically have only a de minimis effect on competition. A pattern or program of disciplinary actions by a regulatory board affecting multiple licensees may have a substantial effect on competition.

The following do <u>not</u> constitute active supervision of a state regulatory board that is controlled by active market participants:

- The entity responsible for supervising the regulatory board is itself controlled by active market participants in the occupation that the board regulates. *See N.C. Dental*, 135 S. Ct. at 1113-14.

- A state official monitors the actions of the regulatory board and participates in deliberations, but lacks the authority to disapprove anticompetitive acts that fail to accord with state policy. *See Patrick v. Burget*, 486 U.S. 94, 101 (1988).

- A state official (*e.g.*, the secretary of health) serves ex officio as a member of the regulatory board with full voting rights. However, this state official is one of several members of the regulatory board and lacks the authority to disapprove anticompetitive acts that fail to accord with state policy.

- The state attorney general or another state official provides advice to the regulatory board on an ongoing basis.

- An independent state agency is staffed, funded, and empowered by law to evaluate, and then to veto or modify, particular recommendations of the regulatory board. However, in practice such recommendations are subject to only cursory review by the independent state agency. The independent state agency perfunctorily approves the recommendations of the regulatory board. *See Ticor*, 504 U.S. at 638.

- An independent state agency reviews the actions of the regulatory board and approves all actions that comply with the procedural requirements of the state administrative procedure act, without undertaking a substantive review of the actions of the regulatory board. *See Patrick*, 486 U.S. at 104-05.

EXHIBIT 10

The State Bar of California

OFFICE OF GENERAL COUNSEL

180 Howard Street, San Francisco, CA 94105

suzanne.grandt@calbar.ca.gov
415-538-2388

July 20, 2022

Via U.S. Mail and email to: justintimesd@gmail.com
Justin Beck
3501 Roselle Street
Oceanside, CA 92056

RE: Your May 19 and July 12, 2022 Email to Chair of the State Bar Board of Trustees, Ruben Duran

Dear Mr. Beck:

This letter responds to your May 19 and July 12, 2022, emails to the Chair of the State Bar Board of Trustees, Ruben Duran. Mr. Duran has referred this matter to the Office of General Counsel for response.

Your May 19, 2022, letter is your second request to Mr. Duran regarding disciplinary matters involving the "Catanzarite Cases."[1] In your letter, you make five specific requests, which are addressed below.

First, you request "all publicly available information regarding certain licensees, and their own reporting of misconduct in CA or any jurisdiction as mandated by BPC/CRPC." As you were informed by letter of May 13, 2022, this request was forwarded to the State Bar's California Public Records Act (CPRA) coordinator. Per your email of June 1, 2022, you acknowledged that the Office of Chief Trial Counsel "was diligent in preparing my public records request, and I granted them another period of time to finish."

Second, you request that Mr. Duran waive confidentiality with respect to the "Catanzarite Cases." You included the following non-exhaustive list of cases:

- 21-O-12371 (Kenneth Catanzarite)
- 21-O-05698 (Nicole Catanzarite-Woodward)
- 21-O-11976 (Jim Travis Tice)

[1] "Catanzarite Cases" is defined in your First Amended Complaint filed in *Beck v. State Bar, et al.*, Orange County Superior Court case number 30-2021-01237499-CU-PN-CJC and specifically includes six disciplinary complaints you filed against five attorneys.

- 21-O-01012 (Kenneth Catanzarite)
- 20-O-01013 (Brandon Woodward)
- 20-O-01014 (Tim James O'Keefe)

Pursuant to section 6086.1(b)(2) of the Business and Professions Code, the Chair of the Board may waive confidentiality, "but only when warranted for protection of the public." As Chair of the Board of Trustees, Mr. Duran declines to waive confidentiality with respect to the "Catanzarite Cases," on the basis that such waiver is not warranted for protection of the public. In this regard, we note that your claims regarding attorney misconduct in the Catanzarite Cases have been heavily litigated in public court proceedings that have given rise to two public (though unpublished) Court of Appeal decisions, and you have a pending lawsuit against the State Bar in which you repeat your claims regarding attorney misconduct in yet another public court proceeding.

Third, you requested "the summary of responses from attorneys in the foregoing specific Catanzarite Cases." Pursuant to section 6093.5 of the Business and Professions Code, the State Bar shall provide a complainant with "a written summary of any response by the attorney to his or her complaint if the response was the basis for dismissal of the complaint."

With respect to Case Numbers 21-O-01012, 21-O-01013, and 21-O-01014, these matters were not closed on the basis of any response by the attorney. With respect to Case Numbers 21-O-12371 and 21-O-05698, these matters were abated and have not been closed (*i.e.*, dismissed). Therefore, as to these matters, there is no written summary required under section 6093.5.

With respect to Case Number 21-O-11976, that matter was closed on December 13, 2021. The Office of Chief Trial Counsel explained the basis for its determination to close the complaint in its December 13, 2021, letter to you. That letter referred to the attorney's response to the extent it formed the basis for dismissal of the complaint. As such, the State Bar has provided the written summary required under section 6093.5.

Fourth, you requested a status update from the Complaint Review Unit regarding the two matters in abatement (Case Nos. 21-O-12371 and 21-O-05698). The Complaint Review Unit does not have a record of receiving a request for review in those matters. Importantly, those matters have been abated and as such, have not been closed. They remain as open matters within the Office of Chief Trial Counsel. Pursuant to Rule 2603(b) of the State Bar Rules of Procedure, the Complaint Review Unit only has authority to "review closures of inquiries, investigations and complaints upon request by complainant." Accordingly, because these matters have not been closed, the Complaint Review Unit does not have authority and is unable to review the abated matters. Review will be available in the event the Office of Chief Trial Counsel closes these matters in the future. In the meantime, as the Office of Chief Trial Counsel explained to you in its November 22, 2021, letter, it has abated and will take no further action on these matters until resolution of the related pending civil matters because those matters "involve substantially the same misconduct that is at issue in the State Bar matters," "the harm

caused by Mr. Catanzarite's violation of the conflict rules, as well as his other alleged misconduct, is an issue in pending litigation," and as a result, resolution of the pending civil matters will substantially assist the Office of Chief Trial Counsel in its investigation as well as in determining the harm caused by any misconduct.

With respect to Case Number 21-O-11976 (Jim Travis Tice), the Complaint Review Unit received your request for review on January 24, 2022. Review of that matter is still pending. That office will contact you in writing to inform you of its determination.

Fifth, you request information regarding "any prior cases that were brought to the Supreme Court under *In Re Walker*, and the circumstances/outcome of those cases." Such matters, known as accusations, are filed with the California Supreme Court, and not the State Bar. To the extent the State Bar may be in possession of records relevant to your request, you may submit a public records request. Information regarding that process is available at the State Bar's website at: https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Records.

Sincerely,

/s/ Suzanne C. Grandt

Suzanne C. Grandt
Attorney V

EXHIBIT 11

The State Bar
of California

OFFICE OF GENERAL COUNSEL

180 Howard Street, San Francisco, CA 94105

ellin.davtyan@calbar.ca.gov
415-538-2000

December 15, 2022

Via U.S. Mail and Email: justintimesd@gmail.com
Justin S. Beck
3501 Roselle Street
Oceanside CA 92056

Dear Mr. Beck:

As we have already informed you, on December 12, 2022 at approximately 9:56 a.m., you received an email containing communication that is confidential and privileged, pursuant to and without limitation Business and Professions Code section 6086.1(b), and attorney-work product and attorney-client privileges. The forwarding of this email was inadvertent and should not be construed as a waiver of state confidentiality laws.

You assert that the State Bar's internal communications with its counsel are not privileged because of your mistaken belief that the State Bar performing its public function differently than you believe it should constitutes a "fraud." Setting aside the fact that your mischaracterizations do not control the application of the privilege, the crime-fraud exception you cite only applies where the specific communication was made for the purpose of aiding a crime or fraud. On its face, the communication you were inadvertently sent related to whether to grant *your* request to waive confidentiality as to certain complaints you have made against various attorneys. The State Bar's consideration of your request that it exercise its discretion in such a manner is neither a crime nor a fraud.

We reiterate that you have no right to share or retain the State Bar's privileged communications, and request that you identify all persons to whom you have distributed the communication and destroy any copies in your possession.

Thank you for your anticipated cooperation.

Sincerely,

Ellin Davtyan
General Counsel

EXHIBIT 12

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
Public: (916) 445-9555
Telephone: (916) 210-6183
E-Mail: PublicRecords@doj.ca.gov

December 29, 2022

Via E-mail to:
Justin Beck
3501 Roselle Street
Oceanside, CA 92056
justintimesd@gmail.com

RE: Public Records Act Request; DOJ PRA 2022-02717

Dear Mr. Beck:

This correspondence is in response to your online request form submission dated December 8, 2022, which was received by the California Department of Justice (the Department) on the same date, in which you sought records pursuant to the Public Records Act (PRA) as set forth in Government Code section 6250 et seq.

Specifically, you requested:

1) When was Justin S. Beck v. State of California et al. (OCSC Case No. 30-2021-01237499) first disclosed to the DOJ, how, and by whom?

2) When was Justin S. Beck v. State of California et al. (OCSC Case No. 30-2020-01145998) first disclosed to the DOJ, how, and by whom?

3) When was Justin S. Beck v. The Superior Court of Orange County et al. (4DCA Original Writ Proceedings G061896) first disclosed to the DOJ, how, and by whom?

4) When was Justin S. Beck v. Catanzarite Law Corporation et al. (U.S. Southern District of California 22-CV-01616-BAS-DDL) first disclosed to the DOJ, how, and by whom?

5) Other than The State Bar of California, what other state agencies require Government Claims Act claim presentation to an entity other than the Department of General Services?

6) Has the Judicial Council reported my new claim for ratification and RICO against Orange County Superior Court to DOJ related to these matters? If so, when did it get reported and by whom?

7) Why does the draft audit from MGO in April 2022 presented by The State Bar of California lack disclosure of the materiality of my government claims?

8) When was the California State Auditor notified of the materiality of my claims -- which could result in an award of monetary judgment exceeding $1B based on evidence presented, unobjected?

9) Who manages claims act litigation for the Department of Justice -- who has a duty to resolve claims act litigation and satisfaction of judgments?

10) Does the DOJ require me to file a new government claim related to these matters in order that DGS be joined to these cases?

11) I just experienced what I allege to be fraud and concealment by California Supreme Court clerk Jorge Navarette after the Office of General Counsel for The State Bar of California filed a fraudulent antitrust petition on my behalf without my authorization in CSC. Given the conflict, am I correct to assume the new claim should be presented to DGS or DOJ and not Mr. Navarette and CSC?

12) When the State of California is liable under the Government Claims Act, why is the DOJ not managing claim presentations and denials for The State Bar of California? "Investigation" of claims, denial, and legal representation of themselves for claims filed by the public violate California Rules of Professional Conduct 1.7(d)(3) and 15 U.S.C. Section 1.

13) Why does the DOJ allow the Board of Trustees for The State Bar of California, controlled by active market participant lawyers, to make decisions on behalf of itself after N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n, 574 U.S. 494, (2015) and its references to Parker v. Brown , 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315?

14) Who is legal counsel for the claims act litigation for DOJ?

15) Who is representing LEGISLATURE in OCSC Case No. 30-2021-01237499 and G061896, and how will DOJ prevent unconstitutional use of State Bar Court from impeding or obstructing state and federal proceedings?16) Why does DOJ allow The State Bar of California to use Office of General Counsel to defend tort claims against itself and its lawyers?

For the reasons set forth below, the Department is extending the date for responding to your request. Agencies are permitted to extend the date for responding to a public records request for fourteen days beyond the original 10-day deadline for responding under specified circumstances (Gov. Code, § 6253, subd. (c)). As your request was received by this office on December 8, 2022, the time established for the original response was December 19, 2022. Fourteen days beyond that date is January 2, 2023. Due to the state holiday on January 2, the Department's response will be due on January 3, 2023.

Agencies may invoke the extension for several reasons, which may be summarized as follows:

1. The need to search for and collect records from field offices or other facilities that are separate from the office processing the request.
2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.
3. The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

In this instance, an extension is needed to consult with multiple components of the Department's with a substantial interest in the records requested.

Sincerely,

/s/ Public Records Coordinator

Public Records Coordinator

For ROB BONTA
Attorney General

EXHIBIT 13

Gmail Justin Beck <justintimesd@gm.

Call with attorney Matt Kinley

Steven A. Haskins <sah@mccunewright.com> Wed, Jan 13, 2021 at 10:25 AM
To: Justin Beck <justintimesd@gmail.com>
Cc: "Richard D. McCune" <rdm@mccunewright.com>, "Jessica L. Becerra" <jb@mccunewright.com>, "Sandy G. Gonzalez" <sgg@mccunewright.com>

Justin,

I had a phone call today with a lawyer named Matt Kinley out of Long Beach which I think will interest you. Since 2015, he has represented a client that has been sued by Catanzarite in a manner very similar to the way that Catanzarite has operated in this situation. In particular, that case involved a partnership dispute, and like here, Catanzarite starting filing lawsuits and papers claiming to represent the partnership. Catanzarite was disqualified in that case as well. What is most interesting is that the Bar has taken investigatory steps on that case, interviewed Matt's clients and such, and so the wheels of bureaucracy are already in motion there. Though we need to think through some of the privilege issues, I think it would be a good idea to coordinate with Matt and that may be a better way in to get your complaints put before the bar. Let me know what you think.

Also, the notice of appeal deadline for Scudder and Aroha is coming up next week. I know that we have previously discussed not appealing that particular order, but just want to confirm as the deadline approaches. Otherwise, we are working on the response to the fee motion and coordinating with insurance counsel on the stay and designation motions.

Thanks. Talk to you soon.

Steve

Steven A. Haskins

Partner

McCUNE WRIGHT AREVALO, LLP
P: 909.551.4521 | F: 909.557.1275 | 3281 East Guasti Road, Suite 100 | Ontario, CA 91761 | **McCuneWright.com**

EXHIBIT 14

The State Bar of California

OFFICE OF GENERAL COUNSEL

180 Howard Street, San Francisco, CA 94105

suzanne.grandt@calbar.ca.gov
415-538-2388

July 29, 2022

Via Email: justintimesd@gmail.com
Justin Beck
3501 Roselle Street
Oceanside, CA 92056

RE: *Justin S. Beck v. State Bar of California, et al.*
Orange County Superior Court Case No. 30-2021-01237499-CU-PN-CJC

Dear Mr. Beck:

On July 27, 2022, the State Bar Defendants filed and served the attached Special Motion to Strike your First Amended Complaint pursuant to the California Code of Civil Procedure section 425.16 (commonly referred to as an "anti-SLAPP motion"). Subsection (g) provides for an automatic stay of discovery upon filing of this motion, with the stay to remain in effect until notice of entry of order ruling on such motion.

As such, the State Bar has no obligation to respond to your July 26, 2022 deposition subpoena and will not be making a witness available for deposition on September 9, 2022. The State Bar will also not be responding to your pending Interrogatories, Request for Admissions, or Requests for Production of Documents until after our motion to strike is ruled upon.

Lastly, please be advised that if the Court grants our anti-SLAPP motion, you will be liable for the State Bar's attorney's fees and costs incurred in bringing the motion. (Cal. Code Civ. Proc.§ 425.16(c).) For the reasons outlined in the attached motion and our pending demurrer, your lawsuit is barred on a number of well-established legal grounds and we expect to prevail on our anti-SLAPP motion. Accordingly, I encourage you to dismiss your case now and avoid potential payment of attorney's fees and costs down the road.

Sincerely,

/s/ Suzanne C. Grandt

Suzanne C. Grandt
Assistant General Counsel

cc: Carissa N. Andresen
Enclosures

EXHIBIT 15

Gmail

Justin Beck <justintimesd@gmail.com>

COM-03242023-00824; Ruben Duran, The State Bar of California

Laura Mandler <lmandler@fppc.ca.gov> Tue, Mar 28, 2023 at 4:39 PM
To: Justin Beck <justintimesd@gmail.com>

Good Afternoon Mr. Beck,

It appears that if there is a potential conflict of interest regarding members of the Board of Trustees, the State Bar may appoint a Special Deputy Trial Counsel to investigate the allegations. As far as I am aware, that is the only oversight avenue.

Sincerely,

Laura Mandler

Enforcement Division - Political Reform Consultant

Fair Political Practices Commission

1102 Q Street #3000

Sacramento, CA 95811

From: Justin Beck <justintimesd@gmail.com>
Sent: Tuesday, March 28, 2023 2:30 PM
To: Laura Mandler <lmandler@fppc.ca.gov>
Subject: Re: COM-03242023-00824; Ruben Duran, The State Bar of California

EXTERNAL EMAIL

[Quoted text hidden]

EXHIBIT 16

Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers
(Rule Approved by the Supreme Court, Effective November 1, 2018)

(a) A lawyer who individually or together with other lawyers possesses managerial authority in a law firm,* shall make reasonable* efforts to ensure that the firm* has in effect measures giving reasonable* assurance that all lawyers in the firm* comply with these rules and the State Bar Act.

(b) A lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same law firm,* shall make reasonable* efforts to ensure that the other lawyer complies with these rules and the State Bar Act.

(c) A lawyer shall be responsible for another lawyer's violation of these rules and the State Bar Act if:

(1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
(2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm* in which the other lawyer practices, or has direct supervisory authority over the other lawyer, whether or not a member or employee of the same law firm,* and knows* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable* remedial action.

Comment

Paragraph (a) – Duties Of Managerial Lawyers To Reasonably Assure Compliance with the Rules*

[1] Paragraph (a) requires lawyers with managerial authority within a law firm* to make reasonable* efforts to establish internal policies and procedures designed, for example, to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

[2] Whether particular measures or efforts satisfy the requirements of paragraph (a) might depend upon the law firm's structure and the nature of its practice, including the size of the law firm,* whether it has more than one office location or practices in more than one jurisdiction, or whether the firm* or its partners* engage in any ancillary business.

[3] A partner,* shareholder or other lawyer in a law firm* who has intermediate managerial responsibilities satisfies paragraph (a) if the law firm* has a designated managing lawyer charged with that responsibility, or a management committee or other body that has appropriate managerial authority and is charged with that responsibility. For example, the managing lawyer of an office of a multi-office law firm* would not necessarily be required to promulgate firm-wide policies intended to reasonably* assure that the law firm's lawyers comply with the rules or State Bar Act. However, a lawyer

remains responsible to take corrective steps if the lawyer knows* or reasonably should know* that the delegated body or person* is not providing or implementing measures as required by this rule.

[4] Paragraph (a) also requires managerial lawyers to make reasonable* efforts to assure that other lawyers in an agency or department comply with these rules and the State Bar Act. This rule contemplates, for example, the creation and implementation of reasonable* guidelines relating to the assignment of cases and the distribution of workload among lawyers in a public sector legal agency or other legal department. (See, e.g., State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006).)

Paragraph (b) – Duties of Supervisory Lawyers

[5] Whether a lawyer has direct supervisory authority over another lawyer in particular circumstances is a question of fact.

Paragraph (c) – Responsibility for Another's Lawyer's Violation

[6] The appropriateness of remedial action under paragraph (c)(2) would depend on the nature and seriousness of the misconduct and the nature and immediacy of its harm. A managerial or supervisory lawyer must intervene to prevent avoidable consequences of misconduct if the lawyer knows* that the misconduct occurred.

