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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

INTERURBAN CAPITAL GROUP, INC., a
Delaware Corporation,

Plaintiff,

v.

BOYDEN INVESTMENT GROUP LLC, a
Washington Limited Liability Company;
TIERRA REAL ESTATE GROUP LLC, a
Washington Limited Liability Company;
HAVE A HEART COMPASSION CARE,
INC., a Washington Corporation; PHAT
SACKS CORP, a Washington Corporation;
GREEN OUTFITTERS LLC, a Washington
Limited Liability Company; RYAN
KUNKEL; and the marital community of
RYAN KUNKEL and JANE DOE
KUNKEL,

Defendants.

NO. 20-2-07480-2 SEA

DEFENDANTS' ANSWER TO PETITION
FOR PROVISIONAL REMEDIES IN AID
OF ARBITRATION

COME NOW DEFENDANTS, by and through their counsel of record, Gleam Law, PLLC
and Carson & Noel PLLC, and answer Plaintiff's Petition for Provisional Remedies in Aid of
Arbitration (hereinafter "Petition") as follows:

ANS. TO PET. FOR PROVISIONAL REMEDIES - 1

gleam law, pllc
605 First Avenue, Ste 330
Seattle, WA 98104
P: (206) 693-2900
F: (206) 319-4596

1 1. In answer to paragraph 1 of Plaintiff's Petition, Defendants admit Plaintiff has
2 placed this matter into arbitration and incorporates its Answer to Plaintiff's Demand for
3 Arbitration, attached hereto as an Exhibit. The parties have selected an arbitrator to hear the
4 arbitration. As to all other allegations in paragraph 1 of Plaintiff's Petition, Defendants are without
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained
6 therein and therefore deny the same.

8 2. In answer to paragraph 2 of Plaintiff's Petition, Defendants admit.

9 3. In answer to paragraph 3 of Plaintiff's Petition, Defendants are without knowledge
10 or information sufficient to form a belief as to the truth of the allegations contained therein and
11 therefore denies the same.

12 4. In answer to paragraph 4 of Plaintiff's Petition, Defendants admit the same.

13 5. In answer to paragraph 5 of Plaintiff's Petition, Defendants admit the same.

14 6. In answer to paragraph 6 of Plaintiff's Petition, Defendants admit the same.

15 7. In answer to paragraph 7 of Plaintiff's Petition, Defendants admit the same.

16 8. In answer to paragraph 8 of Plaintiff's Petition, Defendants admit the same.

17 9. In answer to paragraph 9 of Plaintiff's Petition, this paragraph contains information
18 to which no response is required. To the extent paragraph 9 of Plaintiff's Petition contains any true
19 allegations of fact, Defendants deny the same.

20 10. In answer to paragraph 10 of Plaintiff's Petition, this paragraph contains
21 information to which no response is required. To the extent paragraph 10 of Plaintiff's Petition
22 contains any true allegations of fact, Defendants deny the same.

23 11. In answer to paragraph 11 of Plaintiff's Petition, Defendants admit Ryan Kunkel is
24 a member and/or shareholder of each of the other Defendants and that he resides in Washington
25
26
27
28

1 State. As to any remaining allegations in paragraph 11 of Plaintiff's Petition, Defendant's deny the
2 same.

3 II. JURISDICTION AND VENUE

4
5 12. In answer to paragraph 12 of Plaintiff's Petition, Defendants admit jurisdiction is
6 granted pursuant to statute. Defendants specifically deny personal jurisdiction exists over any
7 Defendant at this time.

8
9 13. In answer to paragraph 13 of Plaintiff's Petition, Defendants deny agreeing to
10 arbitrate in a locale is a basis for proper jurisdiction or venue and therefore deny the same.

11 IV. FACTS

12 14. In answer to paragraph 14 of Plaintiff's Petition, Defendants deny the same.

13
14 15. In answer to paragraph 15 of Plaintiff's Petition, Defendants admit Ryan Kunkel
15 was CEO of Interurban during a period in which Interurban was acquired by Harvest, and that
16 Harvest acquired Interurban's rights in any Services Agreements involving Defendants (with the
17 exception of Defendant Kunkel) and any options to purchase Defendants (with the exception of
18 Defendant Kunkel). As to any remaining allegations in paragraph 15 of Plaintiff's Petition,
19 Defendants deny the same.

