

DISTRICT COURT EL PASO COUNTY, COLORADO El Paso County Combined Courts 270 S. Tejon Street Colorado Springs, Colorado 80903	DATE FILED: August 28, 2019 1:59 PM FILING ID: 7F2EE35E9C143 CASE NUMBER: 2019CV31992
Plaintiff: Dale Takio; an Individual, in his own capacity and derivatively as a member on behalf of Whole Hemp Company LLC d/b/a Folium Biosciences v. Defendants: Whole Hemp Company LLC d/b/a Folium Biosciences, a Colorado limited liability company; Kashif Shan, an Individual; and Quan Nguyen, an Individual.	▲ COURT USE ONLY ▲
<i>Attorneys for Plaintiff:</i> Henry M. Baskerville, Atty. Reg. #49431 David F. Olsky, Atty. Reg. #46694 Fortis Law Partners LLC 1900 Wazee Street, Suite 300 Denver, CO 80202 Phone: (720) 904-6000 Fax: (720) 904-6006 hbaskerville@fortislawpartners.com dolsky@fortislawpartners.com	Case No.: Div.:
VERIFIED COMPLAINT	

For his complaint against Defendants Whole Hemp Company LLC d/b/a Folium Biosciences, Kashif Shan, and Quan Nguyen, Plaintiff Dale Takio alleges and verifies as follows:

PARTIES

1. Plaintiff Dale Takio (“Takio”) is an individual with a primary residence located at 11222 Oakshore Lane, Clermont, FL 34711. As set forth below, Takio asserts certain claims on his own behalf and certain claims derivatively as a member of Folium.

2. Defendant Whole Hemp Company LLC d/b/a Folium Biosciences (“Folium”) is a Colorado limited liability company with a principal place of business located at 615 Wooten Road, Suite 110, Colorado Springs, CO 80915. Folium is a producer, manufacturer, and distributor of cannabinoid extracts (“CBD”) derived from hemp. Folium supplies wholesale CBD to various companies to use in their CBD infused products.

3. Defendant Kashif Shan is an individual residing in Colorado. Shan is the Chief Executive Officer of Folium and also the majority equity holder of Folium. Shan dominates Folium's internal and corporate affairs.

4. Defendant Quan Nguyen is an individual residing in Colorado. Nguyen is the Vice President of Business Development of Folium and a large equity holder in Folium.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Colorado Revised Statute § 13-1-124 because this matter involves the transaction of business within Colorado and the commission of tortious acts in Colorado.

6. Venue is proper in the District Court of El Paso County, Colorado pursuant to C.R.C.P. 98(c)(1) because Folium's headquarters are in this County, and the tortious acts described herein occurred in this County.

7. The Court has jurisdiction over the derivative claims because demand on Folium would have been futile given Shan's domination over the company. Further, Takio did not contact the members or shareholders because he does not know most of their identities or contact information.

FACTUAL ALLEGATIONS

A. Takio Accepts The Position of Vice President, Business Development at Folium

8. On September 18, 2018, Shan extended an offer to Takio to become Folium's new Vice President of Business Development. Shan advised Takio to consider the offer and to create a list of requirements necessary for Takio to accept the position.

9. Several days later, on September 21, 2018, Takio conditionally accepted Shan's offer. Takio provided Shan with a list of requirements for his employment, which included a monthly salary of \$10,000 for twelve (12) months and unrestricted common stock based on Folium's current valuation, of no less than \$350,000.

10. On September 28, 2018, Ricardo Calzada ("Calzada"), Folium's General Counsel, issued to Takio a Letter of Engagement (the "Engagement Letter"). Takio did not execute the Engagement Letter because there were no provisions made for Takio's option to purchase company stock, as the parties had previously agreed.

11. On October 3, 2018, Takio emailed Calzada to suggest revisions to the Remuneration section of the Engagement Letter. Takio reminded Calzada that when Shan first extended a verbal employment offer, Shan represented that Takio would be entitled to purchase company stock at 0.001% - 0.004% of the company's current valuation. Takio requested that this

information, along with a vesting schedule and a schedule for exercising stock options, be included in the Engagement Letter. Calzada assured Takio that the Engagement Letter issues would be “sorted by tomorrow.”

12. After a week of no response from Calzada, and with his October 15 start date looming, Takio took it upon himself to draft a new Engagement Letter including the stock option provisions that he and Shan previously agreed.