[7] A supervisory lawyer violates paragraph (b) by failing to make the efforts required under that paragraph, even if the lawyer does not violate paragraph (c) by knowingly* directing or ratifying the conduct, or where feasible, failing to take reasonable* remedial action.

[8] Paragraphs (a), (b), and (c) create independent bases for discipline. This rule does not impose vicarious responsibility on a lawyer for the acts of another lawyer who is in or outside the law firm.* Apart from paragraph (c) of this rule and rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner,* associate, or subordinate lawyer. The question of whether a lawyer can be liable civilly or criminally for another lawyer's conduct is beyond the scope of these rules.

NEW RULE OF PROFESSIONAL CONDUCT 5.1
(See Former Rule 3-110 Discussion)
Responsibilities of Managerial and Supervisory Lawyers

EXECUTIVE SUMMARY

In connection with consideration of current rule 3-110 (Failing to Act Competently), the Commission for the Revision of the Rules of Professional Conduct ("Commission") has reviewed and evaluated ABA Model Rules 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers), 5.2 (Responsibilities of a Subordinate Lawyer), and 5.3 (Responsibilities Regarding Nonlawyer Assistants). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The evaluation was made with a focus on the function of the rules as disciplinary standards, and with the understanding that the rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. Although these proposed rules have no direct counterpart in the current California rules, the concept of the duty to supervise is found in the first Discussion paragraph to current rule 3-110, which states: "The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents."[1] The result of this evaluation is proposed rules 5.1 (Responsibilities of Managerial and Supervisory Lawyers), 5.2 (Responsibilities of a Subordinate Lawyer), and 5.3 (Responsibilities Regarding Nonlawyer Assistants).

Rule As Issued For 90-day Public Comment

The main issue considered when evaluating a lawyer's duty to supervise was whether to adopt versions of ABA Model Rules 5.1, 5.2, and 5.3, or retain the duty to supervise only as an element of the duty of competence. The Commission concluded that adopting these proposed rules provides important public protection and critical guidance to lawyers possessing managerial authority by more specifically describing a lawyer's duty to supervise other lawyers (proposed rule 5.1) and non-lawyer personnel (proposed rule 5.3). Proposed rules 5.1 and 5.3 extend beyond the duty to supervise that is implicit in current rule 3-110 and include a duty on firm managers to have procedures and practices that foster ethical conduct within a law firm. Current rule 3-110 includes a duty to supervise but says nothing about the subordinate lawyer's duties. Proposed rule 5.2 addresses this omission by stating that a subordinate lawyer generally cannot defend a disciplinary charge by blaming the supervisor. Although California's current rules have no equivalent to proposed rule 5.2, there appears to be no conflict with the proposed rule and current California law in that there is no known California authority that permits a subordinate lawyer to defend a disciplinary charge based on clearly improper directions from a senior lawyer.

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[1] The first Discussion paragraph to current rule 3-110 provides:

> The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288; 499 P.2d 968]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713; 494 P.2d 1257]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161; 396 P.2d 577].)

The following is a summary of proposed rule 5.1 (Responsibilities of Managerial and Supervisory Lawyers).[2]

Proposed rule 5.1 incorporates the substance of ABA Model Rule 5.1. Paragraph (a) requires that managing lawyers make "reasonable efforts to ensure" the law firm has measures that provide reasonable assurance that all lawyers in the firm comply with the Rules of Professional Conduct and the State Bar Act. Paragraph (b) requires that a lawyer who directly supervises another lawyer make "reasonable efforts to ensure" the other lawyer complies with the Rules of Professional Conduct and the State Bar Act, whether or not the other lawyer is a member or employee of the same firm. Neither provision imposes vicarious liability. However, a lawyer will be responsible for a subordinate's violation of a rule under paragraph (c) if a lawyer either ordered or, with knowledge of the relevant facts and specific conduct, ratifies the conduct of the subordinate, ((c)(1)), or knowing of the misconduct, failed to take remedial action when there was still time to avoid or mitigate the consequences, ((c)(2)).

As initially circulated for 90-day public comment, there were nine comments to the rule. Comments [1] – [4] describe the duties of managerial lawyers to reasonably assure compliance with the rules under paragraph (a). Comment [5] states that whether a lawyer has direct supervisory authority over another lawyer in a specific instance is a question of fact. Comments [6] – [9] clarify when a supervisory lawyer is responsible for another lawyer's violation.

National Background – Adoption of Model Rule 5.1

As California does not presently have a direct counterpart to Model Rule 5.1, this section reports on the adoption of the Model Rule in United States' jurisdictions. The ABA Comparison Chart, entitled "Variations of the ABA Model Rules of Professional Conduct, Rule 5.1: Responsibilities of Partners, Managers, and Supervisory Lawyers," revised May 5, 2015, is available at:

- http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_5_1.pdf

Thirty-one states have adopted Model Rule 5.1 verbatim. Fourteen jurisdictions have adopted a slightly modified version of Model Rule 5.1. Five states have adopted a version of the rule that is substantially different to Model Rule 5.1. One state has not adopted a version Model Rule 5.1.[3]

Revisions Following 90-Day Public Comment Period

After consideration of comments received in response to the initial 90-day public comment period, the Commission added Comment [6], the concept of which is derived from proposed rule 5.2(b). In addition, the Commission modified Comment [3] for clarity and deleted Comment [9] as unnecessary.

With these changes, the Board authorized an additional 45-day public comment period on the revised proposed rule.

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[2] The executive summaries for proposed rules 5.2 and 5.3 are provided separately.

[3] The one state is California.

Final Commission Action on the Proposed Rule Following 45-Day Public Comment Period

After consideration of comments received in response to the additional 45-day public comment period, the Commission made no changes to the proposed rule and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 5.1 at its March 9, 2017 meeting.

Supreme Court Action (May 10, 2018)

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. Comment [6] was deleted in its entirety and subsequent Comments were renumbered accordingly.

Rule 5.1 Responsibilities of ~~a Partner or~~Managerial and Supervisory ~~Lawyer~~Lawyers
(Redline Comparison to the ABA Model Rule)

(a) A ~~partner in a law firm, and a~~ lawyer who individually or together with other lawyers possesses ~~comparable~~ managerial authority in a law firm,* shall make reasonable* efforts to ensure that the firm* has in effect measures giving reasonable* assurance that all lawyers in the firm ~~conform to the Rules of Professional Conduct~~* comply with these rules and the State Bar Act.

(b) A lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same law firm,* shall make reasonable* efforts to ensure that the other lawyer ~~conforms to the Rules of Professional Conduct~~complies with these rules and the State Bar Act.

(c) A lawyer shall be responsible for another ~~lawyer's~~lawyer's violation of ~~the Rules of Professional Conduct~~these rules and the State Bar Act if:

(1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the lawyer ~~is a partner or has comparable~~, individually or together with other lawyers, possesses managerial authority in the law firm* in which the other lawyer practices, or has direct supervisory authority over the other lawyer, whether or not a member or employee of the same law firm,* and knows* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable* remedial action.

Comment

~~[1] *Paragraph (a)* applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.~~ *Duties Of Managerial Lawyers To Reasonably* Assure Compliance with the Rules*

[~~2~~1] Paragraph (a) requires lawyers with managerial authority within a law firm* to make reasonable* efforts to establish internal policies and procedures designed ~~to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed~~, for example, to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

[2] Whether particular measures or efforts satisfy the requirements of paragraph (a) might depend upon the law firm's structure and the nature of its practice, including the size of the law firm,* whether it has more than one office location or practices in more than one jurisdiction, or whether the firm* or its partners* engage in any ancillary business.

~~[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.~~

[3] A partner,* shareholder or other lawyer in a law firm* who has intermediate managerial responsibilities satisfies paragraph (a) if the law firm* has a designated managing lawyer charged with that responsibility, or a management committee or other body that has appropriate managerial authority and is charged with that responsibility. For example, the managing lawyer of an office of a multi-office law firm* would not necessarily be required to promulgate firm-wide policies intended to reasonably* assure that the law firm's lawyers comply with the rules or State Bar Act. However, a lawyer remains responsible to take corrective steps if the lawyer knows* or reasonably should know* that the delegated body or person* is not providing or implementing measures as required by this rule.

[4] Paragraph (~~c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).~~a) also requires managerial lawyers to make reasonable* efforts to assure that other lawyers in an agency or department comply with these rules and the State Bar Act. This rule contemplates, for example, the creation and implementation of reasonable* guidelines relating to the assignment of cases and the distribution of workload among lawyers in a public sector legal agency or other legal department. (See, e.g., State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006).)

Paragraph (b) – Duties of Supervisory Lawyers

[5] ~~Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as~~Whether a lawyer ~~who~~ has direct supervisory authority over ~~performance of specific legal work by~~ another lawyer~~. Whether a lawyer has supervisory authority~~ in particular circumstances is a question of fact. ~~Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge~~

~~of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer~~

Paragraph (c) – Responsibility for Another's Lawyer's Violation

[6] The appropriateness of remedial action under paragraph (c)(2) would depend on the ~~immediacy of that lawyer's involvement and the~~nature and seriousness of the misconduct~~. A supervisor is required to~~ and the nature and immediacy of its harm. A managerial or supervisory lawyer must intervene to prevent avoidable consequences of misconduct if the ~~supervisor knows~~lawyer knows* that the misconduct occurred. ~~Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.~~

~~[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.~~

[7] ~~Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.~~A supervisory lawyer violates paragraph (b) by failing to make the efforts required under that paragraph, even if the lawyer does not violate paragraph (c) by knowingly* directing or ratifying the conduct, or where feasible, failing to take reasonable* remedial action.

[8] ~~The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a). the Rules of Professional Conduct. See Rule 5.2(a).~~Paragraphs (a), (b), and (c) create independent bases for discipline. This rule does not impose vicarious responsibility on a lawyer for the acts of another lawyer who is in or outside the law firm.* Apart from paragraph (c) of this rule and rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner,* associate, or subordinate lawyer. The question of whether a lawyer can be liable civilly or criminally for another lawyer's conduct is beyond the scope of these rules.

EXHIBIT 17

The State Bar of California

INSTRUCTIONS FOR SERVICE OF LEGAL PROCESS

(This notice does not apply to filings in the State Bar Court. If you are filing such a document, please proceed to the State Bar Court filing window.)

THE STATE BAR OF CALIFORNIA IS CURRENTLY ACCEPTING SERVICE OF LEGAL PROCESS (SUMMONSES, COMPLAINTS, AND SUBPOENAS) BY EMAIL INSTEAD OF PERSONAL SERVICE. [1]

- **PLEASE SERVE YOUR DOCUMENT(S) BY EMAILING THEM TO SERVICEOFPROCESS@CALBAR.CA.GOV.**
- **DO NOT LEAVE ANY DOCUMENTS WITH SECURITY IN THE LOBBY OR ELSEWHERE, AS THEY WILL NOT BE ACCEPTED.**
- **IF YOU ARE ATTEMPTING TO TENDER WITNESS FEES, PLEASE INDICATE THAT IN YOUR EMAIL MESSAGE AND YOU WILL RECEIVE FURTHER INSTRUCTIONS FOR DELIVERY OF THOSE FEES.**

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[1] The State Bar will only accept legal documents naming the State Bar (or its employees and officers for matters in connection with their official duties). The State Bar is not authorized to accept service of process on behalf of its employees and officers regarding matters outside the scope of their official duties. By receiving your document(s), the State Bar and its employees and officers do not waive any right to object to the validity of service. Your document will be reviewed after receipt and you will be notified if service is rejected due to a defect.

EXHIBIT 18

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JUSTIN S. BECK, Plaintiff and Appellant, v. CATANZARITE LAW CORPORATION et al., Defendants and Respondents.	G059766 (Super. Ct. No. 30-2020-01145998) O P I N I O N

Appeal from orders of the Superior Court of Orange County, Deborah C. Servino, Judge. Affirmed in part and reversed in part. Motions to disqualify and for sanctions denied. Request for judicial notice granted. Motion to augment granted.

Justin S. Beck, in pro. per., for Plaintiff and Appellant.

Catanzarite Law Corporation, Kenneth J. Catanzarite and Nicole M. Catanzarite-Woodward for Defendants and Respondents.

Justin S. Beck filed a malicious prosecution action against Catanzarite Law Corporation, its attorneys Kenneth J. Catanzarite, Brandon Woodward, Tim James O'Keefe (collectively Catanzarite unless the context requires otherwise) and the firm's clients (Amy Jeanette Cooper, Cliff Higgerson, and Mohammed Zakhireh).[1] He alleged some of these defendants were also liable for unfair business practices, slander of title, and intentional infliction of emotional distress (IIED). The trial court granted four special motions to strike (anti-SLAPP motion) (Code Civ. Proc., § 425.16).[2] On appeal, Beck asserts most of his claims are not based on petitioning activity and he would be successful on the merits of his malicious prosecution action. We conclude his contentions have merit and reverse the court's orders.[3]

HISTORY PRIOR APPEALS

Catanzarite filed multiple but similar lawsuits within a one-year period, all of which arise from a dispute between shareholders of MFS and Cultivation Technologies, Inc. (CTI). We incorporate by reference a detailed description of these cases from our opinion *FinCanna Capital Corp. v. Cultivation Technologies, Inc.* (June 28, 2021, G058700) [nonpub. opn.] (*FinCanna*) [for consistency we will continue to refer to these superior court cases as the Pinkerton Action, the MFS Action, the Mesa Action, the Cooper Action, the FinCanna Action, and the Scottsdale Action].)

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1 The lawsuit included other defendants who are not parties to this appeal, including Mobile Farming Systems (MFS), Richard Francis O'Connor, Jr., Tony Scudder, James Duffy, TGAP Holdings (owned by Cooper/O'Connor), and Aroha Holdings (owned by Scudder).

2 All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

3 In this lawsuit, Catanzarite filed a cross-complaint on behalf of MFS against Beck and CTI's attorneys Horwitz + Armstrong. In a case filed concurrently with this appeal, we considered Catanzarite's appeal of the ruling granting Horwitz's anti-SLAPP motion. (*Mobile Farming Systems, Inc. v. Horwitz + Armstrong et al.* (July 13, 2022, G060315) [nonpub. opn.] (*Mobile Farming Systems*).) We reversed the order.

Earlier this year we considered three consolidated appeals concerning CTI's motion to disqualify Catanzarite in four of the six cases mentioned above. (*FinCanna, supra,* G058700.) As will be described in more detail below, we affirmed the trial court's determination Catanzarite could not represent CTI in any manner (including its prosecution of the FinCanna Action). We also concluded neither Catanzarite nor its attorneys could continue advocating for a group of shareholders bringing a derivative lawsuit against CTI and its board members in the Mesa Action. (*Ibid*.) We held in *FinCanna,* "The undisputed nature of the lawsuits, involving parties with conflicting interests, and a corporation with adversarial directors, supported mandatory disqualification as a matter of law." (*Ibid.*)

As for the remaining two cases (the Pinkerton and MFS Actions), we did not review the ruling denying disqualification because neither CTI nor the affected clients filed a notice of appeal challenging those rulings. In the *FinCanna* opinion, we noted a group of defendants in the Pinkerton Action and MFS Action attempted to join in CTI's disqualification motion. However, the trial court rejected the joinder motions as untimely and, alternatively, determined the moving parties lacked standing. The moving parties (Beck, Miguel Motta, Robert Bernheimer, Robert Kamm, and Irving Einhorn) did not appeal this ruling and, accordingly, we did not review it in the *FinCanna* opinion.

Following Catanzarite's disqualification, CTI and Beck filed lawsuits against Catanzarite and some of the firm's clients. Recently, we considered two appeals arising from anti-SLAPP rulings made in CTI's lawsuit. (*Cultivation Technologies, Inc., v. Duffy* (Nov. 12, 2021, G059457) [nonpub. opn.] (*Cultivation*).) We considered and found meritless Catanzarite's appeal of the order denying its anti-SLAPP motion. (*Ibid.*) We also affirmed the trial court's orders denying Cooper and Duffy's anti-SLAPP motion regarding breach of fiduciary claims. (*Ibid.*) We reversed orders granting Cooper and Duffy's anti-SLAPP motion on the remaining claims, concluding they qualified as mixed causes of action that required a claim by claim approach as discussed in *Bonni v. St.*

Joseph Health System (2021) 11 Cal.5th 995, 1010 (*Bonni*). (*Cultivation, supra,* G059457.)

BACKGROUND FACTS[4]

As set forth in Beck's complaint, the history of this case begins in 2015 when a failing corporation sought a new business opportunity in the cultivation and use of cannabis products. MFS's board members, O'Connor, Cooper, and Richard J. Probst formed CTI and appointed themselves to CTI's board of directors. Initially, the directors told MFS shareholders that CTI would become MFS's subsidiary, but their plans changed and they created a separate entity. Beck asserts this was due to the board's concern CTI would be burdened by MFS's previous business failures. The board hired Beck, who was experienced in the cannabis industry and with transitioning small investor-based start-up companies through "an exit or a public merger." Eventually, Beck joined CTI's board of directors and became the president and chief executive officer (CEO) of the company.

In June 2015, O'Connor, Probst, and Cooper executed a document titled, "unanimous written consent of directors of [CTI] [¶] amended organizational acts & resolutions" (hereafter Amended Acts). The Amended Acts stated the original organization consent of CTI's board (Organizational Consent) executed at the end of March 2015 was "made in error" and needed to be amended regarding the issuance of securities. Specifically, the Organization Consent authorized the issuance of 28,000,000 shares of CTI's common stock to MFS in exchange for the contribution of certain assets and cash consideration. The Amended Acts stated MFS failed to provide consideration

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[4] Our factual summary is a compilation of allegations of the operative complaint, declarations, and other evidence submitted in support of the anti-SLAPP motion. (*Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 249.) It should go without saying, these are not litigated facts nor findings, and we imply no view on what actually happened in this case.

For ease of reading, some formatting (such as boldface, underlining, or capitalization) has been omitted from our quotations from the complaint, documentary evidence, and briefing.

and the board determined it was in CTI's "best interests" to sell the stock to its founding shareholders "the 'Founders'" pursuant to a purchase agreement attached as an exhibit. The Amended Acts listed the following Founders: (1) O'Connor; (2) Probst; (3) Cooper; (4) TGAP Holdings (owned by Cooper/O'Connor); (5) I'm Rad (RAD) and EM2 Strategies (EM2) (owned by Beck); (6) Higgerson; (7) Aroha Holdings (owned by Scudder); and (8) Scott Unfug.

Cooper's father, Higgerson, was named one of CTI's Founders because at the time CTI was formed, MFS's "few remaining major liabilities was a $500,000 unpaid loan" owed to Higgerson. The board members of MFS/CTI negotiated a deal whereby Higgerson relinquished payment on the loan and in exchange he acquired 1,000,000 CTI Founder shares for a mere $1,000.

Beck explained Aroha acquired 1,000,000 CTI Founder shares due to Scudder's personal and professional relationship with O'Connor. Beck asserted in his complaint that the Amended Acts essentially granted all MFS shareholders the opportunity to purchase stock in CTI.

One shareholder at the time was Jolly Roger, Inc., owned by Roger Root. Beck alleged Root was contacted about whether Jolly Roger was interested in investing in CTI but Root stated he did not have the capital to pay $4,500 for 450,000 common CTI shares. Beck noted Root "expressed to Scudder that he 'supported' the structure under which CTI was being created."