20
21 16. In answer to paragraph 16 of Plaintiff's Petition, Defendants deny the same. In
22 further answer to paragraph 16 of Plaintiff's Petition, Plaintiff's parent has admitted to its primary
23 purpose of the acquisition of Interurban was to add strategic investors, including former majority
24 shareholder of Interurban, Dan Reiner, as a special adviser to Harvest's board, as well as \$59
25 Million in Private Placement equity from Mr. Reiner. "The strategy behind the Interurban Capital
26 [acquisition] was largely related to the associated capital risk."

27
28 17. In answer to paragraph 17 of Plaintiff's Petition, this paragraph is vague as to "reap

the benefits” and “lucrative” and Defendants therefore deny the same.

18. In answer to paragraph 18 of Plaintiff’s Petition, Defendants deny all allegations in this paragraph.

19. In answer to paragraph 19 of Plaintiff’s Petition, Defendants deny all allegations in this paragraph.

V. FIRST CAUSE OF ACTION: PROVISIONAL REMEDIES IN AID OF
ARBITRATION – RCW 7.04A.080

20. Defendants re-allege and re-incorporate their responses to paragraphs 1 through 19, as if fully set forth herein.

21. In answer to paragraph 21, of Plaintiff’s Petition, Defendants admit.

22. In answer to paragraph 22 of Plaintiff’s Petition, Defendants are without knowledge of information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

VI. PRAYER FOR RELIEF

Defendants deny Plaintiff’s Request for Relief in its Entirety and Deny Plaintiff is entitled to the relief so requested.

VII. AFFIRMATIVE DEFENSES

Having answered Plaintiff’s Petition, Defendants set forth the following affirmative defenses:

1. Jurisdiction. Defendants have not been properly served in this matter and this Court has no personal jurisdiction over the Defendants’ herein.

2. Unclean Hands. Plaintiff has engaged in unscrupulous behavior which does not entitle it to equitable relief.

3. WAC 314-55. Plaintiff may not assert control over a Washington I-502 establishment pursuant to Washington Law. The Agreements at issue were not compliant with Washington law.

4. Illusory Contract. The relief Plaintiff seeks is based on an illusory contract for the payment of additional sums as compared to previous contracts, without additional consideration provided by Plaintiff.

5. Waiver. Plaintiff has waived any argument the breaches were incurable, and thus that the contracts should be enforced, by engaging in retaliatory and malicious actions.

6. Termination of Agreement. The Agreements between Defendants (except Defendant Kunkel) were properly terminated and no amounts are due and owing.

7. Claim Splitting. Plaintiff has split claims related to the same causes of action amount four superior Court actions, and dismissal is the proper remedy.

8. Failure to State a Claim. Plaintiff has failed to state a claim upon which relief can be granted.

9. Lack of Contractual Privity. Plaintiff Ryan Kunkel is not a proper party to this dispute and was not a party to the Agreements between Plaintiff and the other Defendants.

VIII. COUNTERCLAIMS

Defendants reserve all counterclaims for arbitration.

/s/ Justin P. Walsh

GLEAM LAW, PLLC

Justin P. Walsh, WSBA No. 40696

Ryan M. Carson, WSBA No. 41057

Ammon J. Ford, WSBA No. 52626

CARSON & NOEL PLLC

Wright A. Noel, WSBA No. 25264

Stacy Goodman, WSBA No. 39287
Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the date noted below, a true and correct copy of the foregoing was delivered and/or transmitted in the manner(s) noted below:

Dan Oates
Andy Murphy
Miller Nash
2801 Alaska Way
Suite 300
Seattle, WA 98121

Attorney for Petitioner

☐ Via Messenger
☒ Via Email
☐ Via Certified Mail
☐ Via U.S. Mail
☒ Via E-Service

DATED this 17th Day of April, 2020.

/s/ Justin P. Walsh

Justin P. Walsh

EXHIBIT A

JUDICIAL DISPUTE RESOLUTION ARBITRATION

INTERURBAN CAPITAL GROUP, INC., a
Foreign Corporation,

Petitioners,

v.

BOYDEN INVESTMENT GROUP LLC, a
Washington Limited Liability Company;
HAVE A HEART COMPASSION CARE,
INC., a Washington Corporation; GREEN
OUTFITTERS LLC, a Washington Limited
Liability Company; PHAT SACKS CORP, a
Washington Corporation; and TIERRA
REAL ESTATE GROUP LLC, a
Washington Limited Liability Company, and
RYAN KUNKEL;

Respondent.