13. That same day, Shan sent a company-wide email to the Folium staff introducing Takio as a new member of the executive team. Shan described Takio’s duties as furthering Folium’s business development, marketing efforts, sales, and operations.

14. Shortly thereafter, Shan sent an email to Folium’s shareholders assuring them that their equity had not been diluted and allocated to the newly hired executives. Shan stated that 8.5% of Folium’s equity was allocated between the new employees and that a distribution would happen after completion of an appraisal report.

15. Based on the promise that Folium would honor the equity purchase agreement, Takio began working for Folium on October 15, 2018.

B. Takio and Shan Reach An Agreement for Takio to Remain at Folium

16. By January 2019, Takio had raised concerns that Folium was a hostile workplace and that he was dissatisfied with his position.

17. On January 7 2019, as part of an effort to retain him at Folium, Shan offered Takio a promotion to Vice President of Sales and Marketing (the “Offer”).

18. As part of the promotion, Shan offered Takio 0.25% equity in the company, which Shan asserted “was consistent with what [Shan] had given other executives that had recently joined.” Shan further represented that Takio’s monthly pay would increase to \$15,000 per month.

19. The email with the Offer is attached as Exhibit A to the Complaint.

20. Takio accepted the Offer and agreed to remain at Folium. He continued to work at Folium for almost six more months.

21. On January 24, 2019, Shan issued a Sales Reorganization Strategy to take place under Takio’s leadership. In a related meeting later that day, Shan announced to Folium’s executives that each member of the leadership team would be entitled to monthly dividend distributions based on their years of service, respective total equity, and total monthly distributions.

C. Folium and Shan Breach The Agreement With Takio

22. Neither Folium nor Shan issued the promised equity to Takio.
23. Takio was never given the monthly divided distributions that he was promised.
24. After months of dissatisfaction with his new role and the company generally, Takio met with Shan to discuss Takio's transition out of Folium in June 2019.
25. Takio emphasized to Shan that he was not resigning outright and would work collaboratively with Folium until the company could find a replacement.
26. During the meeting, Shan represented that Takio would receive his promised equity. The parties agreed that Takio would receive full payment through July 31, 2019 and would be able to work remotely during the transition period.
27. Dan Steever ("Steever"), Head of Sales at Folium, assured Takio that he would draft an agreement outlining the parties' timeline and duties for the transition period. Takio never received any such agreement.
28. On June 18, 2019, Takio received a series of urgent calls from Steever. Steever stated that Folium wished to "accelerate" Takio's departure from the company, effectively immediately. Steever relayed that Shan would contact Takio regarding the equity owed to him. Takio never heard from Shan.
29. On June 19, 2019, Takio issued to Steever and Calzada a list of requirements for his departure. Takio requested that Folium buy out his equity at a fair price and that his final paycheck and reimbursements be wired to his bank account. Takio reminded Steever and Calzada that he had yet to receive any of the shareholder distributions Shan promised in January 2019. Takio requested that all unpaid distributions be paid in the same manner as his final paycheck.
30. Instead of buying his equity and paying the distributions that were owed, Takio was immediately terminated by Folium without cause.
31. As of July 26, 2019, Takio has not received any communication from Folium regarding his outstanding paychecks, reimbursements, or distributions.

D. Misconduct by Shan and Nguyen

32. Takio is a minority member of Folium, per the Offer.
33. Folium's members have been injured by Shan and Nguyen's ongoing self-dealing and gross negligence. As a former member of management, Takio has first-hand information of the allegations herein.

34. Shan and Nguyen's self-dealing includes taking millions of dollars per month in distributions, to the detriment of other members and Folium.

35. For example, on January 8, 2019, Shan and Nguyen caused \$585,070.55 to be transferred from Folium's bank account to Nguyen. That same day, Shan and Nguyen caused \$1,999,921.84 to be transferred to Shan's wife.

36. On January 18, 2019, Shan and Nguyen caused \$464,745.69 to be transferred to Nguyen. Also on January 18, 2019, Shan and Nguyen caused \$1,664,672.54 to be transferred to Shan's wife.

37. In other words, in January 2019 alone, Shan and Nguyen caused \$3,664,594.38 to be transferred to Shan's wife and \$1,049,816.24 to be transferred to Nguyen. Other Folium members, such as Takio did not receive similar distributions.