Beck's complaint alleged CTI complied with the federal law requirement of authorizing a private placement memorandum (PPM) regarding the sale of its securities. CTI was obligated to disclose shareholders owning or controlling more than five percent of CTI's capital stock. MFS was not listed in the PPM. Thereafter, the Founders sold their CTI shares to others. Scudder acted as O'Connor's agent and earned commissions from selling O'Connor's shares. Cooper and O'Connor retained a transfer agent to sell CTI stock to their company TGAP. In October 2015, Duffy subscribed to buy CTI shares

through the PPM. Duffy often invested in the same projects as O'Connor. In March 2016, Zakhireh (O'Connor's plastic surgeon) also subscribed to buy CTI shares through the PPM. Thus, Duffy and Zakhireh received the PPM stating MFS was not a shareholder. In addition to the above mentioned new CTI shareholders, CTI issued stock certificates to approximately 70 new shareholders and MFS was not one of them.

Beck alleged that from 2015 until his resignation from CTI's board in May 2019, the company raised $3.5 million from private investors and approximately $5.9 million from a venture capital lender, FinCanna. Beck, who had initially been retained as a CTI's consultant, was appointed as a director and officer. He occupied various positions including chairman of the board, CEO, President, and chief strategy officer.

In his complaint, Beck asserted that soon after CTI adopted the Amended Acts, MFS stopped operating. The MFS board discussed shutting down the business. MFS's primary asset was a $676,000 executive loan O'Connor owed to MFS.

Beck asserted the rift between CTI board members started in October 2015, when Cooper "left CTI due to complications" arising from her extra-marital affair with O'Connor. Thereafter, in April 2016, CTI's board members asked O'Connor to resign. Beck explained O'Connor "had conducted himself in a manner contrary—and detrimental—to CTI's best interests, including not coming into the office, spending money irrationally, and other 'erratic behaviors.'" Beck believed O'Connor blamed him personally for his removal, and thereafter, began making threats of revenge.

The following year, CTI executed a $14 million funding agreement with FinCanna, which allowed the company to begin constructing manufacturing facilities in Southern California. Beck maintained CTI became "an attractive business opportunity for potential additional investors" which also made it a deep pocket target for those who "bore a grudge." Relevant to this appeal, O'Connor and Zakhireh each filed complaints against CTI. O'Connor's lawsuit asserted CTI breached its contract "related to payments associated with his 2016 settlement agreement." Zakhireh, on behalf of himself and other

CTI shareholders, filed a complaint challenging the board's decision to borrow money from FinCanna and disputing the issuance of "Preferred Series A shares." CTI settled these lawsuits. Zakhireh agreed to receive more CTI shares.

Beck produced evidence that after Cooper's resignation, she continued to work with CTI as an unpaid consultant. Beck recalled speaking with Cooper about Zakhireh's complaints and before he filed a lawsuit she agreed to speak with Zakhireh on CTI's behalf. Cooper told Beck that as a CTI shareholder she was not the only one who had a personal stake in the company's success, and the board was responsible for dozens of other CTI shareholders. In all their discussions about the duties of CTI leadership, Cooper never discussed MFS or that CTI was MFS's subsidiary.

Despite these setbacks due to the lawsuits, CTI pressed forward in the summer of 2018 with its business plan to build a $40 million cultivation and manufacturing facility. Beck maintained CTI engaged an investment bank to raise an additional $25 million and signed a letter of intent with Tidal Royalty for $5 million in financing. Meanwhile, CTI generated over $500,000 in revenue per month, and the board modified its business plan to shift away from cultivation and manufacturing to cannabis extraction. CTI entered several production and distribution agreements with retail cannabis companies and brands.

Beck's complaint alleged all was going well until Catanzarite filed a complaint in September 2018 for Denise Pinkerton. Pinkerton claimed to be acting as attorney in fact for Root, individually and as successor in interest to the claims of his deceased spouse (Sharon Root). The complaint alleged the Roots owned MFS common stock and that the lawsuit was also a shareholder derivative action on behalf of MFS.

The complaint alleged multiple causes of action against CTI, the original board members (O'Connor, Cooper, and Probst), Joseph R. Porche (MFS's securities salesperson), and all parties having a connection to CTI. This included Beck, as CTI's chief strategy officer and his two companies (RAD and EM2), which held CTI Founder's

stock. Similarly, the complaint named TGAP, Higgerson, Aroha, Scudder, and Unfug as defendants holding shares of CTI Founder's stock. The complaint included, Mobin, who held 250,000 shares of CTI stock, shared an office with Porche, and acted as vice president of shareholders relations of MFS and CTI. The complaint explained Bernheimer was included in the lawsuit because he was an attorney who worked with CTI's management team "since inception" and served as chief counsel since 2017. Another defendant, Einhorn, was an attorney and director of CTI. Finally, Motta was included due to his current role as CTI's CEO and a director.

The Roots alleged that in 2012 and 2013, MFS identified itself as an agricultural technology company that manufactured residential hydroponic growing systems. The Roots understood growing marijuana was the anticipated use of MFS's products. In 2014, they heard MFS's directors and Mobin discuss the business opportunities created by the anticipated legalization of marijuana. Root asserted the MFS shareholders were told about the formation of CTI and that it would become MFS's subsidiary. The complaint cited to CTI's Organizational Consent stating MFS would hold 28,000,000 CTI shares of common stock. The Roots claimed they received letters signed by Probst, O'Connor, Cooper, and Mobin about CTI's progress. The complaint also referred to CTI's Amended Acts, which stated the CTI "shares had not been transferred or provided" to MFS. The Roots quoted from the Amended Acts, explaining MFS's board members rescinded MFS's promised shares and instead issued 23,000,000 shares to the Founders. Specifically, the complaint noted O'Connor, Probst, Cooper, and TGAP spent a total of $15,500 to acquire 15,500,000 out of the 23,000,000 shares, giving them 67.3913 percent control of CTI. This percentage was "materially greater than their control ownership of MFS."

For the derivative claims, the Roots asserted Probst, O'Connor, and Cooper, while acting as MFS directors, worked against the interests of company by rescinding MFS's ownership of 100 percent of the outstanding shares of CTI "so that

they, simultaneously acting as the sole directors of the CTI and MFS boards of directors, could capture the entire business opportunity which belonged to MFS for themselves and their co-conspirators." The derivative claims on behalf of MFS included causes of action for breach of fiduciary duty, constructive fraud, conversion, misappropriation of trade secrets, and unfair competition. They sought declaratory relief in the form of a court order that CTI, Probst, O'Connor, Cooper, Beck, Higgerson, and the other defendants "surrender the certificate (or certificates) in their names for cancellation and or reissuance, costs, and expenses incurred in bringing this action and such other relief as the court" deemed proper.

In the constructive fraud cause of action, the Roots asserted "MFS and Root" relied on their fiduciaries, Probst, O'Connor, Cooper, and Mobin. The Roots claimed they were deceived and defrauded by these four specific individuals. They alleged EM2, RAD, Higgerson, Aroha, Scudder, Unfug, Beck, and Bernheimer were liable because they aided and abetted in the fiduciaries' breach of their duties. Alternatively, they maintained Probst, O'Connor, Cooper, and Mobin conspired to breach their fiduciary duties to MFS, while Kamm, Bernheimer, Einhorn, and Motta agreed to cover up their misconduct "in order to maintain their board positions, stock ownership and options, and compensation."

The Roots raised several claims on their own behalf, based on the following factual circumstances: Probst, O'Connor, Cooper, Mobin, and Porche took advantage of frail, elderly, and unsophisticated investors. Starting in 2012, O'Connor, Porche, and Mobin met with 75-year-old Root and his 69-year-old wife. They unscrupulously convinced the Roots to invest virtually all their retirement savings ($437,500) for 1,537,500 shares of MFS common stock "at a price grossly above the true fair market value of said securities."

The Roots initially wire transferred two payments of $125,000 in December 2012. Thereafter, Probst, O'Connor, Cooper, Mobin, and Porche continued to call and

e-mail the Roots asking for more money at an increasing MFS stock price per share. Root sent seven more checks from February to May 2013 to purchase additional shares. The exploitation of the elder abuse cause of action specifically alleged Probst, O'Connor, Cooper, Mobin, and Porche stayed at the Roots' home as house guests. It was alleged the group pretended to be friends with the Roots to gain their confidence and "reduce their guard and caution with the intent of deceiving and taking their retirement savings." In addition to compensatory damages, the Roots sought attorney fees, punitive damages, exemplary damages, treble damages, and the return of all MFS's property.

Several causes of actions were based on the factual allegation Probst, O'Connor, Cooper, Mobin, and Porche received illegal commissions on the sale of MFS securities to the Roots. These defendants were not licensed broker-dealers in California or Florida when they sold the shares. These specific five defendants told the Roots the MFS shares were being sold pursuant to a PPM, and therefore, "purportedly exempt from registration under the federal and state securities laws" when in fact "MFS securities did not qualify as exempt private placements" and were sold in violation of the federal and state securities laws. The Roots believed these individuals knew there were security law violations but rather than tell the Roots about their right to rescind the transactions, they concealed the illegal nature of the transactions.

The complaint alleged these specific individuals also misrepresented or failed to disclose the following material facts: (1) the risks with investing in MFS; (2) their commissions from the stock sales; (3) they claimed to be taking minimal salary compensation when in fact they were receiving excessive compensation and paying personal expenses from the stock subscription money; and (4) Porche was the subject of SEC civil and administrative proceedings resulting in permanent injunctions such as barring him from associating with any brokers, dealers, or investment advisors. Beck recalled that during a meeting with O'Connor and Cooper they revealed MFS's board directed a $340,000 commission payment using the Roots' investment funds.

Beck maintained the Pinkerton Action has several problems from the start. First, Jolly Roger, not the Roots, purchased MFS stocks. More importantly, Roger Root knew CTI was not MFS's subsidiary because he was invited (on Jolly Roger's behalf) to participate in CTI's stock offering but he had declined. Second, Beck submitted evidence showing Jolly Roger was a "defunct" corporation when the lawsuit was filed. The documents revealed Jolly Roger filed articles of dissolution in early 2015 and was not reinstated until January 17, 2019.

Another issue was the inherent inconsistency in the requested remedies. On one hand, the Roots were willing to settle their direct action for 10,000,000 CTI Founders shares and a seat on the CTI board. On the other hand, the Roots derivative claims sought cancellation of all CTI stock certificates because MFS allegedly owned 100 percent of CTI.

Despite these issues, Catanzarite diligently prosecuted the case by serving MFS's counsel (Anderson, McPharlin & Conners) with over 500 discovery requests. Cooper was assigned counsel under CTI's policy.

Beck declared CTI held a shareholder meeting in November 2018 (two months after the Pinkerton Action was filed). He noted Cooper and O'Connor at that time were acting as if CTI was a separate entity from MFS. They did not discuss MFS or whether MFS had a right to vote in CTI's corporate affairs. Rather, Cooper furnished a proxy to vote 4,900,000 shares of her CTI stock, which would not have been possible if MFS supposedly owned all of CTI's stock. Beck recalled hearing Probst, O'Connor, and Cooper discuss whether to settle the Pinkerton Action derivative claims with Root, without involving Catanzarite or its lawyers.

The gravamen of Beck's complaint is the theory that sometime between November 2018 and January 2019, Catanzarite and the O'Connor Faction struck a deal. Specifically, they set into motion a scheme to save members of the O'Connor Faction from liability in the Pinkerton Action. Beck provided evidence showing that around

January 2019 many Pinkerton Action defendants entered into settlement agreements with Catanzarite. They agreed to "renounce" their CTI shares in favor of MFS and entered "into separate agreements to allege—now, for the first time—that CTI had been a subsidiary of MFS all along . . . ." On December 13, 2018, Catanzarite dismissed Porche, and in early January it dismissed Mobin, two of the primary wrongdoers named in the Pinkerton Action.

While Catanzarite was negotiating agreements with other defendants, it continued litigating the Pinkerton Action. Beck asserted the parties eventually designed a scheme that involved misusing the judicial process, publicizing unlawful CTI shareholder written consents, and sending e-mails intent on destabilizing CTI's operations by interfering in merger negotiations and other business prospects. If this plan worked, MFS (controlled by the O'Connor Faction) would be able to regain control of CTI's business/profits and reallocate all the stock shares. MFS shareholders (including the Roots) would likely also benefit from the shift in power.

January 2019 was a busy month for Catanzarite, setting in motion the group's corporate takeover scheme. On January 4, 2019, it dismissed Scudder and Aroha from the Pinkerton Action. On January 22, 2019, it dismissed O'Connor, TGAP, and Unfug. The following day, Catanzarite dismissed Cooper and Higgerson. Thereafter, O'Connor and Cooper used their MFS shareholder votes to reconstitute the MFS board of directors. MFS hired Catanzarite as corporate counsel.

On January 23, 2019, O'Connor executed a "unanimous written consent of the sole shareholder of [CTI]" (2019 Consent), stating he was CEO of MFS and had authority to act by unanimous written consent without a meeting to adopt several resolutions. The first resolution stated MFS was the sole shareholder of CTI and O'Connor, in his capacity as CEO, could issue the written consent stating MFS fully paid for 28,000,000 shares of CTI common stock in March 2015. The next resolution stated the Amended Acts contained the false contention MFS "had not fully paid for all of its

stock [was] facilitated by the wrongful and self-serving conduct" of Probst and Beck. Accordingly, all actions, issuance of shares, and promisors were void or voidable acts. In essence, the written consent sought to unwind three years of CTI's corporate acts.

In addition, the 2019 Consent "resolved" that the entire CTI board of directors was wrongly elected "by shareholders other than MFS" and they were immediately removed. MFS rescinded all CTI's stocks and promissory notes. It elected O'Connor, Zakhireh, and Murphy to serve as CTI's directors. It terminated CTI's auditor and legal counsel.

Around this same time, Catanzarite sent CTI's largest secured creditor, FinCanna, an e-mail stating future modifications or agreements between them must be signed by the new CTI board members (O'Connor, Zakhireh, and Duffy). (See *Cultivation, supra,* G059457 [detailed discussion of Catanzarite's damaging e-mails to CTI's business partners]). Catanzarite also took steps to interfere with CTI's proposed merger with Western Troy Capital Resources, Inc, by writing an e-mail to the company stating the new CTI directors objected to the merger. (*Ibid.*)

However, it was Catanzarite's misuse of the judicial process that formed the basis for Beck's malicious prosecution claims. On January 28, 2019, Catanzarite filed the MFS Action. The claims were brought "derivatively on behalf of its wholly owned subsidiary [n]ominal [d]efendant [CTI]." It named as defendants CTI's board of directors (Probst, Beck, Kamm, and Motta), CTI attorneys (Einhorn and Bernheimer) and several entities (EM2, RAD, and Tow and Grow).[5] CTI was named as a nominal defendant. MFS raised nine causes of action and sought declaratory relief and a permanent injunction. MFS asserted it was entitled to file a derivative action because it organized CTI and acquired 28,000,000 shares of CTI common stock, and therefore, CTI was its wholly owned subsidiary.

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[5] Tow and Grow is not a party to this appeal. The complaint alleged CTI purchased this company, but it was for Probst's personal benefit.

Catanzarite drafted a complaint telling a remarkably different story from the one set forth in the Pinkerton Action. The lawsuit reflected an abrupt shift in allegiances. O'Connor and his allies turned against their former board members Probst and Beck. Indeed, the MFS Action did not allege O'Connor, Cooper, TGAP, Higgerson, Aroha, or Unfug took part in any wrongdoing while they were in control of CTI. Rather these parties were portrayed as "the good guys" who were victimized by Probst, Beck, and other parties who wrongfully sold and purchased CTI shares that belonged to MFS. We note Catanzarite filed the MFS Action acting as MFS's purported corporate counsel while still representing different a shareholder in a derivative action against both MFS and CTI (Pinkerton Action).

In the MFS Action, the complaint asserted Probst and Beck conspired with and were aided and abetted by other Founders to falsely claim CTI's shares were not transferred to MFS and wrongfully reissued those shares. With respect to the other CTI directors and shareholders, the complaint offered the following explanation: "O'Connor, Cooper, TGAP, . . . Higgerson, Aroha, [and] Unfug have agreed to renounce their Founders' Shares in favor of MFS." The complaint failed to explain why renouncing shares and forming an alliance with MFS absolved O'Connor and Cooper from their role in executing the Amended Acts. Nor did the complaint reveal O'Connor's authority to publicize the 2019 Consent, which rescinded the Amended Acts, ousted the board members, and fired CTI's legal counsel. O'Connor's 2019 Consent rescinded CTI shares he and others sold to third parties such as Zakhireh, Cooper, and Higgerson.

To further meddle in CTI's business operations, the MFS Action's complaint asserted CTI's current board of directors were violating Corporations Code section 1507 by "preparing, signing and circulating false minutes, issuing securities, transacting business with insiders, [and] borrowing money from insiders and records relating to CTI." MFS requested that the court enjoin the CTI's board from operating the company until the court held a Corporations Code section 709 hearing (709 hearing) "to

determine the rightful ownership of CTI, its appropriate [b]oard of [d]irectors, and executive structure." The court initially granted a temporary restraining order (TRO), which was highly disruptive to CTI's ability to operate its business.

The trial court (Judge Randall J. Sherman) dissolved the TRO in May 2019 after the 709 hearing. Catanzarite argued MFS had the right to vote in CTI's last board meeting when it elected new officers. The court examined the original Organizational Consent, the Amended Acts, the 2019 Consent, MFS loan documents, and other relevant evidence. It noted CTI's securities agreements, which are required to contain a list of issued shares, did not mention MFS was a shareholder. It found telling that O'Connor signed 50 subscription agreements to sell CTI stock directly to MFS shareholders and all but six of MFS's 59 shareholders purchased CTI stock. It considered an e-mail Probst sent to Cooper and O'Conner in 2017 that discussed closing MFS or declaring bankruptcy because the only asset was a note from CTI. And no one disagreed with Probst's failure to list CTI stock as another MFS asset. The court considered CTI's assertion that beginning in 2015 CTI's board raised over 3,000,000 from over 60 private investors and 6,000,000 in financing based on representations MFS did not own any shares of CTI stock. At the hearing, Catanzarite represented Cooper and O'Connor would testify they signed documents making CTI a separate entity but did not understand it meant they were rescinding the shares promised to MFS. Finally, the court questioned Catanzarite about the reasons for the long delay in bringing the motion, during which CTI and MFS operated as separate entities.

The court determined CTI's election was valid and stated that "every fiber of my being says that the facts are overwhelming against" Catanzarite's position. It stated there was a repudiation of an agreement (the Subsidiary Promise) by people who were the same principles in MFS and then there was evidence of repeated actions after the Amended Actions that were consistent with the notion MFS was not a stockholder. The court concluded the delay in bring this claim further supported the conclusion MFS

"has been of the view that they are not a shareholder." "So the court concludes that the challenge [to CTI's] election is denied, and the court concludes that [MFS] is not a stockholder in CTI."

That same month, Beck resigned from CTI's board. Meanwhile, Catanzarite resumed filing lawsuits to further the O'Connor Faction's and MFS's interests. Each version represented a slight shift in trial tactics, but all were aimed at achieving the same result set forth in the MFS Action. Beck claimed the litigation against CTI created a sense of instability with CTI's business partners and lenders causing the company to lose money.