NO.

ANSWER TO NOTICE OF INTENTION
TO ARBITRATE AND DESIGNATION OF
COUNTER CLAIMS FOR BREACH OF
CONTRACT; PRELIMINARY
INJUNCTION; AND DECLARATORY
RELIEF

Interurban Capital Group, Inc, ("ICG") is demanding that Respondents violate Washington marijuana regulations in the way they are running their stores. It is not surprising that ICG beat Respondents in the race to the Court house, since ICG seems to have been planning its actions for some time, nor is it surprising that there is a dispute. What is surprising is the numerous false and malicious representations made in ICG's filings. Respondents answer ICG's Notice of Intention to Arbitrate as follows:

ANSWER TO NOTICE OF INTENTION TO ARBITRATE AND
DESIGNATION OF COUNTER CLAIMS FOR BREACH OF
CONTRACT; PRELIMINARY INJUNCTION; AND
DECLARATORY RELIEF - 1

gleam law, pllc
605 First Avenue, Ste 330
Seattle, WA 98104
P: (206) 693-2900
F: (206) 319-4596

1 1. With regard to paragraph 1, ICG did not include this paragraph in the body of their
2 claims and as a result, it is unclear whether an answer is necessary. In as much as an answer is
3 necessary, Respondents deny the same.
4

5 2. With regard to paragraph 2, ICG did not include this paragraph in the body of their
6 claims and as a result, it is unclear whether an answer is necessary. In as much as an answer is
7 necessary, Respondents deny the same.
8

9 3. With regard to paragraph 3, ICG did not include this paragraph in the body of their
10 claims and as a result, it is unclear whether an answer is necessary. In as much as an answer is
11 necessary, Respondents deny the same.
12

13 4. With regard to paragraph 4, ICG did not include this paragraph in the body of their
14 claims and as a result, it is unclear whether an answer is necessary. In as much as an answer is
15 necessary, Respondents deny the same.
16

17 5. With regard to paragraph 5, ICG did not include this paragraph in the body of their
18 claims and as a result, it is unclear whether an answer is necessary. In as much as an answer is
19 necessary, Respondents deny the same.
20

21 6. With regard to paragraph 6, Respondents admit the same.

22 7. With regard to paragraph 7, Respondents admit the same.

23 8. With regard to paragraph 8, Respondents admit the same.

24 9. With regard to paragraph 9, Respondents admit the same.

25 10. With regard to paragraph 10, Respondents admit the same.

26 11. With regard to paragraph 11, Respondents admit the same.

27 12. With regard to paragraph 12, an answer does not appear to be needed. In as much
28 as an answer is necessary, Respondents deny the same.

1 13. With regard to paragraph 13, an answer does not appear to be needed. In as much
2 as an answer is necessary, Respondents deny the same.

3 14. With regard to paragraph 14, Respondents admit Ryan Kunkel executed the
4 agreements on behalf of Interurban in his then-capacity as President and CEO and admit Ryan
5 Kunkel executed the agreements in his capacity as Member of each of the retailers. As to all other
6 allegations in paragraph 14, Respondents deny, and Respondents specifically deny Ryan Kunkel
7 signed any agreement in his individual capacity.

8 15. Respondents admit the allegations in paragraph 15.

9 16. With regard to paragraph 16, this paragraph is vague as to “consulting services to
10 retail stores” and “advice and administrative services regarding regulatory compliance, business
11 operations, human resources and staffing, [and] accounting and financing services.” Respondents
12 admit Interurban contracted with Respondents to provide the services outlined in the Agreements.
13 As to all other allegations in paragraph 16, Defendants deny.

14 17. With regard to paragraph 17, Respondents admit.

15 18. With regard to the allegations in paragraph 18, Respondents state that the merger
16 documents speak for themselves and deny the remaining allegations. Respondents do note that
17 Miller Nash Graham & Dunn (“Miller Nash”), counsel representing ICG in this arbitration,
18 represented ICG in the merger when Mr. Kunkel was the CEO of ICG. As a result, attorneys at
19 Miller Nash will be witnesses at the arbitration hearing and received confidential information
20 regarding Mr. Kunkel in the process of representing ICG in the merger. In additional response to
21 paragraph 18, deny the Retailers were part of the consideration for the merger, as Interurban held
22 only options to Retailers which could only be executed upon a change in Washington law, which
23 have not been triggered or exercised.