38. In February 2019, Shan received \$345,817.78 in distributions, Shan's wife received \$2,000,000 in distributions, and Nguyen received \$907,000 in distributions. Again, these types of distributions were not shared with all of the other members of Folium, such as Takio.

39. Shan, with the knowledge, acquiescence, and assistance of Nguyen, on many occasions (including with Takio) violated state laws by surreptitiously taping employees who lived in states that do not permit such taping.

40. On information and belief, Shan and Nguyen have engaged in numerous other acts of misconduct that have caused significant harm to Folium and its members, including Takio.

**FIRST CLAIM FOR RELIEF
(Breach of Contract)**

41. Takio incorporates the allegations in the paragraphs above, inclusive, as if fully set forth herein.

42. Takio brings this Claim for Relief in his individual capacity against Folium.

43. Takio and Folium formed a contract based on the Offer, and Takio's subsequent acceptance and performance thereon.

44. Folium breached the terms of the contract by, among other things, failing to issue the promised equity to Takio, to pay him monthly distributions, or to pay him his salary.

45. As a result of Folium's breach of the Offer, Takio has been damaged in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment for Distribution of Shares under C.R.S. §§ 13-51-101 et seq.)

46. Takio incorporates the allegations in the paragraphs above, inclusive, as if fully set forth herein.

47. Takio brings this Claim for Relief in his individual capacity against Folium and Shan.

48. Takio has an interest in Folium established by a writing (*i.e.*, the Offer) and seeks a determination of that right.

49. Specifically, Takio has an equitable interest of 0.25% in Folium. Folium and Shan have denied the existence of that right.

50. Takio seeks a declaration to resolve the controversy and to determine that Takio has a 0.25% equity interest in Folium Biosciences pursuant to the contract created when Takio accepted the Offer.

51. The Court should therefore issue a declaratory judgment that Takio is a 0.25% equity owner of Folium.

THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty Against Shan and Nguyen)

52. Takio incorporates the allegations in the paragraphs above, inclusive, as if fully set forth herein.

53. Takio brings this claim for relief as an individual and derivatively on behalf of Folium against Shan and Nguyen.

54. As the Chief Executive Officer, Shan owes duties of loyalty and care, among others, to Folium and to the minority members.

55. Shan and Nguyen have breached those duties by, among other things:

- a. Engaging in self-dealing, including but not limited to paying themselves millions of dollars in distributions per month, while paying none to certain minority members (including Mr. Takio).
- b. Engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
- c. Failing to execute their rights and duties consistent with the contractual obligation of good faith and fair dealing.

d. Violated state laws by secretly taping employees without their permission.

56. Takio, as an individual, and Folium have been damaged in an amount to be determined at trial.

57. Takio, on behalf of Folium, also seeks equitable relief requiring that Shan and Nguyen follow state taping laws.

58. As a result of the breach of fiduciary duties by Shan and Nguyen, Takio individually and as a member of Folium, Folium members, and Folium have been damaged in an amount to be determined at trial and a constructive trust should be placed on the funds and property transferred, without authority, to or by Shan and Nguyen.

**FOURTH CLAIM FOR RELIEF
(Accounting and Member Communications)**

59. Takio incorporates the allegations in the paragraphs above, inclusive, as if fully set forth herein.

60. Takio brings this claim against Folium in his capacity as a partial equity owner of Folium.

61. Takio is entitled of an accounting of Folium, including financial statements and records of the board.

62. Takio is entitled to communications issued by Shan and other members of management to the other equity holders of Folium.

JURY DEMAND

Takio hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the judgment be entered on his Complaint and in his favor against all Defendants on all claims for relief as follows:

- a. Awarding him actual and compensatory damages, in an amount to be determined at trial;

- b. Awarding him declaratory relief concerning his rights with respect to the Defendants as to the subject matters of his claims for relief;
- c. Awarding him injunctive relief against Defendants;
- d. Awarding him an accounting;
- e. Awarding pre- and post-judgment and moratory interest, costs incurred and reasonable attorneys' fees as authorized by law; and
- f. Granting such other and further relief as the Court may deem just and proper.

Dated this 28th day of August 2019

Respectfully submitted,

FORTIS LAW PARTNERS, LLC

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