For example, Catanzarite filed the Mesa Action in April 2019 for Richard Mesa and a *putative class* of MFS shareholders who also purchased CTI shares. The complaint was framed as both a class action and a shareholder derivative action filed "on behalf of" CTI. The complaint asserted the class of MFS/CTI shareholders wanted to consolidate their lawsuit with MFS's derivative action "and to among other relief, recognize the ownership and control of CTI" by MFS's ownership of 28,000,000 shares, 5,000,000 "Friends & Family CTI shares," and 3,000,000 CTI shares issued pursuant to the 2015 PPM.

This Mesa Action grouped the "'[d]irector [d]efendants'" separately from the "'[p]referred [s]hares [d]efendants." The director defendants included members of the Probst Faction (Probst, Beck, Bernheimer, Kamm, Einhorn, and Motta). Ten defendants holding CTI series A preferred stock were collectively referred to as the preferred shares defendants. CTI was listed as a nominal defendant.

One month later, Catanzarite amended the Mesa Action complaint to add Cooper and Tom Mebane as plaintiffs and FinCanna as a defendant. (See *FinCanna, supra,* G58700.) Catanzarite also changed the nature of the action to focus on unraveling CTI's financial dealings with FinCanna and declare CTI's actions and contracts void.

The shareholder no longer wished to join the MFS Action or seek recognition of MFS's controlling stock shares over CTI. (*Ibid.*)

Thus, to briefly recap, at this point Catanzarite's concurrent and successive representation of adverse parties included the following: (1) Catanzarite was representing the Roots' elder abuse lawsuit against CTI and some of its Founders (the Probst Faction) as well as a derivative action against MFS; (2) Catanzarite had made a deal with a handful of CTI Founders to dismiss them from the Pinkerton Action; (3) it became MFS's counsel of record; (4) Catanzarite filed a derivative shareholder lawsuit for MFS, claiming 100 percent control and ownership of CTI, despite having lawsuits filed by other people claiming to be MFS shareholders; and (5) after filing two *derivative* shareholder lawsuits, Catanzarite filed a third derivative action (the Mesa Action) claiming to represent a different set of outsider shareholders, i.e., a class of derivative shareholders willing to join in the MFS Action but also independently seeking damages from CTI, its current shareholders, and board of directors.

At the end of May 2019, Catanzarite filed a lawsuit on behalf of Cooper and Mebane against CTI. The Cooper Action requested the court direct CTI to (1) hold a shareholder's meeting to elect a board of directors; (2) deliver an annual report; (3) appoint an accountant to conduct an audit; and (4) order CTI to pay the costs for an investigation, audit, and costs of the suit. CTI's corporate counsel filed an opposition, asserting a shareholder meeting was scheduled for August 2019. (See *FinCanna, supra,* G058700 [description of Catanzarite's six lawsuits].)

In July 2019, Catanzarite filed first amended complaints (FAC) in the Pinkerton Action and the MFS Action. It removed all derivative action claims made on

behalf of MFS and CTI.[6] Catanzarite claimed to be MFS's and CTI's corporate counsel. Catanzarite next filed two lawsuits as CTI's corporate counsel (the FinCanna Action and Scottsdale Action). The Scottsdale Action is noteworthy in that Catanzarite demanded that CTI's insurance company stop providing a defense or indemnify Beck and other Probst Faction defendants in the Mesa Action. (See *FinCanna, supra,* G058700 [description of Catanzarite's six lawsuits].)

In January 2020, the trial court disqualified Catanzarite and its attorneys from representing CTI and the Mesa Action plaintiffs. (*FinCanna, supra,* G058700.) What happened next is described in full detail in our *FinCanna* and *Cultivation* opinions. (*FinCanna, supra,* G058700; *Cultivation, supra,* G059457), which we incorporate by reference. Relevant to this appeal, on March 5, 2020, Catanzarite dismissed the Pinkerton Action and MFS Action.

Meanwhile, CTI filed a lawsuit against Cooper, Duffy, and Catanzarite for interfering in its business relationships, breaching fiduciary duties, legal malpractice and other allegations related to their misconduct. As discussed in *Cultivation, supra,* G059457, defendants anti-SLAPP motions (for the most part) failed.

Beck, represented by counsel, filed the case underlying this appeal. MFS filed a cross-complaint against Beck, Probst, Bernheimer, Horwitz + Armstrong, Horwitz, Armstrong and other entities (discussed in more detail in our concurrently filed opinion *Mobile Farming Systems, supra,* G060315).

Beck filed a demur to the cross-complaint, a motion to disqualify Catanzarite, and a request for judicial notice of documents supporting these motions. Out of the 13 defendants named in Beck's lawsuit, a handful filed anti-SLAPP motions. Beck

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6 We note the Pinkerton Action FAC was deeply sanitized to remove all traces of accusations against the O'Connell Faction, Porche, Mobin, and TGAP. Where the original complaint specified four people (O'Connell, Probst, Porche, and Mobin) befriended the Roots to swindle the elderly couple out of their retirement funds, the FAC asserted Probst was acting alone.

opposed the anti-SLAPP motions and submitted declarations and a request for judicial notice.[7]

In his opposition to Cooper's motion, Beck asserted Cooper turned her back on CTI and Beck when she and O'Connor were asked to resign from CTI. Beck alleged Cooper, joined by her father Higgerson, had been harassing Beck and CTI for two years. He maintained they helped the other defendants in a two-prong scheme. "First, Cooper and Higgerson assisted [in] the creation of false shareholder consents and other corporate acts claiming that MFS was the 'sole shareholder' of CTI. [This was] a false statement that contradicted the fact that Cooper herself had facilitated sales of CTI shares to dozens of individual CTI shareholders. The MFS Action could not exist without their signatures and alleged collusion with [Catanzarite] and other [d]efendants, because Cooper as a major shareholder of MFS and as its largest debt-holder of MFS had to cooperate. Cooper's cooperation was needed to remove the existing MFS board and purportedly retain [Catanzarite] to file the MFS Action on facts known to be false. Second, both falsified testimony for the purpose of engaging in malicious litigation against Beck and CTI, a second track that [d]efendants hoped would give them the leverage to obtain through illicit means what they could not otherwise have." Beck argued his non-malicious prosecution causes of action did not arise from protected speech, but rather "from corporate actions aided and abetted by Cooper and Higgerson." Moreover, Cooper and Higgerson participated in defendants' malicious prosecution scheme by creating false testimony to support MFS's narrative it was CTI's sole shareholder.

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[7] Our appellate record is lengthy and disorganized. Appellant's appendix and Respondent's appendix contain only select parts of the record. As will be explained in further detail anon, we granted Beck's motion to augment the record with additional relevant exhibits, i.e., copies of his written oppositions and some of the anti-SLAPP motions. However, all the oppositions refer to Beck's 1,209-page request for judicial notice, which is not part of our record. On our own motion, we augment the record to include this document as it was considered by the trial court and necessary for our required de novo review.

Beck's opposition to Zakhireh's motion contained similar arguments. Beck acknowledged Zakhireh was not a plaintiff in any of Catanzarite's previous lawsuits. He argued the malicious prosecution claim could be based on Zakhireh's participation in the conspiracy to prosecute frivolous actions. In addition, "Zakhireh is liable for the other claims against him because he participated directly in various non-judicial actions that constituted corporate sabotage against CTI and Beck. Beck can offer evidence establishing a prima facie case for these claims, and Zakhireh acts as a corporate director or officer to sabotage CTI are not privileged under . . . Civil Code section 47."

Beck filed separate oppositions to Catanzarite's and the attorney's motions, but the arguments overlapped. He alleged anti-SLAPP should not apply when these defendants conspired to use MFS as a vehicle for corporate sabotage of CTI, and "engaged in a series of private, corporate acts to slander and destroy CTI and Beck." He added the basis for liability against the individual lawyers was their direct participation in "various non-judicial actions that constituted corporate sabotage against CTI and Beck."

On October 23, 2020, the trial court considered Zakhireh and Catanzarite's anti-SLAPP motions. It granted Zakhireh's motion as to all claims other than slander of title and granted Catanzarite's motion in full. On November 20, 2020, the court considered and granted Cooper and Higgerson's anti-SLAPP motions.

MOTIONS ON APPEAL

I. *Disqualification Motion*

Beck filed a motion to disqualify Catanzarite (and the firm's attorneys Kenneth Catanzarite (Kenneth), Nicole Marie Catanzarite-Woodward (Nicole), Brandon Woodward (Brandon), and O'Keefe) from this appeal.[8] He argues that for the same reasons this court upheld the disqualification orders regarding the Mesa Action shareholders (Cooper, Higgerson, and Duffy), we must now disqualify Catanzarite from

[8] For the sake of clarity, we will refer to parties having the same last names by their first given names.

representing MFS/CTI shareholders in this appeal. Specifically, he asserts Catanzarite's ongoing concurrent representation of clients with conflicting interests triggered mandatory disqualification. (Citing *FinCanna, supra,* G058700.) We disagree.

As explained in *FinCanna, supra,* G058700, at the same time the trial court granted CTI's disqualification motion, it denied Beck's motion seeking joinder for Catanzarite's disqualification in the Pinkerton and MFS Actions. Beck filed a disqualification motion in his malicious prosecution action, but it appears from our record that the court did not rule on it before granting the defendants' anti-SLAPP motions. Beck waited eight months after filing his notice of appeal to file a disqualification motion directed at the respondents' counsel.

The disqualification motion in this appeal was filed too late. The trial court's order denying Beck's original disqualification motion was immediately appealable. (*Meehan v. Hopps* (1955) 45 Cal.2d 213, 217 [order denying motion for disqualification "left nothing further of a judicial nature for a final determination of his rights regarding opposing counsel, [and] the order was final for purposes of appeal"]; *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1263-1264 [either writ petition or appeal may be filed following denial of motion to disqualify].) In *FinCanna, supra,* G058700, we noted Catanzarite was the only party to appeal the court's disqualification rulings. To consider Beck's current motion on appeal, we would essentially be reviewing an order from which a separate appeal should have been pursued.

"'Collateral estoppel precludes a party from relitigating in a second proceeding the matters litigated and determined in a prior proceeding. The requirements for invoking collateral estoppel are the following: (1) the issue necessarily decided in the previous proceeding is identical to the one that is sought to be relitigated; (2) the previous proceedings terminated with a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party to or in privity with a party in the

previous proceeding.' [Citation.] An order disqualifying an attorney, which was not appealed, has collateral estoppel effect in a subsequent action involving the same issue. [Citation.]" (*A.I. Credit Corp. Inc. v. Aguilar & Sebastinelli* (2003) 113 Cal.App.4th 1072, 1078.) The disqualification issue in the previous proceeding is identical to the one sought to be relitigated. The trial court determined Beck and his codefendants did not have standing to bring the motion, which qualifies as a judgment on the merits. The third element is satisfied in that this malicious prosecution action involves the same parties as the previous proceeding. Beck is collaterally estopped from relitigating the issue of Catanzarite's disqualification.

II. *Request for Judicial Notice (RJN)*

Our court's docket reflects that on August 19, 2021, this court rejected Beck's motion to augment the record with several documents because there was a problem with the pagination. That same day, Beck filed a separate RJN with the following unhelpful caption: "Filed concurrently with index of exhibits and exhibits in support of motion to augment record on appeal." This court filed the RJN and determined the matter would be decided in conjunction with the decision on appeal.

Defendants separately filed an opposition and evidentiary objections to the RJN. They argued the motion was moot because this court rejected Beck's motion to augment. Alternatively, they maintained the motion should be denied because Beck failed to show good cause for the delay and some of the matters were not admissible. These contentions are frivolous. We were dismayed that the evidentiary objections simply repeated the meritless arguments raised in the opposition. The only new argument alleged the documents listed in the RJN lacked relevance, which also turns out to be a frivolous argument.

The RJN includes copies of Beck's oppositions to three different anti-SLAPP motions considered by the trial court, but that were not included in either the appellant's appendix or respondent's appendix. Because we review the trial court's

ruling on the anti-SLAPP motion de novo, these documents are highly relevant to resolving this appeal. Similarly, a copy of Beck's declaration supporting one of the oppositions was relevant for our de novo review. Finally, Beck sought judicial notice of our prior *FinCanna* opinion. As demonstrated above, we frequently refer to it and incorporate portions in this opinion. The opinion certainly was relevant to this appeal.

Contrary to defendants' assertion, appellate courts routinely take judicial notice of the records of their own cases under Evidence Code sections 452, subdivision (d) and 459.2. (See, e.g., *Rel v. Pacific Bell Mobile Services* (2019) 33 Cal.App.5th 882, 886 [on court's own motion, took judicial notice of two prior opinions in the same case as well as underlying appellate records]; *People v. Bilbrey* (2018) 25 Cal.App.5th 764, 769, fn. 7 [taking judicial notice of related appeal in writ proceeding]; *Eden Township Healthcare Dist. v. Eden Medical Center* (2013) 220 Cal.App.4th 418, 421 ["We quote at length from our discussion of the facts in our prior opinion"].)

As for the oppositions and declarations, the trial court considered these documents and we could, on our own motion, augment the record. However, we conclude it would be more time efficient to construe Becks RJN as a motion to augment the record on appeal. Thus, we will grant Beck's motion to augment the record with the exhibits attached to his RJN.

Beck also filed a motion for sanctions against Catanzarite and its attorneys for filing frivolous lawsuits below and baseless objections to his motions on appeal. While sanctions are tempting due to the repetitive and groundless objections, we conclude the opposition to the disqualification motion was at least partially correct. At this time, we deny Beck's motion for sanctions.

DISCUSSION

Section 425.16 authorizes a special motion to strike claims arising from any act "in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (§ 425.16,

subd. (b)(1).) The purpose of the anti-SLAPP statute is to encourage participation in matters of public significance by allowing defendants "to request early judicial screening of legal claims targeting free speech or petitioning activities." (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 880-881.)

"Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16, and if the defendant makes this showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. [Citation.] On appeal, we review the trial court's ruling on the anti-SLAPP motion de novo. [Citation.]" (*Wittenberg v. Bornstein* (2020) 50 Cal.App.5th 303, 311-312 (*Wittenberg*).)

"To establish a probability of prevailing, the plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' [Citations.] For purposes of this inquiry, 'the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (§ 425.16, subd. (b)(2)); though the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim.' [Citation.] In making this assessment it is 'the court's responsibility . . . to accept as true the evidence favorable to the plaintiff . . . .' [Citation.] The plaintiff need only establish that his or her claim has 'minimal merit' [citation] to avoid being stricken as a SLAPP. [Citations.]" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291-292 (*Soukup*).) We will address each cause of action separately.

I. *Slander of Title*

Beck's complaint alleged, inter alia, that Zakhireh, Catanzarite, and Kenneth were liable for slander of title. The complaint stated: "Defendants effected, or

caused to be effected, certain shareholder consents of MFS and CTI which they knew to be false, stating that MFS was the sole shareholder of CTI. On the basis of these alleged consents, title to ownership by Plaintiff of CTI shares was thereby compromised. Indeed, such slander also prevented [Beck] from pursuing valuable business opportunities or growth capital on behalf of CTI." He alleged these defendants acted "with reckless regard in making statements that they knew were false. Defendants knew that other parties would rely upon their statements. Here, the slander of title by [d]efendants destroyed [Beck's] opportunity to sell shares in the public markets through a proposed merger with Troy, or other public offering as an alternative, each at times when public market valuations in 2019 were superior to current market conditions."

Thus, Beck's claim appears to be based on publication of the 2019 Consent, which was intended to reinstate MFS as CTI's primary shareholder and purportedly replaced CTI's board members. As pled, this conduct does not obviously relate to protected litigation-related activity, which the first prong of anti-SLAPP requires. Accordingly, we agree with the trial court's determination Zakhireh failed to meet his burden on the first prong and properly denied the motion as to this claim.

With respect to Catanzarite/Kenneth, the trial court concluded these moving parties met their burden on first prong because Beck "conceded" in his opposition the law firm "published" the 2019 Consent when drafting the MFS Action's complaint. Filing a complaint certainly falls under section 425.16 subdivision (e)(1) [writing made in judicial proceeding]. However, we read Beck's opposition differently. While he mentions Catanzarite's reference to the 2019 Consents in the complaint, he adamantly refuted the contention his slander of title claim was entirely based on protected activity. He asserted Catanzarite/Kenneth "was one of those responsible for the non-privileged publications that directly slandered Beck's title to CTI shares." He explained that *after* publishing the written consent in the MFS Action's complaint, Catanzarite/Kenneth and their "allies" changed tactics because the MFS Action and Pinkerton Action failed. Beck maintained

the scheming defendants tried to take control of CTI through a shareholder vote with O'Connor holding the shareholders' proxies. Beck concluded the alleged actions of corporate sabotage outside of the courtroom were not protected actions. "[R]ecission of the Amended Acts through the issuance of the shareholder consent" were not dependent on the pursuit of litigation.

Beck's opposition revisited this line of argument when discussing the second prong of anti-SLAPP. He repeated the slander of title claim was not based "on acts that were made in any kind of 'judicial proceeding.'" He asserted, "the most damaging representations made regarding Beck's CTI shares were made completely separate from litigation, when [Catanzarite/Kenneth] and the individuals purporting to make up the MFS board issued the supposed consent that knowingly claimed false ownership of CTI." None of the above language suggests Beck conceded the basis of his slander of title claim was litigation-related conduct.

Because we read the complaint and Beck's opposition differently than the trial court, we reverse the decision to grant Catanzarite/Kenneth's anti-SLAPP motion with respect to the slander of title claim. Catanzarite did not meet its burden of showing this claim was based on protected activity. We conclude Beck's reference to allegations in the complaint merely served to provide context to the timing of the publication of the 2019 Consent and events amounting to acts of corporate sabotage following the lawsuits. "'Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.' [Citation]" (*Bonni, supra,* 11 Cal.5th at p. 1012 [incidental or collateral assertions not subject to section 425.16].)

II. *Intentional Infliction of Emotional Distress (IIED)*

Beck's complaint contains a very short discussion of a factual basis for this cause of action. It alleged all the defendants caused him to suffer emotional distress, including those involved in "conducting their malicious prosecution scheme." He

asserted these defendants engaged in reckless disregard, knowing he "would be required to answer baseless claims made against him on the basis of knowingly false statements made by [d]efendants." We agree with the trial court's determination that to the extent this claim is dependent on the malicious prosecution claim, it satisfies the first prong of anti-SLAPP. (*Lee v. Kim* (2019) 41 Cal.App.5th 705, 719 (*Lee*) ["every claim of malicious prosecution is a cause of action arising from protected activity, because every such claim necessarily depends upon written and oral statements in a prior judicial proceeding"].)

Beck's complaint also contains the broadly worded allegation the defendants "engaged in a pattern of despicable conduct, as set forth in the allegations described herein." As mentioned, the "pattern of despicable conduct" includes non-litigation claims, such as the publication of the 2019 Consent (supporting the slander of title cause of action). Because this cause of action refers to both protected conduct and non-litigation actions, it qualifies as a "mixed cause[] of action," a concept discussed at length in our prior opinion *Cultivation, supra,* G059457, which we incorporate by reference.