1 19. With regard to the allegations in paragraph 19, Admit the parties entered into new
2 service agreements due to requirements put in place by Interurban's majority member and Harvest,
3 who were not Members of the Retailers. Deny that any changes were the result of regulatory
4 changes to WAC 314-55-034, as no changes to 314-55-035 have been adopted since May 18, 2016,
5 and deny all other allegations.
6

7 20. With regard to the allegations in paragraph 20, the Agreements speak for
8 themselves and Respondents deny all remaining allegations.
9

10 21. With regard to the allegations in paragraph 21, Respondents admit that Kunkel was
11 the CEO and that he was replaced. Respondents deny the remaining allegations.

12 22. With regard to the allegations in paragraph 22, Respondents admit that they
13 terminated the Agreements as a result of ICG's material breaches of the Agreements but deny the
14 remaining allegations.
15

16 23. With regard to the allegations in paragraph 23, Respondents deny the same.

17 24. With regard to the allegations in paragraph 24, Respondents admit Interurban
18 refused to change the security cameras, which is exercising hidden control over the business. As
19 to all other allegations in paragraph 24, Respondents deny the same.
20

21 25. With regard to the allegations in paragraph 25, Respondents deny the same.

22 26. With regard to the allegations in paragraph 26, Respondents deny the same.

23 27. With regard to the allegations in paragraph 23, Respondents deny the same.

24 28. With regard to paragraph 28, Respondents incorporate their answers to the
25 proceeding allegations.
26

27 29. With regard to paragraph 29, Respondents assert that the contracts speak for
28 themselves and deny the remaining allegations in those paragraphs.

1 30. With regarding paragraph 30, Respondents deny the same.

2 31. With regard to paragraph 31, Respondents deny the same.

3 32. With regard to paragraph 32, Respondents incorporate their answers to the
4 proceeding allegations.

5 33. With regard to paragraph 33, Respondents assert that the contracts speak for
6 themselves and deny the remaining allegations in those paragraphs.

7 34. With regarding paragraph 34, Respondents deny the same.

8 35. With regard to paragraph 35, Respondents deny the same.

9 36. With regard to paragraph 36, Respondents incorporate their answers to the
10 proceeding allegations.

11 37. With regard to paragraph 37, Respondents assert that the contracts speak for
12 themselves and deny the remaining allegations in those paragraphs.

13 38. With regarding paragraph 38, Respondents deny the same.

14 39. With regard to paragraph 39, Respondents deny the same.

15 40. With regard to paragraph 40, Respondents incorporate their answers to the
16 proceeding allegations.

17 41. With regard to paragraph 41, Respondents assert that the contracts speak for
18 themselves and deny the remaining allegations in those paragraphs.

19 42. With regarding paragraph 42, Respondents deny the same.

20 43. With regard to paragraph 43, Respondents deny the same.

21 44. With regard to paragraph 44, Respondents incorporate their answers to the
22 proceeding allegations.

23 45. With regard to paragraph 45, Respondents assert that the contracts speak for
24

1 themselves and deny the remaining allegations in those paragraphs.

2 46. With regarding paragraph 46, Respondents deny the same.

3 47. With regard to paragraph 47, Respondents deny the same.

4 48. With regard to paragraph 48, Respondents incorporate their answers to the
5 proceeding allegations.
6

7 49. With regard to paragraph 49, Respondents assert that the contracts speak for
8 themselves and deny the remaining allegations in those paragraphs. Respondents specifically deny
9 this matter is one of consumer protection, or that the requirements of *Hangman Ridge Training*
10 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986).
11

12 50. With regarding paragraph 50, Respondents deny the same.

13 51. With regard to paragraph 51, Respondents deny the same.

14 52. With regard to paragraph 51, Respondents deny the same.

15 53. With regard to paragraph 53, Respondents incorporate their answers to the
16 proceeding allegations.
17

18 54. With regard to paragraph 54, Respondents assert that the contracts speak for
19 themselves and deny the remaining allegations in those paragraphs.
20

21 55. With regarding paragraph 55, Respondents deny the same. Respondent specifically
22 denies he signed the agreements in anything other than his capacity with the subject entities.

23 56. With regard to paragraph 56, Respondents deny the same.

24 57. With regard to paragraph 57, Respondents deny the same.