As discussed in more detail in our prior opinion, our Supreme Court has recently clarified that courts must take a claim by claim approach when considering each cause of action subject to an anti-SLAPP motion. (*Bonni, supra*, 11 Cal.5th at p. 1010; *Baral v. Schnitt* (2016) 1 Cal.5th 376, 382 (*Baral*).) "Section 425.16 is not concerned with how a complaint is framed, or how the primary right theory might define a cause of action. While an anti-SLAPP motion may challenge any claim for relief founded on allegations of protected activity, it does not reach claims based on unprotected activity." (*Baral, supra,* 1 Cal.5th at p. 382.) Accordingly, "'[C]ourts should analyze each claim for relief—each act or set of acts supplying a basis for relief, of which there may be several in a single pleaded cause of action—to determine whether the acts are protected

and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion. [Citation.]'" (*Ibid.*)

In light of this case authority, we conclude the moving parties did not meet their burden of showing Beck's *entire* IIED claim rested on protected activity. Taking a claim by claim approach, it appears there were non-litigation allegations supporting the cause of action that cannot be stricken under anti-SLAPP. The claims relating to malicious prosecution satisfy the first prong, but as we will discuss in more detail below, Beck met his burden on the second prong, i.e., regarding probability of prevailing. Therefore, we must reverse the ruling on this cause of action.

III. *Unfair Business Practices*

Like the IIED cause of action, we conclude the unfair business practices claims were a mixed cause of action. In addition to the moving parties' actions of filing frivolous lawsuits (the malicious prosecution allegations), this cause of action referred to unprotected acts of attorney malpractice (violations of the Rules of Professional Conduct), violation of Corporations Code section 1507 regarding the false publication of documents about a corporate entity (the 2019 Consent), and violation of Business and Professions Code section 6104 regarding an attorney appearing without authority.

The trial court viewed the attorney malpractice allegations as relating to protected conduct because Beck did not prove he was Catanzarite's client. It reasoned anti-SLAPP must apply when a non-client raises a professional negligence claim against an opponent's attorney. This ruling improperly conflates the first and second prongs of anti-SLAPP.

The existence or nonexistence of an attorney client relationship is a dispute that relates only to the second prong. "'The sole inquiry' under the first prong of the test is whether the plaintiff's claims arise from protected speech or petitioning activity. [Citation.] In making this determination, '[w]e do not consider the veracity of [the plaintiff's] allegations' [citation] nor do we consider '[m]erits based arguments.'

[Citations.] If the defendant demonstrates the plaintiff's claims do arise from protected activity, we then review the potential merits of the plaintiff's claims in the second step of the analysis. [Citation.] . . . Whether [plaintiff] actually shared an attorney-client relationship with defendants relates to the merits of [his] claims and is therefore not relevant to our first prong analysis. Although defendants may ultimately defeat [Beck's] claims by proving the absence of an attorney-client relationship, that does not alter the substance of [his] claims. [Citation.]" (*Sprengel v. Zbylut* (2015) 241 Cal.App.4th 140, 156-158, fns. omitted.)

Beck's unfair business practices cause of action was also based on an alleged violation of Corporations Code section 1507. In the briefing, the moving parties assert the acts giving rise to liability under the statute "are the lawsuits and related litigation activity concerning MFS's status as CTI's sole shareholder and the veracity of the CTI preferred stock issuance." As aptly stated by Beck in his opposition, the moving parties "assume[]" this cause of action arises from protected activity because there was clear evidence of Catanzarite's "pattern of litigation abuse." Beck explained, "Though this pattern exists and [was] discussed [by both parties regarding the malicious prosecution cause of action, Catanzarite] wrongly assumes that Beck's other causes of action arise from litigation acts. To the contrary, they arise from non-expressive acts of what amounts to corporate sabotage of CTI and Beck. These are not acts that the Legislature meant the anti-SLAPP statute to protect." Beck asserts his causes of action were not based on protected activity, "but instead on the fact that [Catanzarite] willingly participated in MFS's use as a corporate shell to sabotage CTI and Beck. [Catanzarite's] participation in this conspiracy, even if contemporaneous with its abuses of the judicial process, [should] not mean that Beck's claims arises from protected activity."

To support this argument, Beck referred to allegations in the complaint regarding several defendants (including Zakhireh) who "reconstituted the MFS board of directors" to sabotage CTI and Beck. Beck asserts these defendants adopted corporate

documents to renounce the Amended Acts and attempted to remove CTI's board, none of which was protected litigation-related conduct. He alleged Catanzarite "was the hub of the [d]efendant's scheme" because it "arranged and maintained the agreements by which the [d]efendants asserted control of MFS and agreed to attack Beck and CTI, then divide the soils among themselves." We agree the factual basis for the Corporations Code violation allegations do not satisfy the first prong, and should not be stricken pursuant to the anti-SLAPP statute.

Finally, Beck's unfair business practices cause of action contained allegations Catanzarite/Kenneth (aided by Zakhireh) violated Business and Professions Code section 6104. The moving parties assert this cause of action relates to protected conduct because it includes the factual allegation Zakhireh aided MFS's attorneys by providing false supporting declarations for lawsuits. Supplying a written declaration for a lawsuit would qualify as protected activity, however, the complaint specifies a different factual basis for the claim. Specifically, Beck's complaint set forth the following three points: (1) Business and Professions Code section 6104 provided an attorney cannot appear for a party corruptly or without authority; (2) Catanzarite and its attorneys "were well aware that they lacked authority to appear on behalf of CTI and other parties" but they did so anyway; and (3) Zakhireh, O'Conner, and Duffy aided the other defendants in violating this statute.

We conclude the activity underlying the claim—Catanzarite's representation of CTI in the trial court—is constitutionally protected conduct. "[A]ll communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute. [Citation.]" (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 479-480.) Thus, the moving parties established the first prong of the SLAPP analysis.

Turning to the second prong, we conclude Beck cannot show minimal merit on this sub-claim of the unfair business practices cause of action. Violations of Business

and Professions Code section 6104 does not authorize Beck to sue or recover damages from Catanzarite or its aider and abettors. Violation of a disciplinary rule allows the Supreme Court to suspend or disbar an attorney. (Bus. & Prof. Code, § 6100.) It does not give "'an antagonist in a collateral proceeding or transaction . . . standing to seek enforcement of the rule.' [Citation.]" (*Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 303.) Beck cannot prevail on this claim and it must be stricken from the cause of action.

IV. *Malicious Prosecution*

Beck alleged all the defendants were liable for malicious prosecution because the Pinkerton Action, MFS Action, and Scottsdale Action were initiated and prosecuted without probable cause and with malice. He maintained the first two lawsuits were "rooted on the fraudulent assertion of MFS's ownership of CTI," which each defendant knew was untrue. He added Catanzarite filed the Scottsdale Action without any authorization from CTI's board, and therefore knew it also lacked probable cause.

The first step of the anti-SLAPP inquiry, whether defendants made a threshold showing the malicious prosecution claim arose from protected activity, is not disputed here. "The plain language of the anti-SLAPP statute dictates that every claim of malicious prosecution is a cause of action arising from protected activity, because every such claim necessarily depends upon written and oral statements in a prior judicial proceeding. [Citation.] Accordingly, our inquiry shifts to whether [Beck] satisfied [his] burden[] to demonstrate a probability of prevailing on the merits of [his] claims for malicious prosecution. [Citations.]" (*Lee, supra,* 41 Cal.App.5th at p. 719.)

"To prevail on a malicious prosecution claim, the plaintiff must show that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice. [Citation.]" (*Soukup, supra,* 39 Cal.4th at p. 292.)

A. *Favorable Termination*

It is undisputed Catanzarite voluntarily dismissed the Root Action and the MFS Action on March 5, 2020. It dismissed the Scottsdale Action on November 18, 2019. "[A] voluntary dismissal is presumed to be a favorable termination on the merits[.] [Citation.]" (*Lee, supra,* 41 Cal.App.5th at p. 720.)

In its briefing, Catanzarite notes the trial court questioned whether Beck satisfied his burden of showing there were favorable dismissals. The court opined Catanzarite likely dismissed the action after it received the ruling at the Corporations Code section 709 hearing that MFS was not a shareholder (and therefore lacked standing to bring the derivative action). The court added a dismissal for this kind of technical reason would not indicate Beck was innocent of wrongdoing, especially when he was still a defendant in the ongoing Mesa Action. We disagree with this analysis.

"It is not essential to maintenance of an action for malicious prosecution that the prior proceeding was favorably terminated following trial on the merits." (*Lackner v. LaCroix* (1979) 25 Cal.3d 747, 750 (*Lackner*).) "'The fact that such legal termination would not be a bar to another civil suit or criminal prosecution founded on the same alleged cause is no defense to the action for malicious prosecution; otherwise a party might be continuously harassed by one suit after another, each dismissed before any opportunity for a trial on the merits.' [Citation.]" (*Kennedy v. Byrum* (1962) 201 Cal.App.2d 474, 480.) Thus, Beck's status as a defendant in a different action has little relevance.

We appreciate the trial court's concern that "termination must *reflect* on the merits of the underlying action. [Citation.]" (*Lackner, supra,* 25 Cal.3d at p. 750.) "To determine 'whether there was a favorable termination,' we 'look at the judgment as a whole in the prior action . . . .' [Citation.]" (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 341.) "[C]ourt[s] must examine the reasons for termination to see if the disposition reflects the opinion of the court or the prosecuting party that the action would

not succeed." (*Sierra Club Foundation v. Graham* (1999) 72 Cal.App.4th 1135, 1149.) Dismissals that result from negotiation, settlement or consent are generally considered not to be a favorable termination, because such a dismissal "reflects ambiguously on the merits of the action . . . ." (*Minasian v. Sapse* (1978) 80 Cal.App.3d 823, 827 fn. 4 (*Minasian*).) Likewise, a dismissal based upon the statute of limitations is not a favorable termination, because it is technical or procedural termination rather than one on the merits. (*Lackner, supra,* 25 Cal.3d at p. 751.)

In contrast, a dismissal for failure to prosecute is "not a dismissal on technical grounds" but rather reflects on the merits based upon "the natural assumption that one does not simply abandon a meritorious action once instituted." (*Minasian, supra*, 80 Cal.App.3d at p. 827.) A voluntary dismissal not based upon the parties' settlement or consent, even where it is made without prejudice, is generally considered to be a favorable termination to support a malicious prosecution action. (*Fuentes v. Berry* (1995) 38 Cal.App.4th 1800, 1808; *Villa v. Cole* (1992) 4 Cal.App.4th 1327, 1335.) In the *Sycamore Ridge Apartment* case, the court held that a voluntary dismissal is presumed to be a favorable termination, unless proved to the contrary by the party who prosecuted the underlying action and dismissed it. (*Sycamore Ridge Apartments, LLC v. Naumann* (2007) 157 Cal.App.4th 1385, 1400 (*Sycamore*).)

In this case, Catanzarite dismissed two complaints on the same day, March 5, 2020. There was no evidence these dismissals occurred as a result of a settlement between Beck and plaintiffs. The trial court reasoned the dismissals were likely due to the previous Corporations Code section 709 ruling, holding MFS was not one of CTI's shareholders. However, the record shows that when Catanzarite learned MFS lacked standing to bring a derivative suit on CTI's behalf, it did not dismiss the lawsuits. Catanzarite filed FACs instead.

The record shows that three months after the court ruled MFS was not CTI's shareholder, Catanzarite amended the complaints in the Pinkerton Action and MFS

Action by deleting the derivative causes of action. Catanzarite transformed both lawsuits into direct actions against Probst, Beck, and other CTI-related entities. Thus, the record does not support the court's conclusion Catanzarite dismissed the lawsuits for the mere technical reason MFS was not a shareholder. The complaints were amended to purportedly reflect this correction.

It is more likely Catanzarite's voluntary dismissal of the two lawsuits was related to a later disqualification ruling and the lack of tenable claims. The dismissals took place just a few months after the court disqualified Catanzarite and its attorneys from representing CTI and the Mesa Action plaintiffs (the class action shareholder derivative lawsuit). Given Catanzarite's zeal for filing multiple lawsuits against the same defendants, we can assume it would not abandon a meritorious action already initiated. Thus, we conclude the voluntary dismissal in this case should be regarded as a favorable termination of the two lawsuits (Pinkerton Action and MFS Action).

There is very little information in our record about the Scottsdale Action. Beck submitted a document filed in the United States District Court, Central District, showing Catanzarite filed the Scottsdale Action claiming to be CTI's authorized corporate counsel. The document reflected that on November 18, 2019, CTI dismissed the action against CTI's insurance company "in its entirety." As noted in our prior opinion, on November 15, 2019, the court granted the motion disqualifying Catanzarite from representing CTI. (*FinCanna, supra,* G058700.) In making its ruling, the court noted Catanzarite could not represent two client adversaries and in the Scottsdale Action CTI claimed to be representing the corporation and at the same time sought to invalidate a defense and indemnity for CTI directors under CTI's insurance policy. (*Ibid.*) The court stated a denial of coverage could put CTI "'on the hook for the individuals' costs of defense and/or liability.'" In other words, the court recognized Catanzarite was improperly using the Scottsdale Action for an improper purpose, i.e., to help his clients in the Mesa Action. Accordingly, this dismissal was a favorable termination on the merits.

B. *Commencement of Action*

As for the issue of commencement, the parties do not dispute Catanzarite and Attorneys were responsible for filing the lawsuits at issue in this case.

Zakhireh asserts he was not a party to the lawsuits at issue and cannot be held liable. We disagree. While he did not direct the commencement of the Pinkerton Action, there was evidence supporting the conclusion he was instrumental in the MFS Action. As mentioned, the complaint alleged that after O'Connor and Cooper secured their dismissals from the Pinkerton Action, they used the near-bankrupt MFS as a litigation tool to raise untenable claims against their former business partners (Probst and Beck). Beck presented evidence showing O'Connor (on behalf of MFS) selected Zakhireh to be CTI's treasurer and chief financial officer. Beck alleged Zakhireh, at the same time, was part of MFS's new board comprised of O'Connor's allies. In his newfound position with MFS, Zakhireh would have the duty of discussing litigation plans with MFS's corporate counsel Catanzarite and the other MFS board members. How could MFS have filed the MFS Action without the approval of its board members?

We conclude Zakhireh's position as both an MFS and CTI director raises a strong inference he aided the O'Connor Faction and MFS's corporate counsel (Catanzarite) with the group's plans for an illegal corporate takeover. As noted by Beck, a person who aids and abets a malicious prosecution can be held liable. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1131, fn. 11 ["A person who is injured by groundless litigation may seek compensation from any person who procures or is actively instrumental in putting the litigation in motion or participates after the institution of the action"].)

As for Cooper and Higgerson, they were not responsible for commencing the Pinkerton Action because they were the defendants. However, one can reasonably infer Cooper and Higgerson, like O'Connor, made a deal with Catanzarite in exchange for their dismissal from the Pinkerton Action. Beck alleged Cooper and Higgerson were

instrumental in assisting MFS and its shareholders in their efforts to take over CTI. These dismissed defendants helped by agreeing to testify in support of MFS's new allegedly fabricated claim to own 100 percent of CTI. Cooper's participation was further demonstrated by Beck's evidence her vote was needed before MFS's corporate counsel (Catanzarite) could file the lawsuit, because she held five million MFS shares. Cooper did not refute this evidence.

C. *Probable Cause*

"An action is deemed to have been pursued without probable cause if it was not legally tenable when viewed in an objective manner as of the time the action was initiated or while it was being prosecuted. The court must 'determine whether, on the basis of the facts known to the defendant, the institution of the prior action was legally tenable.' [Citation.] 'The resolution of that question of law calls for the application of an *objective* standard to the facts on which the defendant acted. [Citation.]' [Citation.] The test the court is to apply is whether 'any reasonable attorney would have thought the claim tenable . . . .' [Citation.] The tort of malicious prosecution also includes the act of 'continuing to prosecute a lawsuit discovered to lack probable cause.' [Citation.] In determining the probable cause issue, the same standard applies 'to the continuation as to the initiation of a suit.' [Citation.]" (*Sycamore, supra,* 157 Cal.App.4th at p. 1402.)

"'Continuing an action one discovers to be baseless harms the defendant and burdens the court system just as much as initiating an action known to be baseless from the outset.' [Citation.] 'A person who had no part in the commencement of the action, but who participated in it at a later time, may be held liable for malicious prosecution.' [Citations.]" (*Sycamore, supra*, 157 Cal.App.4th at p. 1398.) "A claim for malicious prosecution may also apply to a defendant who has brought an action charging multiple grounds of liability when some, but not all, of the grounds were asserted without probable cause and with malice. [Citations.]" (*Id.* at p. 1399.)

"In analyzing the issue of probable cause in a malicious prosecution context, the trial court must consider both the factual circumstances established by the evidence and the legal theory upon which relief is sought. A litigant will lack probable cause for his action either if he relies upon facts which he has no reasonable cause to believe to be true, or if he seeks recovery upon a legal theory which is untenable under the facts known to him." (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 164-165.) "In making its determination whether the prior action was legally tenable, the trial court must construe the allegations of the underlying complaint liberally in a light most favorable to the malicious prosecution defendant. [Citation.]" (*Id.* at p. 165.)

We conclude Beck met the low burden of proving his claim had minimal merit with respect to Catanzarite. Unlike the trial court, we find it relevant Catanzarite initiated the Pinkerton Action, a shareholder derivative action on behalf of MFS, without first verifying the Roots owned shares in MFS. Beck presented evidence they did not. He submitted stock certificates showing the Roots' corporation, Jolly Roger, invested in MFS, but this entity lost its corporate status between 2015 to 2019. Thus, both the Roots and Jolly Roger lacked standing to bring a shareholder derivative lawsuit. Before agreeing to become an attorney of record in a case, an attorney should, at a minimum, be familiar with the client's claims as a purported shareholder, and should have made a preliminary determination about whether probable cause existed to support the asserted claims.

Here, Catanzarite filed a shareholder derivative lawsuit on behalf of clients who were not actually shareholders. The basic nature of a shareholder derivative action is to *permit shareholders* to "'bring a derivative suit to enforce the corporation's rights and redress its injuries when the board of directors fails or refuses to do so.' [Citation.]" (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1003.) There are stock ownership requirements for standing to pursue a shareholder's derivative suit. (See Corp. Code, § 800.)

Catanzarite also drafted a complaint seeking recovery upon two legal theories which were untenable under the facts known to the firm's attorneys. The Pinkerton Action's derivative shareholder claims all related to the following factual circumstances: In 2015, MFS board of directors (Probst, O'Connor, and Cooper) promised its shareholders MFS owned 100 percent of the CTI's outstanding shares (a total of 28,000,000 CTI common stock) (hereafter referred to as the Subsidiary Promise). MFS's board of directors became CTI's board of directors and "captured the entire business opportunity" for themselves, reneging on the Subsidiary Promise. And thereafter, CTI entered into agreements with third parties to implement its marijuana business plan and sold shares to investors. The MFS board members' recission of the Subsidiary Promise was the basis for the following shareholder derivative claims: constructive fraud; breach of fiduciary duty; misappropriation of trade secrets; and unfair competition.

The Roots' direct claims related to misconduct by the MFS board members but the Roots indicated they were willing to settle the case in exchange for a large quantity of CTI Founder shares and a seat on CTI's board. The Roots inexplicably did not want to be on MFS's board, despite their allegations about the Subsidiary Promise and decision to raise claims on MFS's behalf. The complaint's internal inconsistency and standing issues certainly raise red flags.

Given the Roots' settlement request for CTI shares, it is reasonable to infer Catanzarite and his clients knew only those shares had value and also understood those shares were available because MFS did not own 100 percent of CTI. Under these circumstances, a reasonable attorney may not have found the Pinkerton Action claims tenable. Moreover, when the factual allegations of the Pinkerton Action and the MFS Action are compared in an objective manner, no reasonable attorney would conclude both had merit. Simply stated, one action was based on the factual premise CTI's board members improperly renounced the Subsidiary Promise, leaving MFS *without any* CTI

shares, and the other was based on the factual premise MFS *currently owned* 100 percent of CTI's shares, rendering any other CTI stock certificates worthless.

The lack of probable cause for maintaining the two lawsuits was further demonstrated by evidence Catanzarite filed multiple lawsuits while unethically representing clients with conflicting interests. For good reason, it is difficult to apply the "reasonable attorney" test when there is evidence the attorneys initiating the cases violated multiple rules of professional conduct. For example, no reasonable attorney would agree to act as corporate counsel of MFS while at the same time representing shareholders in a derivative lawsuit against that corporation. Yet this is exactly what happened when Catanzarite filed the MFS Action while also litigating the Pinkerton Action. We conclude the concurrent representation of directly adverse parties creates a strong inference the attorneys and litigants knew the claims in one or both lawsuits were untenable.

Beck also presented evidence Catanzarite and the O'Conner Faction created a mutually beneficial alliance. In exchange for their dismissal from the Pinkerton Action, these former defendants agreed to help opposing counsel file a different lawsuit against CTI and the Probst Faction (which included Beck). Beck's evidence suggested these CTI shareholders agreed to create and support a false story about MFS's ownership of CTI, revive MFS by reconfiguring its board of directors, and then use MFS as a litigation tool to sabotage CTI and its board members. In addition to providing testimony that MFS owned CTI, the O'Connor Faction members publicly renounced their CTI stock shares. O'Connor executed the 2019 Consent, without objection from his cohorts, which rendered worthless all their CTI stocks. As pointed out by Beck, all of this anti-CTI activity, following their dismissals from the Pinkerton Action, was highly suspect especially when one considers their actions and business dealings as CTI board members and shareholders from 2015 to 2019.

As discussed in more detail in our factual summary, after the formation of an alliance between Catanzarite and the O'Conner Faction, Catanzarite embarked on a spectacularly relentless mission (inside and outside of the courtroom) to replace CTI's board members with members of the O'Connor Faction. MFS/Catanzarite could not have initiated the MFS Action without the evidence and testimony provided by members of the O'Connor Faction. Accordingly, there was enough evidentiary support for Beck's claim Cooper, Higgerson, and Zakhireh, who were O'Connor's loyal allies, were instrumental in the maintenance of MFS Action knowing it lacked probable cause. We conclude Beck submitted enough evidence to satisfy his low burden at this stage of the proceedings with respect to the element of probable cause as to all the moving parties.

D. *Malice*

The above evidence also lends support to the malice requirement of anti-SLAPP. "'Malice "may range anywhere from open hostility to indifference." [Citations.]' [Citation.] While the mere absence of probable cause, without more, 'is not sufficient to demonstrate malice' [citation] '"[m]alice may also be inferred from the facts establishing lack of probable cause." [Citation.]' [Citation.] . . . '[T]he extent of a defendant attorney's investigation and research may be relevant to the further question of whether or not the attorney acted with malice.' [Citation.]" (*Sycamore, supra,* 157 Cal.App.4th at p. 1409.)

It appears the complaints were filed by plaintiffs lacking standing and/or included untenable claims. If Catanzarite knew the relevant facts, and only dismissed the O'Conner Faction and not the entire CTI board, we can infer the continued prosecution of those claims was motivated by malicious intent. If Catanzarite was not aware of the plaintiffs' lack of standing because it failed to adequately familiarize itself with the case before filing the lawsuit, this too would indicate indifference, and therefore also, the inference of malice.

Malice can also be inferred from evidence the MFS Action was initiated and maintained as part of a larger scheme to replace CTI's board with MFS shareholders, i.e., a hostile corporate takeover. The MFS Action complaint included a request for declaratory relief in the form of a court order declaring MFS owed 100 percent of CTI's stock, replacement of CTI's board, and confirmation CTI's business deals were invalidated. Catanzarite also separately filed a motion under Corporations Code section 709, asking the court to confirm MFS was a shareholder and must be permitted a vote in CTI's board elections. After losing the motion and hearing the court rule MFS was not CTI's shareholder, the parties did not immediately dismiss the lawsuit. Instead, Catanzarite filed more lawsuits and began acting as corporate counsel of both MFS and CTI. It can be inferred O'Connor, Cooper, Higgerson, and Zakhireh continued to authorize and support Catanzarite's efforts to reallocate CTI's shares to MFS and oust the Probst Faction from CTI's board.

In light of all of the above, we conclude Beck submitted enough evidence to satisfy his burden with respect to the element of malice. "'[T]he defendant's motivation is a question of fact to be determined by the jury.' [Citation] 'Because direct evidence of malice is rarely available, "malice is usually proven by circumstantial evidence and inferences drawn from the evidence." [Citation.]' [Citation.]" (*Citizens of Human., LLC v. Hass* (2020) 46 Cal.App.5th 589, 607.) We conclude the evidence supports a reasonable inference Catanzarite, O'Connor, Cooper, Higgerson, and Zakhireh were working together and pursuing litigation lacking probable cause against Beck with an improper purpose.

DISPOSITION

We affirm the court's orders granting the moving party's anti-SLAPP motion regarding paragraph 124 of the complaint, regarding violation of Business and Professions Code section 6104.

We affirm the court's order denying Zakhireh's anti-SLAPP motion regarding the slander of title cause of action.

We reverse the court's orders granting the moving party's anti-SLAPP motion regarding Beck's causes of action for malicious prosecution, unfair business practices, slander of title, and intentional infliction of emotional distress. The matter is remanded for further proceedings.

We treat Beck's request for judicial notice as a motion to augment and grant it. We deny all requests for sanctions on appeal. We deny Beck's disqualification motion. On our own motion, we augment the record with the request for judicial notice Beck filed with his oppositions to the anti-SLAPP motions. In the interests of justice, each party shall bear their own costs on appeal.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

SANCHEZ, J.

EXHIBIT 19

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FINCANNA CAPITAL CORP., Plaintiff and Cross-defendant, v. CULTIVATION TECHNOLOGIES, INC., et al., Defendants, Cross-complainants, and Respondents. CATANZARITE LAW CORPORATION, Objector and Appellant.	G058700 consol. w/ G058942 & G058931 (Super. Ct. Nos. 30-2019-01072088 & 30-2019-01064267) O P I N I O N
RICHARD MESA et al., Plaintiffs, v. CULTIVATION TECHNOLOGIES, INC., Defendant and Respondent. CATANZARITE LAW CORPORATION, Objector and Appellant.	

Appeal from orders of the Superior Court of Orange County, Randall J. Sherman. Affirmed.

Catanzarite Law Corporation, Kenneth J. Catanzarite and Nicole M. Catanzarite-Woodward for Objector and Appellant.

Horwitz + Armstrong, John R. Armstrong and Alexander Avakian for Defendant, Cross-complainant, and Respondent.

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These three consolidated appeals concern Cultivation Technologies, Inc.'s (CTI) motion to disqualify its own legal counsel, the Catanzarite Law Corporation (Catanzarite), in related cases. The trial court granted CTI's disqualification motion relating to two lawsuits, deciding Catanzarite could not represent the following parties (1) CTI; (2) three CTI subsidiaries (Coachella Manufacturing, LLC, Coachella Distributors, LLC, and DS Gen, LLC, hereafter collectively referred to as CTI Subsidiaries); and (3) a group of CTI shareholders bringing a derivative lawsuit. We conclude the trial court was correct and we affirm its disqualification orders.

FACTS

The appellate briefing in this case does not provide any background facts to give context to the current attorney disqualification dispute. We have pieced together the story by reviewing the multiple complaints and the parties' declarations related to six separate lawsuits. The keystone of each lawsuit (and this appeal) is a battle between two groups of shareholders over who controls CTI. Thus, it is helpful to understand the underlying dispute before jumping into a factual summary of the disqualification motion.

I. *Background Facts*

In 2012, Richard Probst and Richard O'Connor were the controlling shareholders and directors of Mobile Farming Systems, Inc., (MFS), an agricultural technology company selling hydroponic growing systems. Anticipating MFS's products and technology would be in high demand during the expected "medical marijuana boom"

the corporation convinced new investors to purchase MFS common stock. In 2015, the MFS board reported to investors that MFS intended to form a subsidiary, CTI, to purchase several acres of land and build a 100,000 square foot building in Coachella, California, to process marijuana and gain "up to $10,000,000 of high margin annual revenues." The MFS shareholders (who invested over $3 million) believed MFS acquired 28,000,000 shares of CTI common stock and the new corporation would be a wholly owned subsidiary of MFS.

As promised, Probst and O'Connor incorporated CTI, and these two MFS directors, and along with Amy Cooper, became CTI's appointed board of directors. However, for reasons that are unclear, CTI did not become MFS's subsidiary, angering MFS's shareholders. In addition, CTI not only refused to acknowledge MFS's 28,000,000 shares but also issued 23,000,000 shares of common stock to CTI's "Founders." The "'CTI Founders Common Stock'" shares were held by Probst, O'Connor, Cooper, TGAP Holdings, LLC, EM2 Strategies LLC, I'm Rad LLC, Cliff Higgerson, Aroha Holdings Inc., and Scott Unfug. Soon thereafter, CTI's board members began fighting amongst themselves.

In October 2015, Cooper resigned as president, secretary, and board member of CTI. In February 2016, CTI's remaining board members removed O'Connor from the board. This was the starting point of the rift between CTI shareholders, creating two factions, the O'Connor Faction (comprised of O'Connor, Cooper, and a group of CTI/MFS shareholders) and the Probst Faction (Probst and the remaining CTI directors). These two groups became locked in a struggle for control over the corporation.

The Probst Faction issued additional shares, gaining more votes for themselves plus more investors. In 2016, the Probst Faction, which included CTI's controlling board of directors, entered into several agreements with FinCanna Capital Corp. (FinCanna), a Canadian royalty corporation. Over the next two years, FinCanna loaned CTI nearly $6 million dollars to develop cannabis cultivation, distribution, and

extraction operations in California. In 2018, CTI was unable to make its loan payments to FinCanna and several CTI directors resigned.

Meanwhile, the O'Connor Faction and some disgruntled MFS shareholders hired Catanzarite. In total, Catanzarite filed six lawsuits within a one-year period as follows:

(1) The Pinkerton Action. *Denise Pinkerton v. Cultivation Technologies, Inc., et al.,* OCSC No. 30-2018-01018922.

Catanzarite filed this lawsuit on September 14, 2018, on behalf of an elderly woman (via an attorney in fact) who invested all her retirement savings in MFS shares. This shareholder, individually and derivatively on behalf of MFS, asserted CTI, Probst, O'Connor, Cooper, and others involved with CTI, engaged in fraud, conversion, breach of fiduciary duty, conspiracy, fraudulent concealment, and theft of trade secrets.

In addition to damages, this derivative action demanded the cancellation of CTI stock certificates, an injunction preventing the sale of CTI stock, an injunction forcing CTI to stop using MFS's trade secrets, and the payment of punitive damages and attorney fees. For this lawsuit, CTI attorney of record was Winget, Spadafora, Schwartzberg LLP (Winget).

On January 23, 2019, a few days before Catanzarite filed a shareholder derivative action involving CTI shareholders, Catanzarite dismissed several defendants from the Pinkerton Action, including CTI and members of the O'Connor Faction (O'Connor and Cooper). It also deleted causes of action for misappropriation of trade secrets, unfair competition, and declaratory relief against CTI. In August 2019, Catanzarite amended the complaint to remove all shareholder derivative causes of action on behalf of MFS. Thus, the only defendants remaining were members of the Probst Faction (Probst, Justin Beck, I'm Rad, LLC, Robert Kamm, Robert Bernheimer, Irving Einhorn, and Miguel Motta).

(2) The MFS Action. *Mobile Farming Systems, Inc. v. Cultivation Technologies, Inc., et al.,* OCSC No. 30-2019-01046904.

Catanzarite filed this lawsuit in January 28, 2019, for MFS and "derivatively on behalf of its wholly owned subsidiary [n]ominal [d]efendant [CTI]." MFS asserted it was entitled to file a derivative action because it organized CTI and acquired 28,000,000 shares of CTI common stock, and therefore, CTI was its wholly owned subsidiary. The complaint asserted MFS contributed assets to CTI (a seedling trailer and a shipping container) and paid start-up costs. MFS sought cancellation of CTI's shares as well as any "insider loans and transactions." It alleged CTI owed MFS "$75,007.24 plus accrued interest of $12,444.29" (MFS's start-up loan) and other damages to be proven at trial. (Underline omitted.) The complaint sought attorney fees, punitive damages, and interest. The lawsuit was based on the premise that no CTI shareholders, other than MFS shareholders, had any valid stock or voting rights.

This complaint also asserted the Probst Faction violated Corporations Code section 1507[1] by "preparing, signing and circulating false minutes, issuing securities, transacting business with insiders, [and] borrowing money from insiders and records relating to CTI." MFS requested that the court enjoin the Probst Faction from operating CTI until the court held a section 709 hearing "to determine the rightful ownership of CTI, its appropriate [b]oard of [d]irectors, and executive structure.[2]

The court initially granted a temporary restraining order (TRO). According to Probst, the TRO was financially devastating for CTI because "CTI's operations ground

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[1] All further statutory references are to the Corporations Code, unless otherwise indicated.

[2] Section 709 "'was intended to confer upon the superior court the power to determine in a summary proceeding whether or not a particular director or the entire board was or was not properly elected or appointed in order that the corporation can properly function.' [Citation.]" (*Morrical v. Rogers* (2013) 220 Cal.App.4th 438, 457.)

to a halt" for several months. Probst declared, "CTI did not have access to its working capital and . . . key customers became aware of the TRO and refused to continue to place orders and the cash flow began to severely suffer."[3] The court dissolved the TRO in May 2019, after holding a section 709 hearing. The court determined MFS was not a CTI shareholder and could not challenge the election of CTI's directors.

In August 2019, the same day Catanzarite amended the Pinkerton Action to be a direct rather than derivative action, Catanzarite also transformed the MFS Action into a direct action. The first amended complaint (FAC) omitted CTI as a party and alleged only direct claims against members of the Probst Faction for breach of fiduciary duty, conversion, misappropriation of trade secrets, and unfair competition.

(3) The Mesa Action. *Mesa, et al. v. Probst, et al.,* OCSC No. 30-2019-01064267.

Catanzarite filed this shareholder derivative class action on April 16, 2019. The complaint asserted the "nature of [the] action" was on behalf of shareholders owning both MFS and CTI shares seeking to "join MFS in a consolidated action with [the MFS Action] and to among other relief, recognize the ownership and control of CTI as held by" four groups of shareholders. (Capitalization and bold omitted.) These shareholder groups included MFS (holding 28,000,000 CTI shares), as well as any MFS shareholders who purchased CTI shares in various offerings. The complaint expressly excluded shares held by Probst Faction members, their attorneys, agents, or affiliates.

Richard Mesa initiated the lawsuit in three capacities: (1) individually as a "shareholder of both" MFS and CTI shares; (2) in a representative capacity on behalf of over 100 similarly situated shareholders; and (3) derivatively on behalf of CTI. The Mesa Action asserted nine causes of action against the Probst Faction and CTI as a nominal defendant. Identical to allegations in the MFS Action, the Mesa Action sought

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[3] This declaration was prepared in response to Catanzarite's later request for a section 709 hearing in a subsequent CTI shareholder derivative action.

to enjoin the Probst Faction from operating CTI until there could be an expedited section 709 hearing. In addition to damages, the class sought punitive damages and attorney fees.

One month later, Catanzarite amended the complaint to add Cooper and Tom Mebane as plaintiffs and FinCanna as a defendant. More significantly, the complaint's "nature of the action" changed. The class members no longer sought to join the MFS Action or seek recognition of MFS's controlling shares over CTI. Instead, the Mesa Action plaintiffs sought to declare the current CTI directors' meetings and actions void. In particular, the class sought to unravel CTI's financial dealings with FinCanna, who had just foreclosed on CTI's properties. The FAC included two new causes of action, as well as allegations the Probst Faction wrongfully liquidated CTI's assets and that FinCanna should not have initiated foreclosure proceedings. The FAC asserted FinCanna "claims ownership of the extraction facility and CTI's employees have effectively become [FinCanna] employees." Furthermore, it maintained CTI shareholders "have suffered a total loss of their share value of not less than $5,000,000 and millions more in business opportunities. . . ." CTI's attorney of record, Winget, filed an answer asserting the plaintiffs lacked standing or were not qualified to maintain a derivative lawsuit on CTI's behalf. In October 2019, the Mesa Action plaintiffs filed a motion requesting the court appoint a receiver for CTI.

(4) The Cooper Action. *Cooper, et al., v. Cultivation Technologies, Inc.*, OCSC No. 30-2019-01072443.

On May 23, 2019, Catanzarite filed an action directly against CTI on behalf of two CTI shareholders (Cooper and Mebane), who were members of the O'Connor Faction. The previous day, FinCanna had filed a breach of contract action against CTI and CTI Subsidiaries and requested a receivership. The Cooper Action requested the court direct CTI to (1) hold a shareholder's meeting to elect a board of directors; (2) deliver an annual report; (3) appoint an accountant to conduct an audit; and (4) order

CTI to pay the costs for an investigation, audit, and costs of the suit. Winget, on behalf of CTI filed an opposition, asserting a shareholder meeting was scheduled for August 2019.[4]

(5) The FinCanna Action Cross-complaint. *FinCanna v. Cultivation Technologies, Inc., et al.,* OCSC No. 30-2019-01072088.

As mentioned, in May 2019, FinCanna filed a breach of contract action against CTI and CTI Subsidiaries. On July 2, 2019, Catanzarite filed a cross-complaint on behalf of CTI and CTI Subsidiaries against FinCanna and three of its directors. Large sections of the cross-complaint appear to have been cut and pasted from the Mesa Action complaint. Catanzarite purported to represent CTI and its subsidiaries.

In Probst's declaration, prepared to oppose the section 709 request in the Mesa Action, he explained Catanzarite's actions in the FinCanna Action created confusion and harm. He noted Catanzarite filed a cross-complaint and propounded discovery against CTI's "primary secured lender" without telling CTI's board "and during a time when FinCanna has not yet served their complaint on CTI due to ongoing settlement negotiations."

(6) The Scottsdale Action. *Cultivation Technologies, Inc., v. Scottsdale Insurance Company,* OCSC No. 30-2019-01096233.

On September 6, 2019, Catanzarite filed this declaratory relief action purporting to represent CTI. In this lawsuit, CTI demanded that its insurance company, Scottsdale, stop providing a defense or indemnity to the Probst Faction defendants in the Mesa Action. The complaint asserted Scottsdale "refused to communicate with the officers and directors elected by the common shareholders of CTI and who are of the position that only they and their elected officers and directors speak for CTI." In the complaint, CTI sought the court's declaration of its rights under the insurance policy and

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[4] On our own motion, we took judicial notice of CTI's opposition filed in the Cooper Action.

orders forbidding Scottsdale from providing a defense "unless and until the vote of the disinterested common shareholders of CTI [was] obtained."

We note that immediately before filing the Scottsdale Action, Catanzarite amended the complaints in the first two derivative actions transforming them into direct actions against individuals who were part of the Probst Faction (the Pinkerton and MFS Actions). Additionally, after filing the Scottsdale Action, Catanzarite dismissed the Cooper Action on September 13, 2019.