25 58. With regard to paragraph 58, Respondents deny the same.
26

27 AFFIRMATIVE DEFENSES

28 Having fully answered ICG's claims, Respondents assert the following affirmative

1 defenses:

2 A. Failure to state a claim.

3 B. Breach of contract.

4 C. Unclean hands.

5 D. Frustration of Purpose.

6 E. Fraud or Misrepresentation.

7 F. Failure of Consideration for the Agreements.

8 G. Illegality in that the Agreements violate Washington laws and regulations.

9
10
11 COUNTER CLAIMS

12 I. PARTIES

13 1.1 Counterclaimant BOYDEN INVESTMENT GROUP LLC is a Washington
14 Limited Liability Company operating a recreational cannabis shop at 115 Blanchard Street, Seattle,
15 Washington 98121-2020 under Washington State Liquor and Cannabis Board License No. 423379.

16
17 1.2 Counterclaimant HAVE A HEART COMPASSION CARE, INC. is a Washington
18 Corporation operating a recreational cannabis shop at 300 Northwest 85th Street, Suite A, Seattle,
19 Washington 98117-3120 under Washington State Liquor and Cannabis Board License No. 421409.

20
21 1.3 Counterclaimant GREEN OUTFITTERS LLC is a Washington Limited Liability
22 Company operating a recreational and medicinal cannabis shop located at 688 Ocean Shores
23 Boulevard Northwest, Ocean Shores, Washington 98569-9344 under Washington State Liquor and
24 Cannabis Board License No. 413798.

25
26 1.4 Counterclaimant PHAT SACKS CORP is a Washington for Profit Corporation
27 operating a recreational cannabis shop at 22624 Meridian Avenue South, Suite B, Bothell,
28 Washington 98021-8358, under Washington State Liquor and Cannabis Board License No.

1 423536.

2 1.5 Counterclaimant TIERRA REAL ESTATE GROUP LLC is a Washington Limited
3 Liability Company operating a recreational cannabis shop at 12833 Martin Luther King Jr. Way
4 South, Seattle, Washington 98178-3513, under Washington State Liquor and Cannabis Board
5 License No. 415333.
6

7 1.6 Counterclaim Respondent INTERURBAN CAPITAL GROUP, INC. is a Delaware
8 Corporation with its principle place of business in Seattle, King County, Washington.
9

10 II. JURISDICTION AND VENUE

11 2.1 The Amended and Restated Services Agreement under which ICG is managing
12 aspects of the Counterclaimants' stores specifies that all disputes relating to the agreement shall
13 be resolved through binding arbitration administered by Judicial Dispute Resolution.
14

15 III. FACTS

16 3.1 Counterclaimants each are businesses operating marijuana establishments pursuant
17 to I-502, Chapter 69.50 RCW, and Chapter 314-55 of the Washington Administrative Code,
18 collectively "Marijuana Regulations".

19 3.2 On February 27, 2020, Counterclaimants entered into an Amended and Restated
20 Services Agreement with ICG. The Amended and Restated Services Agreement for Green
21 Outfitters is attached hereto as **Exhibit A**. The Amended and Restated Services Agreement
22 between ICG and the other petitioners is substantially the same as the Green Outfitters Agreement.
23 All the Amended and Restated Services Agreement will be referred to as the "Agreements" in the
24 remainder of this Complaint.
25

26 3.3 Pursuant to the terms of the Agreements, ICG was to provide Counterclaimants
27 with advice and assistance in operating their respective establishments as follows:
28

- a. "Advising [Counterclaimants] on [their] store maintenance processes";
- b. "Making recommendations, [sic] regarding the installation, maintenance, and administration of, and training regarding security services."
- c. "Communication with vendors";
- d. "Marketing and advertising services for" Counterclaimants' businesses;
- e. "Provide advice", "[u]nder the direction and control of" each Counterclaimant, regarding "[s]election, employment, training, review, and evaluation of personnel necessary to service" each business; and
- f. "Provide advice", [u]nder the direction and control of" each Counterclaimant, regarding the "administration and finance" of Petitioners' businesses.

3.4 The Agreement prohibited Interurban from engaging in certain actions which may be seen as "exercising control of the Business." Prohibited actions included the "prescribing or suggesting in substantial part a plan or system concerning an aspect of conducting business, including without limitation":

- a. "[P]rice specifications;
- b. "[S]pecial pricing systems or discounting plans";
- c. "[M]anagement of the business"; or
- d. "[O]perational, managerial, technical, or financial guidelines.