II. *The FinCanna Action*

Before discussing the disqualification motions, it is helpful to briefly summarize the FinCanna Action. The complaint alleged that in 2016, FinCanna loaned nearly $6 million dollars to CTI. FinCanna asserted it attempted to renegotiate the deal, but after several key CTI members resigned, CTI's "attention and resources [were] devoted to litigation" and "its management [was] in disarray, which pos[ed] further threat to FinCanna's chances of recovery." FinCanna asked the court to appoint a receiver to protect its interests in CTI and order an injunction to stop any interference in the receivership.

FinCanna's complaint specifically referred to the upheaval created by the MFS Action. It explained that in April 2019, it foreclosed on property used as collateral for some of the loan proceeds (recovering nearly $3.9 million). Thereafter, four board members and CTI's Chief Operating Officer (CEO) resigned, leaving two directors. FinCanna explained it filed the lawsuit because it believed that after these resignations, CTI's operations became impaired and the ability to recover the money owed (over $4 million due to owed interest) was "placed in serious risk."

III. *Disqualification Motions*

A. First Disqualification Motion in the FinCanna Action

Horwitz + Armstrong (Horwitz) filed a motion on behalf of CTI, the cross-complainant in the FinCanna Action, to recuse and/or disqualify the "purported attorneys

of record." (Capitalization and bold omitted.) Horwitz argued CTI did not retain Catanzarite to represent it and there were unwaivable conflicts of interest. In support of the motion, Probst filed a declaration, "on behalf of [himself] and CTI's duly elected [b]oard of [d]irectors, who have authorized the filing" of the disqualification motion.

Probst declared that at CTI's annual meeting, the shareholders elected himself, Hank Casillas, Michael Burdick, James Lally and Cooper to CTI's board of directors and there were no other shareholder meetings held to elect different officers. Probst explained Catanzarite claimed it obtained "written shareholder consents" to remove CTI's elected board and install different directors, who then hired Catanzarite to represent CTI. Probst submitted a copy of the "written consent promulgated by . . . Catanzarite purportedly removing" all the board members on May 2019. Catanzarite initiated this legal maneuvering after the court ruled against its clients at the section 709 hearing and refused to overturn the board of directors election.

Probst explained, "Rather than holding a shareholder's meeting for the purpose of electing a new [b]oard since Catanzarite knew his clients lacked a sufficient number of shares necessary to win such an election, on May 14, 2019, he instead unlawfully procured a purported 'Majority Written Consent' of CTI's shareholders that removed the entire shareholder-elected and sitting CTI Board and subsequently elected a new board consisting of Catanzarite's true clients who are a faction of CTI shareholders." After providing several reasons why the written consent was "ineffective and unlawful," Probst noted the shareholders' election of O'Connor and Duffy to the board "by way of unanimous written consent" was not effective, and therefore, they were not authorized to act on behalf of CTI or retain Catanzarite as counsel.

In his declaration, Probst stated Catanzarite filed a cross-complaint and answer in the underlying case "despite his having been opposing counsel against CTI and/or its management in at least four other related cases, and despite his personal participation in a proxy battle for control of CTI." He explained Catanzarite recently

filed a lawsuit, on behalf of CTI, against the corporation's insurance carrier to withhold coverage. He declared, "It is no coincidence that it is this insurance coverage which is financing the defense of the various parties Catanzarite is suing in the various other matters. This is the essence of conflict of interest: he is challenging insurance coverage for the benefit of one of his clients, which is being used to finance the defense of the multiple lawsuits he has filed."

Catanzarite, on behalf of CTI, filed an opposition and submitted declarations written by Kenneth J. Catanzarite, O'Connor, and several others. Catanzarite also filed evidentiary objections to Probst's declaration. The opposition asserted that removing the Probst Faction from the board and filing a cross-complaint and answer in the FinCanna Action were all "[v]alidly [a]uthorized" actions. Catanzarite asserted its representation of other clients was not adverse to CTI. For example, the Scottsdale Action would directly benefit CTI by preserving the "$3 million Business and Management Indemnity Policy from being depleted by Probst and others who failed and refuse to post the undertaking required by CTI's Bylaws and . . . section 317." Similarly, in the derivative actions, CTI was named as a nominal defendant and the claims "are not asserted against it but instead for the benefit of CTI." Moreover, Catanzarite maintained it requested the receivership to protect CTI's assets.

In its reply, Horwitz addressed Catanzarite's assertion its representation of other clients was not adverse to CTI. "[Catanzarite] cannot ethically represent certain shareholders suing defendant/cross-complainant [CTI] in shareholder derivative actions, shareholder class actions, and making motions to appoint a receiver to control [CTI] *while at the same time* acting as legal/litigation counsel of record *for* CTI directly. Rule of Professional Conduct, rule 1.7 expressly prohibits a lawyer from so representing clients with such direct and adverse interests at the same time. When, as here, the lawyers' clients' interest are so directly adverse, the clients cannot even consent to such joint representation, because it makes the entire judicial machinery appear unfair." On

CTI's behalf, Horwitz argued the drastic measure of seeking a receivership in the shareholder derivative Mesa Action was "adverse to the corporation's interests" due to the "extravagant costs." CTI argued the request was "similar to claiming 'we had to destroy the village in order to save it.'"

B. *November 2019 Disqualification Order*

On November 15, 2019, the court granted the motion but did not rule on the evidentiary objections on the grounds they were "not directed at evidence that the court considers material to its disposition of this motion." The court ruled as follows: "Catanzarite's simultaneous representation of CTI and interests adverse to CTI compel the firm's disqualification. In *Flatt v. Superior Court* (1994) 9 Cal.4th 275 (*Flatt*), the California Supreme Court held, 'Courts and ethical codes alike prohibit an attorney from simultaneously representing two client adversaries, even where the substance of the representations are unrelated.' [Citation.] The court added, 'Indeed, in all but a few instances, the rule of disqualification in simultaneous representation cases is a per se or automatic one.' [Citation.] Catanzarite is representing CTI in this case, but in the pending [Mesa Action] Catanzarite is representing one faction of CTI shareholders who have an upcoming motion scheduled seeking to impose a receiver on CTI, relief that would be adverse to CTI. In the pending [Scottsdale Action], Catanzarite represents CTI yet seeks to invalidate a defense and indemnity for CTI directors in the [Mesa Action] under an insurance policy issued on CTI's behalf. A denial of coverage could put CTI on the hook for the individuals' costs of defense and/or liability."

The court cited authority holding an attorney cannot avoid the disqualification rule by "unilaterally converting a present client into a former client before the hearing" on the disqualification motion. The court reached the following conclusions: "In the pending [Pinkerton Action], Catanzarite represents the plaintiffs, and the original [c]omplaint named CTI as a defendant, although the first amended complaint dropped CTI as a party. In the Cooper [Action], Catanzarite represented the

petitioners, who sought to compel CTI to hold a shareholders meeting to elect directors. Petitioners dismissed that action on September 13, 2019. Catanzarite represents the plaintiffs in the [MFS Action], in which the original [c]omplaint alleged in [paragraph] 50 that CTI owes money to the plaintiff [referring to MFS start up loan totaling $87,451.53]. The [FAC] omitted that allegation. Thus, there are five lawsuits in which the Catanzarite firm is or was adverse to CTI, compelling the firm's disqualification."

Alternatively, the court determined disqualification was warranted because "corporate counsel's professional duties run to the corporation, [and] counsel must refrain from taking part in any controversies or factional differences among shareholders as to control of the corporation." It noted, "Catanzarite represents CTI's common stockholders, who are fighting with CTI's preferred stockholders in several lawsuits for CTI's control." Finally, the court explained that in light of the above rulings, "the court need not and will not reach the issue of whether Catanzarite was authorized to represent CTI in this action based on his shareholder faction allegedly being in control of CTI."

C. *Second Disqualification Motion in the FinCanna Action*

Less than a week later, Horwitz filed a motion to recuse and/or disqualify Catanzarite from representing the CTI Subsidiaries in the FinCanna Action. The motion asserted CTI and the CTI Subsidiaries should be treated as the same client for conflict purposes. Horwitz explained that after the court's disqualification ruling, it asked Catanzarite to voluntarily withdraw from representing the CTI Subsidiaries. Catanzarite refused, stating it intended to appeal the prior disqualification order.[5]

Catanzarite filed an opposition, confirming it intended to file an appeal. It argued Horwitz filed an "abusive disqualification motion[]" brought "solely for the improper and strategic purpose to leave the CTI Subsidiaries without their counsel of choice." The hearing was scheduled for January 2020.

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[5] Before the trial court considered CTI's second motion, Catanzarite, representing itself, filed a notice of appeal from the November disqualification order.

D. *Two Disqualification Motions in the Mesa Action*

Catanzarite's appellant's appendix does not include one of the disqualification motions filed in the Mesa Action. On our own motion, we augmented the record on appeal to include missing documents.[6] (Cal. Rules of Court, rule 8.155(a)(1)(A).) Horwitz filed a motion on behalf of CTI. Several members of the Probst Faction, who were named defendants in the Mesa Action (Beck, Miguel Motta, Robert Bernheimer, Robert Kamm, Eric Mathur, Robert Schmidt, and Jason Pitkin, hereafter referred collectively and in the singular as Beck), filed a motion to "join in" CTI's motion. Beck was represented by attorneys from O'Hagan Meyer LLC.

Our record contains Catanzarite's oppositions to these motions, filed on behalf of the Mesa Action plaintiffs. Catanzarite addressed the merits of CTI's motion. However, Catanzarite argued Beck's motion was procedurally improper because the November disqualification order stayed all the lawsuits, and Beck did not ask for permission to file the joinder motion. In addition, Catanzarite argued Beck's motion raised different issues from CTI and should be treated as a separate independent motion for disqualification. It noted a separate motion would be untimely filed because the hearing on CTI's motion was scheduled for early January.

E. *January 2020 Disqualification Orders*

On January 10, 2020, the court considered the two disqualification motions filed in the Mesa Action, as well as the CTI Subsidiaries' motion filed in the FinCanna Action. It ruled as follows: "The [m]otions to [d]isqualify [Catanzarite] in the four related cases are granted in [the Mesa Action and the FinCanna Action] and denied in

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[6] We caution counsel that it is not this court's responsibility to obtain the documents necessary to consider the arguments raised on appeal. We have used our discretionary authority to take judicial notice of documents discussed by the parties and augment the record to assist us in reviewing the appeals on their merits. But we are not required to do so. (See *State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1529.)

[the Pinkerton Action and the MFS Action]. [¶] This court previously granted a motion to disqualify [Catanzarite] from representing CTI in the FinCanna [Action] because principles prohibiting dual representation prohibit [Catanzarite's] simultaneous representation of CTI and interests adverse to CTI. In [the Mesa Action] Catanzarite is representing the plaintiffs in a derivative action on behalf of CTI, meaning that its representation is for the benefit of CTI. Thus, the same principles that warranted Catanzarite's disqualification in the FinCanna [Action] apply to [the Mesa Action] and compel disqualification here."

As for the CTI subsidiaries, the court ruled as follows: "Here, the FinCanna plaintiff sued CTI and its three wholly-owned subsidiaries, alleging that plaintiff loaned CTI $5.9 million and that CTI still owes plaintiff about $4.7 million. Plaintiff's theory against the subs[idiaries] is that they owe CTI money . . . . Thus, the [three subsidiaries'] liability to plaintiff is dependent on CTI owing plaintiff money, and as a result all four defendants have a unity of interest in the case. Catanzarite filed an [a]nswer and [c]ross-[c]omplaint on behalf of all four named defendants. The [c]ross-[c]omplaint is based primarily on the relationship between FinCanna and CTI, with little reference to the subs[idiaries], and alleges all of its causes of action jointly on behalf of all four cross-complainants, without any distinction as to any of the allegations, or in any of the six causes of action or in the prayer as to which cross-complainants are seeking what relief. Thus, all four of the defendants and cross-complainants have a unity of interest in the FinCanna [Action], warranting Catanzarite's disqualification from representing the subs[idiaries], on the heels of being disqualified from representing CTI."

The court denied the motion with respect to the Pinkerton Action. It noted the case was originally a derivative action on behalf of MFS, but Catanzarite amended the complaint and CTI was no longer a party in this lawsuit. The court concluded CTI, therefore, lacked standing to seek Catanzarite's disqualification from representing MFS

shareholders against defendants other than CTI "even if the allegations involve the world of CTI."

Likewise, the court determined CTI lacked standing in the MFS Action. Although the complaint "originally asserted derivative claims on behalf of CTI, and named CTI as a nominal defendant," the FAC omitted CTI as a party. The court noted, "CTI (through other counsel) filed a cross-complaint against MFS which is still pending. Although MFS alleges it was and is CTI's sole shareholder, the court ruled at a [section] 709 hearing in April 2019 that MFS was not a CTI shareholder as of November 2018." The court concluded, "Although Catanzarite represents MFS as a cross-defendant, there is no dual representation involved, and Catanzarite's disqualification from representing MFS is not warranted."

The court denied Beck's joinder motion as being untimely filed. It added, "The moving parties also lack standing to seek Catanzarite's disqualification from representing the parties that firm represents." The court granted Catanzarite's requests for judicial notice and ruled on some of Catanzarite's evidentiary objections. The court stayed the Mesa Action pending the appeal. It vacated all future motions scheduled in the case including a motion to appoint a receiver.

IV. *Appellate Procedural History*

Catanzarite, representing itself, filed a notice of appeal from the November disqualification order (G058931 [the FinCanna Action]), and it filed two notices of appeal challenging the January order (G058700 [additional disqualification in FinCanna Action]; G058942 [disqualification in the Mesa Action]). We granted Catanzarite's request to consolidate its two appeals related to the FinCanna Action (G058700 & G058942), and on our own motion consolidated Catanzarite's appeal from the disqualification order in the Mesa Action (G058931). None of Catanzarite's clients filed appeals. CTI filed its respondent's brief in support of the disqualification orders.

DISCUSSION

This case raises issues related to motions to disqualify Catanzarite, a law firm filing six lawsuits while simultaneously representing two corporations, three corporate subsidiaries, and a group of minority shareholders of both corporations. Specifically, the corporate entities are the following: (1) MFS, the plaintiff in the MFS Action, (2) CTI, the cross-complainant and defendant in the FinCanna Action, (3) CTI Subsidiaries, the cross-complainants and defendants in the FinCanna Action, and (4) CTI, the plaintiff in the Scottsdale Action. The minority shareholders groups include members of the O'Connor Faction as follows: (1) Pinkerton, a MFS shareholder and plaintiff in the Pinkerton Action; (2) Mesa, Cooper, Mebane and a class action of shareholders, all plaintiffs in the Mesa Action; (3) Cooper and Mebane, who are MFS/CTI shareholders and plaintiffs in the Cooper action.

No party appealed from the orders denying Catanzarite's disqualification in the MFS and Pinkerton Actions. Catanzarite, representing itself, seeks to reverse the disqualification orders regarding the firm's representation of CTI, CTI Subsidiaries, and the Mesa Action plaintiffs. Accordingly, this opinion will be limited to our review of the orders regarding those three concurrently represented clients.

I. *Applicable Law*

A. *Attorney Disqualification Generally*

"A trial court's authority to disqualify an attorney derives from the power inherent in every court '[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.' [Citations.]" (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145 (*SpeeDee Oil*); Code Civ. Proc., § 128, subd. (a)(5).)

"Disqualification motions implicate competing considerations. On the one hand, these include clients' rights to be represented by their preferred counsel and

deterring costly and time-consuming gamesmanship by the other side. . . . [¶] Balanced against these are attorneys' duties of loyalty and confidentiality and maintaining public confidence in the integrity of the legal process. . . . [Citation.] 'The loyalty the attorney owes one client cannot be allowed to compromise the duty owed another.' [Citation.]" (*Banning Ranch Conservancy v. Superior Court* (2011) 193 Cal.App.4th 903, 911 (*Banning Ranch*).)[7]

B. *Standard of Review*

"Generally, a trial court's decision on a disqualification motion is reviewed for abuse of discretion. [Citations.] If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court's express or implied findings supported by substantial evidence. [Citations.] When substantial evidence supports the trial court's factual findings, the appellate court reviews the conclusions based on those findings for abuse of discretion. [Citation.] However, the trial court's discretion is limited by the applicable legal principles. [Citation.] Thus, where there are no material disputed factual issues, the appellate court reviews the trial court's determination as a question of law. [Citation]." (*SpeeDee Oil, supra,* 20 Cal.4th at pp. 1143-1144.)

C. *Successive vs. Concurrent Representation*

"There are different disqualification standards for attorneys who have conflicts with former clients and those who have conflicts with current clients. As to conflicts involving successive representation with former clients, courts look to whether there is a 'substantial relationship' between the subjects of the current and the earlier

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[7] """Normally, an attorney's conflict is imputed to the law firm as a whole on the rationale 'that attorneys, working together and practicing law in a professional association, share each other's, and their clients', confidential information."' [Citation.]" (*Beachcomber Management Crystal Cove, LLC, v. Superior Court* (2017) 13 Cal.App.5th 1105, 1116 (*Beachcomber Management*). Accordingly, the disqualification ruling made as to Catanzarite is binding on the associates of that firm.

proceedings. [Citations.] [¶] In contrast, there is a more stringent standard when an attorney simultaneously represents two current clients with conflicting interests. Disqualification . . . is *mandatory* in such circumstances even though the simultaneous matters may have nothing in common. (*Flatt, supra,* 9 Cal.4th at p. 284.) '"Something seems radically out of place if a lawyer sues one of the lawyer's own present clients on behalf of another client. Even if the representations have nothing to do with each other, so that no confidential information is apparently jeopardized, the client who is sued can obviously claim that the lawyer's sense of loyalty is askew."' [Citation.]" (*Banning Ranch, supra,* 193 Cal.App.4th at pp. 911-912; see Rules Prof. Conduct rule 1.7(a) & (b) [attorney may not without informed written consent "represent a client if the representation is directly adverse to another client in the same or a separate matter" or "there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client"].)

In summary, courts recognize the "chief fiduciary value jeopardized" in cases involving successive representation is client confidentiality. (*M'Guinness v. Johnson* (2015) 243 Cal.App.4th 602, 613.) Whereas in concurrent "representation of multiple clients resulting in a conflict of interest" the "'primary value at stake'" is the attorney's duty and "the client's legitimate expectation" of loyalty, not confidentiality.[8]

D. *Corporate Counsel*

Corporate counsel's professional responsibilities and allegiances are owed to the corporate entity, not the officers, directors, or shareholders "and the individual shareholders or directors cannot presume that corporate counsel is protecting their interests. [Citations.]" (*La Jolla Cove Motel & Hotel Apartments, Inc. v. Superior Court* (2004) 121 Cal.App.4th 773, 784 (*La Jolla Cove*).) Generally, a lawyer representing a

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[8] This case involves issues related to concurrent representation, invoking the fiduciary duty of loyalty, rather than confidentiality. For this reason, we will not discuss any of Catanzarite's arguments about maintaining client confidentiality.

corporation may also represent any of the corporation's officers or directors upon the clients' written consent. (*Id.* at p. 785; see Rules Prof. Conduct rule 1.13(g).)

"Conflicts of interest between a corporation and its officers, directors and shareholders are particularly problematic for corporate counsel where . . . the corporation is a closely held one, with few shareholders. [Citation.] Corporate counsel may develop a fiduciary relationship with individual shareholders or directors. However, even in that situation, the attorney's ultimate loyalty is to the corporation, not individual shareholders, officers or directors. [Citation.] Thus, where an adversarial setting presents itself, pitting the corporation against one or more of its officers, directors or shareholders, corporate counsel may still represent the corporation against those individuals, even though he or she may have received confidential information about them in the course of representing the corporation. [Citations.]" (*La Jolla Cove, supra,* 121 Cal.App.4th at p. 785.)