3.5 The restrictions on what ICG could and more importantly, what it could not do, were specified so that the Agreements would comply with Marijuana Regulations. The Marijuana Regulations prohibit no one but Washington citizens from owning Washington retail marijuana stores. To make it so that a Washington resident not an owner in name only, the regulations require the owner to make pricing and employment decisions. If an owner relinquishes those decision

1 making powers, it risks creating a true party in interest and hidden control violation.

2 3.6 In early 2020, ICG merger with Harvest Health & Recreation (“HHR”) such that
3 ICG became a wholly owned subsidiary of HHR. In the merger HHR represented to ICG and
4 Counterclaimants that it was familiar with the Marijuana Regulations. As part of the merger, ICG
5 signed the Agreements, replacing earlier service agreements. Although the Agreements and
6 Marijuana Regulations prohibit ICG from terminating the Counterclaimants’ employees or setting
7 product prices at Counterclaimants’ stores, HHR planned on doing both shortly after the merger.
8

9 **ICG Terminates Employees**

10
11 3.7 After the merger which occurred on or about March 10, 2020, ICG directed that
12 some employees of Have a Heart Compassion Care; Boyden Investment Group; Tierra Real Estate
13 Group; and Phat Sacks Corp be terminated. This was in violation of the Agreements and the
14 Marijuana Regulations.
15

16 3.8 ICG, without the advice or consent of Counterclaimants, engaged in the negotiation
17 and drafting of separation agreements for the terminated employees, which were presented to the
18 terminated employees without the knowledge of the respective Counterclaimants.
19

20 3.9 The Unions have now filed a UPLA claim with the National Labor Relations Board
21 regarding Harvest’s improper termination of the employees.
22

23 **ICG Set Wages**

24 3.10 ICG, without the advice or consent of Counterclaimants, gave raises to all
25 Counterclaimants’ employees and doubled the bonuses of management employees of
26 Counterclaimants.
27

28 **ICG Sets Prices at the Stores**

3.11 Despite the express prohibition regarding ICG setting pricing at the retail stores,

1 ICG engaged in promotional pricing over each of Counterclaimants' establishments without the
2 express consent of the respective Counterclaimants.

3 3.12 In addition, for a period of two weeks from mid-March 2020 to present, ICG has
4 provided no communication to Counterclaimants regarding the operational decisions at their
5 establishments. Instead ICG is operating the stores as if they were the owners, rather than a vendor
6 of the stores.
7

8 3.13 ICG's operation of the stores and failure to abide by the terms of the Services
9 Agreements has exposure each of the licensed establishments to significant regulatory and license
10 revocation risk. ICG actions are potentially violations of the true party in interest and hidden
11 control violation regulations. If the Washington Liquor and Cannabis Board (the "Board") find
12 those violations to have found to have occurred it could terminate the Counterclaimants licenses
13 and at a minimum a heightened risk of increased scrutiny, enforcement, and severity of future
14 enforcement by the Board.
15
16

17 3.14 On March 31, 2020, Counterclaimants, through counsel, sent a letter terminating
18 the Agreements. ICG's parent, Harvest, responded that evening acknowledging receipt of the
19 termination letter.
20

21 3.15 Despite having been terminated ICG as a vendor, on April 1, 2020, ICG instituted
22 a system wide markdown across each of Counterclaimants' stores was initiated within the point of
23 sale system. The system discount was for fifty percent (50%).
24

25 3.16 The sole entity with access to perform such a markdown was ICG.

26 3.17 Pursuant to WAC 31-44-017, the selling of marijuana products below their true
27 value is an administrative violation.

28 3.18 Also April 1, 2020, Counterclaimants discovered they were unable to access several

1 systems necessary to their operation of the business.

2 3.19 Currently, Counterclaimants do not have access over their electronic accounts
3 necessary to adequately operate the businesses for which they are responsible under Chapter 69.50
4 RCW and Chapter 314-55 of the Washington Administrative Code.
5

6 3.20 As a result of the markdowns in violation of the Marijuana Regulations and ICG
7 making it so that Counterclaimants could not access their accounts, Petitioners were forced to
8 temporarily close each of their businesses.
9

10 3.21 Due to the ongoing conduct of ICG, Counterclaimants continue to be exposed to
11 further administrative violations, jeopardizing their status not only with respect to their licenses,
12 but within the recreational or medicinal markets of any state in which they may operate now or in
13 the future.
14

15 **ICG Interferes with Counterclaimants' Contracts**

16 3.22 In addition, due to the ongoing conduct of ICG, Counterclaimants continue to be
17 exposed to further service disruptions.