However, "[O]nce a conflict has arisen between a corporation and one or more of its officers, directors or shareholders, corporate counsel may not simultaneously represent the corporation and the adverse officer, director or shareholder." (*La Jolla Cove, supra,* 121 Cal.App.4th at p. 785; see Rules Prof. Conduct rule 1.7.) "Thus, where a shareholder has filed an action questioning [the corporation's] management or the actions of individual officers or directors, such as in a shareholder derivative or . . . dissolution action, corporate counsel cannot represent both the corporation and the officers, directors or shareholders with which the corporation has a conflict of interest. [Citation.]" (*Id.* at pp. 785-786.)

Consequently, there can be no dual representation of a corporation and directors when the suit is brought by other shareholders. "In an action by a shareholder alleging *harm to the corporation*, an attorney cannot represent both the corporation and defendant shareholders who are accused of wrongdoing or whose interests are otherwise adverse to the corporation. This is so whether or not the suit is framed as a derivative action." (Friedman, Cal. Practice Guide: Corporations (The Rutter Group 2021)

¶ 1:11.2a; see *Ontiveros v. Constable* (2016) 245 Cal.App.4th 686, 696-699, [attorney could not represent both corporation and 60 percent shareholder in derivative action brought by 40 percent shareholder]; *Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.4th 477, 488-489, [attorney could not represent both LLC and defendant member in derivative action brought by LLC's only other member]; *Gong v. RFG Oil, Inc.* (2008) 166 Cal.App.4th 209, 216 (*Gong*) [attorney cannot represent both 51 percent shareholder and corporation in suit by 49 percent shareholder alleging personal use of corporate funds and other claims showing harm to corporation].)

Of course, the case before us involves the opposite scenario. Not surprisingly, we found no cases (and Catanzarite cites to none) holding an attorney may simultaneously represent both the corporation and the *plaintiff shareholders* who are accusing the board of directors of wrongdoing. The lack of authority can be explained by the existence of well-settled legal authority holding a derivative plaintiffs' attorney does not ipso facto represent the corporation, but rather "the shareholder's attorney is acting *against* the corporation's wishes." (*Shen v. Miller* (2012) 212 Cal.App.4th 48, 57-60, italics added (*Shen*).) In order for a shareholder to have standing to bring a derivative action, counsel must plead the corporation refused to pursue the claim. (*Id.* at pp. 57-58.) For this reason, in a shareholder derivative suit the corporation is included as a nominal defendant because it is in conflict with the outsider shareholder about the advisability of suing. (*Id.* at p. 58.)

Moreover, "[T]he corporation that is the subject of the derivative claim is generally a nominal party only. '"Because the claims asserted and the relief sought in [the derivative] complaint would, if proven, advance rather than threaten the interests of the nominal defendant[], the nominal defendant[] must *remain neutral* in [the] action." [Citation.]' [Citation.]" (*Shen, supra,* 212 Cal.App.4th at p. 58, italics added.) Logically, if the derivative plaintiffs' attorney also represented the corporation, there would be no need for a derivative action because "the corporation itself would be

pursuing" the outside shareholder's claims. (*Ibid.*) An attorney representing plaintiff shareholders cannot both advocate those claims and remain neutral. Concurrent representation of clients with such obvious conflicting interests is not permissible.

II. *Analysis of Disqualification Order in the FinCanna Action*

To briefly summarize, the trial court disqualified Catanzarite from representing CTI on the grounds it was simultaneously representing "two client adversaries."[9] It reasoned Catanzarite was representing CTI in the FinCanna Action but representing a faction of CTI shareholders in the Mesa Action. Moreover, the court determined Catanzarite improperly took sides in a shareholder dispute by filing the Scottsdale Action to promote the interests of the O'Connor Faction by stopping CTI's insurance company from providing a defense or indemnity to the Probst Faction defendants in the Mesa Action. On appeal, Catanzarite asserts the court abused its discretion in making this ruling because the moving party lacked standing and its clients did not have adversarial interests. We address each contention separately, concluding both lack merit.

A. *Standing*

Catanzarite's first and primary challenge to the trial court's ruling is that the party filing the disqualification motion lacked standing. Catanzarite asserts the trial court could not possibly decide this issue without first resolving the parties' complicated dispute about which shareholder faction rightfully controlled CTI. Catanzarite provides a lengthy argument supporting its theory the O'Connor Faction controlled CTI. It argues the court abused its discretion by failing to consider and agree with its contentions. Not

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[9] On appeal, Catanzarite does not challenge the trial court's conclusion CTI and CTI Subsidiaries had a unity of interest in the FinCanna Action. Catanzarite, conceding that the same principles regarding its representation of CTI apply equally to CTI Subsidiaries, does not distinguish between them in its legal discussions. We will do the same for purposes of this opinion; our discussion of CTI applies equally to CTI Subsidiaries unless otherwise indicated.

so. CTI had standing to file the motion because all the facts relevant to the issue of disqualification were undisputed. There was no need for the court to prematurely consider and resolve other factual disputes (rending many causes of action moot before trial).

"A 'standing' requirement is implicit in disqualification motions. Generally, before the disqualification of an attorney is proper, the complaining party must have or must have had an attorney-client relationship with that attorney. [Citation.]" (*Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356.)

Catanzarite is in the awkward position of asserting it had an attorney-client relationship with CTI for purposes of filing complaints in the Scottsdale and FinCanna Actions, but not with CTI for purposes of a disqualification motion. To avoid this conundrum, Catanzarite frames its lack-of-standing argument on the premise there was never an attorney-client relationship between itself and members of the Probst Faction. We agree the Probst Faction never entered into an attorney-client relationship with Catanzarite. Instead, the Probst Faction, the directors purportedly controlling CTI, hired Horwitz to act as corporate counsel for CTI, i.e., the same corporate entity Catanzarite claims to represent. Catanzarite cannot avoid the undisputed fact it was not the only law firm representing the corporation in litigation. Indeed, Winget was CTI's attorney of record in the three derivative actions filed by Catanzarite.[10]

The problem with Catanzarite's lack-of-standing argument is that it ignores the fact CTI is not an individual, but rather an inanimate corporate entity having a board of directors with authority to hire corporate counsel. Catanzarite's authority to represent CTI arose from its relationship with the O'Connor Faction. Yet, as discussed at length in

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[10] It is noteworthy that CTI's directors who were members of the Probst Faction hired Winget to defend CTI in the three shareholder derivative actions (the Pinkerton, MFS, and Mesa Actions). Catanzarite does not suggest these directors lacked authority to retain Winget as CTI's corporate counsel in these lawsuits. It offers no distinction between CTI's retention of Winget from the decision to hire Horwitz.

the briefs, and as evidenced by the pleadings in multiple lawsuits, the O'Connor Faction's control over CTI is a hotly contested issue. Thus, the O'Connor Faction's authority to hire Catanzarite and defend CTI's choice of counsel is necessarily the same legal rights afforded to the Probst Faction, who hired Horwitz to act as corporate counsel (and challenge Catanzarite). We conclude that because the chief fiduciary duty at stake is loyalty, CTI had standing to file the motion to disqualify one of its attorneys regardless of which shareholder faction *currently* claimed to control CTI.

We reject Catanzarite's argument the court was required to determine *before trial* the issue of which shareholder faction rightfully controlled CTI before ruling on CTI's disqualification motion. The trial court wisely understood the relevant facts pertaining to disqualification were undisputed. The parties agreed the two factions of shareholders were promoting very different agendas for CTI's operations. As mentioned, the O'Connor Faction sought to nullify actions taken by the prior board of directors (the Probst Faction). This included cancelling shares and voting rights, voiding contracts, repaying money owed to MFS, and changing CTI's business relationship with FinCanna. On the other hand, the Probst Faction was fighting to remain in control and maintain the status quo of voting rights, shares, financial obligations, and contracts with FinCanna. Due to the undisputed contentious nature of their dispute, it would be absurd to suggest the same attorney could simultaneously represent these two factions of shareholders. Similarly, there was no need to determine which faction controlled CTI to disqualify an attorney simultaneously purporting to act as corporate counsel while pursuing a derivative action filed against the corporation. If the interests of these two clients were in accord, there would be no need for a derivative action. (*Shen, supra,* 212 Cal.App.4th at p. 58.)

As mentioned earlier, although disqualification motions are generally reviewed for abuse of discretion, "where there are no material disputed factual issues, the appellate court reviews the trial court's determination as a question of law. [Citation.]"

(*SpeeDee Oil, supra,* 20 Cal.4th at p. 1144.) Here, the trial court correctly determined *it need not* "reach the issue" of which shareholder faction rightfully controlled CTI. We agree. The undisputed nature of the lawsuits, involving parties with conflicting interests, and a corporation with adversarial directors, supported mandatory disqualification as a matter of law.

B. *Adverse Interests*

Catanzarite asserts the trial court exacerbated its abuse of discretion by finding it was representing interests adverse to CTI. Catanzarite suggests its legal maneuverings, undertaken on behalf of the O'Connor Faction, actually benefitted the corporation. For example, Catanzarite maintains the Mesa Action plaintiffs' receivership motion would prevent corporate waste. This and similar contentions CTI benefitted from Catanzarite's legal tactics are disingenuous. This is not a case where Catanzarite was comprised of neutral lawyers, hired by a cohesive board of directors.

The record plainly shows MFS shareholders (the O'Connor Faction) hired Catanzarite to regain shares and control of CTI through litigation and by removing and replacing the Probst Faction from CTI's then board of directors. Indeed, it is undisputed that within six months, Catanzarite filed three separate shareholder derivative actions all designed to give its clients more control over CTI and to revoke business decisions made by directors from the Probst Faction. Catanzarite's involvement in these derivative actions, in which a corporation must remain neutral, highlights critical issues regarding its fiduciary duty of loyalty. Particularly troubling was Catanzarite's active role in helping its clients forcibly remove CTI's directors, after Catanzarite was unable to achieve this same result in the MFS Action's section 709 hearing.

Even if we assume the transition of power was executed correctly with written consents, the scheme clearly demonstrated an allegiance to one faction of shareholders and corporate counsel's professional responsibilities and allegiances are owed to the corporate entity, not the officers, directors, or shareholders. (See *La Jolla*

Cove, supra, 121 Cal.App.4th at p. 784.) As stated earlier, "[O]nce a conflict has arisen between a corporation and one or more of its officers, directors or shareholders, corporate counsel may not simultaneously represent the corporation and the adverse officer, director or shareholder." (*Id.* at p. 785; see Rules Prof. Conduct rule 1.7.)

We found other evidence of Catanzarite's conflicting loyalties after comparing the complaints Catanzarite prepared for the Mesa Action (a derivative lawsuit) with the one used for CTI in the FinCanna Action. Large sections appear to have been cut and pasted from one to the other. Perhaps Catanzarite believed the mirror complaints filed on behalf of different clients were appropriate due to its theory the derivative action, filed "on behalf of" CTI, would necessarily benefit the corporation. This assertion demonstrates its misunderstanding of derivative actions and the limited role of counsel representing the outsider shareholder plaintiffs. As mentioned earlier in this opinion, the *Shen* case is instructive on attorney client relationships arising from derivative actions. (*Shen, supra,* 212 Cal.App.4th at pp. 56-57.) That case involved three related actions and concerned a dispute between 50/50 shareholders over control of a closely held corporation. (*Id.* at p. 52.) The trial court denied one co-president's (Miller) motion to disqualify the other co-president's (Shen) attorney. (*Ibid.*) Miller filed the motion after Shen filed a petition for court supervision of voluntary winding up proceedings, as well as a complaint derivatively on behalf of the company. (*Id.* at pp. 52-53.) Miller recognized Shen lacked a formal attorney-client relationship with the company, but he argued for automatic disqualification. He reasoned disqualification was necessary due to the attorney's role in prosecuting the derivative action, which involved representing the interests of the corporation, while at the same time the attorney took an adverse position to the company in related litigation (winding up proceedings). (*Id.* at pp. 56-57.)

The *Shen* court clarified the limited significance of the "on behalf of" language commonly utilized when referring to shareholder derivative lawsuits. "[A] shareholder may only bring a derivative suit on behalf of the corporation if the

corporation has refused to pursue the claim. In bringing the derivative action, the shareholder's attorney is acting *against* the corporation's wishes. [¶] Nevertheless, should the shareholder prevail in the derivative action, the corporation is the ultimate beneficiary. [Citation.] Therefore, the corporation must be joined in the action . . . as a nominal defendant because of 'its refusal to join the action as a plaintiff. [Citation.]' [Citation.] In other words, in a shareholder derivative suit, '"[t]he corporation has traditionally been aligned as a defendant because it is in conflict with its stockholder about the advisability of bringing suit . . . ." [Citation.]' [Citation.]" (*Shen, supra,* 212 Cal.App.4th at p. 58, italics added.) The court cautioned the corporation that is the subject of a derivative action "'"must remain neutral in [the] action." [Citation.]' [Citation.]" (*Id.* at p. 58.) Thus, Catanzarite's role in bringing the derivative action conflicts with the corporation's obligation to remain neutral in the action. Filing the lawsuit was an act against the corporation's wishes. Thus, Catanzarite's decision to reuse the same derivative type claims in a cross-complaint, filed directly by the corporation in a different lawsuit against a third party, was plainly disloyal to the corporation (regardless of whether the directors were recently replaced).

C. *Waivers*

Catanzarite suggests we can ignore any conflicts arising from the concurrent representation of members of the O'Connor Faction and CTI because Pinkerton, Cooper, Mebane, Mesa, CTI and MFS waived any conflicts. As pointed out by CTI's counsel on appeal, Catanzarite obtained these waivers in December 2019, after the trial court's November hearing/ruling disqualifying Catanzarite from representing CTI. Catanzarite does not address this issue. It fails to explain why it could file five lawsuits (for and against CTI) before obtaining the waivers. Moreover, Catanzarite does not explain why these waivers would be relevant to a *mandatory* disqualification for ongoing concurrent representation of clients with conflicting interests.

Once again, Catanzarite ignores the problem with its dual representation in this case and that the O'Connor Faction cannot waive the conflict on behalf of the inanimate corporate entity, CTI. "[While] in some circumstances multiple representation may be permissible if both clients are fully informed of potential conflict and the parties consent to the representation. This consent rationale seems peculiarly inapplicable to a derivative suit, because the corporation must consent through the directors, who, as in the present case, are the individual defendants. [Citations.]" (*Forrest v. Baeza* (1997) 58 Cal.App.4th 65, 76-77 (*Forrest*).) The directors and the corporation cannot act independently of each other. (*Id.* at p. 76.)

Stated another way, "'[A]n inanimate corporate entity, which is run by directors who are themselves defendants in the derivative litigation, cannot effectively waive a conflict of interest as might an individual under applicable professional rules such as [rules] 3-600(E) and 3-310.' One commentator noted: 'But it would be meaningless in derivative litigation to allow the consent of the parties defendant to exculpate the practice of dual representation, for most often it would be the defendant directors and officers who would force the corporation's consent.' (Comment, Independent Representation for Corporate Defendants in Derivative Suits (1965) 74 Yale L.J. 524, 528.)" (*Forrest, supra,* 58 Cal.App.4th at p. 77, capitalization and italics omitted.)

Catanzarite appears to be arguing concurrent representation was possible because after the O'Connor Faction asserted control of the corporation, these shareholders effectively became insiders of the corporation. This is twisted logic. A shareholder only needs to file a derivative action, on the company's behalf, when the insiders who control the company refuse to do so. (*Beachcomber Management, supra,* 13 Cal.App.5th at p. 1118.) By filing the derivative action, Catanzarite implicitly acknowledged its clients are outsiders with interests adverse to CTI's directors. Having

sided with the O'Connor Faction early on, the appearance of impropriety compels disqualification.

If this case involved a deadlocked corporation, Catanzarite would have needed to secure written consent from all directors before continuing as corporate counsel. "An attorney who is asked by an officer/director to represent the corporation on a matter over which the board is deadlocked, or otherwise sharply divided, should obtain *each board member's* informed written consent to act as corporate counsel. If that consent cannot be obtained, the attorney must withdraw from representing the corporation: The attorney cannot purport to act as corporate counsel when in fact he or she is representing one faction of the board against another. [Citations.]" (Friedman, Cal. Practice Guide: Corporations (The Rutter Group 2021) ¶ 1:11.1e.) The same principles apply in this case. For several years, the CTI board of directors, comprised of both O'Connor and Probst Faction members, have been sharply divided on many issues. Accordingly, an attorney wishing to become corporate counsel, but who has an existing client at odds with some of the corporation's directors, would need more than the existing client's written waivers to concurrently represent the corporation.

V. *The Mesa Action Plaintiffs*

Catanzarite maintains the trial court abused its discretion in disqualifying it as counsel for the Mesa Action plaintiffs. We note the Mesa Action plaintiffs did not file an appeal. We do not know if these shareholders agreed with the court's ruling and have retained new counsel. CTI's respondent's brief does not address the issue. In any event, we conclude the court's ruling was correct with respect to the Mesa Action plaintiffs.

In its ruling, the court concluded the same principles preventing Catanzarite from representing CTI in the FinCanna Action prevented it from representing "plaintiffs in the derivative action *on behalf of* CTI, meaning that its representation is for the benefit of CTI." (Italics added.) As discussed earlier in this opinion, the derivative action was filed *against* CTI's wishes. (*Shen, supra,* 212 Cal.App.4th at pp. 57-58.) The derivative

action's "on behalf of" language signifies only a mere possibility the corporation may benefit from the litigation's outcome and should not be confused with which party holds an expectation of loyalty from Catanzarite. Thus, we disagree with the notion Catanzarite was representing CTI in the Mesa Action. Nevertheless, disqualification was appropriate.

In reaching this conclusion, we reject Catanzarite's argument the court abused its discretion by failing to determine whether the Probst Faction or the O'Connor Faction controlled CTI and had authority to retain counsel. Disqualification in the Mesa Action was appropriate under either scenario. If the O'Connor Faction gained control of CTI and hired Catanzarite, the firm still could not concurrently represent derivative shareholders at the same time it was representing a corporation experiencing conflict between those same derivative shareholders and others. Prosecuting the derivative action also clearly conflicts with a corporate counsel's duty to remain neutral in the derivative action. (*Shen, supra,* 212 Cal.App.4th at pp. 57-58.) Similarly, if the Probst Faction never lost control of CTI, then there were certainly problems created by Catanzarite's unauthorized litigation on the corporation's behalf. However, we consider the fact most relevant to CTI's disqualification motion in the Mesa Action, was CTI's newly created status as Catanzarite's former client (following the firm's disqualification in the FinCanna Action). As a former client, CTI, a defendant in the Mesa Action, had standing to challenge the firm's representation of plaintiffs having adverse interests from CTI. CTI, under the direction of the Probst Faction would certainly never give Catanzarite informed written consent to represent outsider shareholders suing the corporation and board members. Catanzarite tainted all litigation involving CTI after purporting to represent the corporation and at the same time prosecuting a derivative shareholder action against CTI.

DISPOSITION

We affirm the court's orders disqualifying Catanzarite from representing CTI, CTI Subsidiaries, and the group of shareholder plaintiffs in the Mesa Action. Respondent shall recover its costs on appeal.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.