18 3.23 Under Marijuana Regulations, Counterclaimants are entitled to and required to
19 have access to the accounts and records of their establishments. ICG is further violating the
20 Agreements and Marijuana Regulations by blocking Counterclaimants' access to their accounts
21 and records.
22

23 3.24 ICG has actively frustrated and interfered with Counterclaimants' agreements with
24 several of their vendors. For example, Green Bits, Inc., helps Counterclaimants' stores track
25 information that they have to report to the State in order to maintain their licenses.
26

27 3.25 When Counterclaimants contacted Green Bits to obtain their information, Greenbits
28 told Counterclaimants that ICG had told Green Bits that Counterclaimants did not own the stores

1 and threatened Green Bits if it allowed Counterclaimants to access the information regarding their
2 stores.

3 3.26 On information and belief, ICG has taken similar actions with regard to other
4 vendors who are supplying services to Counterclaimants.
5

6 3.27 Counterclaimants are entitled, and indeed required by Marijuana Regulations, to
7 operate and control their businesses, free of interference from third parties.
8

9 IV. CAUSES OF ACTION

10 FIRST CAUSE OF ACTION –INJUNCTION AND DECLARATORY RELIEF

11 4.1 A dispute now exists between Counterclaimants and ICG as to the following:

- 12 a. Access to accounts and records of Counterclaimants' I-502 establishments;
- 13 b. Management and control over Counterclaimants' I-502 establishments;
- 14 c. Administration of personnel and security of Counterclaimants' I-502
15 establishments;
- 16 d. Ultimate authority over all aspects of the operation of Counterclaimants' I-
17 502 establishments.
- 18 e. Contractual obligations, if any, formed between the parties.
- 19 f. Who is liable for any unfair labor fines, penalties, or wages as a result of
20 ICG improperly terminating employees.
21

22 4.2 Counterclaimants' obligations under the Services Agreements were terminated
23 when ICG breached the Agreements. Counterclaimants', by virtue of Washington law related to
24 recreational marijuana, have all ultimate operational authority over the accounts, records, and all
25 aspects of Counterclaimants' businesses.
26

27 4.3 Counterclaimants request a preliminary injunction and subsequently a permanent
28

1 injunction preventing ICG from in any way interfering, operating, managing, or asserting any
2 influence over Counterclaimants businesses, including accessing any accounts, preventing
3 Counterclaimants' access to accounts, preventing access to records, directing employees,
4 communicating with vendors or any other party on behalf of Counterclaimants, or in any way
5 operating Counterclaimants' establishments.

7 4.4 Counterclaimants request an order declaring that ICG breached the Agreements;
8 that all of the information relating to Counterclaimants' stores belongs to Petitioners; that ICG is
9 obligated to turn that information over to Counterclaimants and then permanently delete it so that
10 it cannot access it in the future; and that ICG is liable for any penalties, wages, or fines resulting
11 from its improper firing of employees.

13 SECOND CAUSE OF ACTION—BREACH OF CONTRACT

14 4.5 As outlined above, ICG breached the Agreements.

16 4.6 It was a material breach because it exposed Counterclaimants to lose of their
17 licenses and other significant harm.

18 4.7 The breaches were incurable because ICG exposed Counterclaimants to true party
19 of interest and hidden control violations, true value violations, and ongoing and increased scrutiny
20 from the Washington State Liquor and Cannabis Board.

22 4.8 Counterclaimants have suffered and will continue to suffer harm as a result of
23 ICG's breaches.

24 THIRD CAUSE OF ACTION—TORTIOUS INTERFERENCE WITH CONTRACTS

25 4.9 Counterclaimants had valid contracts with several vendors.

27 4.10 ICG was aware of those contracts.

28 4.11 ICG intentionally interfered with those contacts.

1 4.12 ICG's interference with the contracts was improper.

2 4.13 Counterclaimants suffered damages as a result of ICG's improper actions.

3 FOURTH CAUSE OF ACTION—FRAUD AND NEGLIGENT MISREPRESENTATION

4
5 4.9 ICG knew it was going to fire Counterclaimants employees when they signed the
6 Agreements. It also knew it was going to exercise price control when it signed the Agreements.

7 4.10 Knowing they were going to violate the express clauses of the Agreements, ICG
8 signed the Agreement.

9
10 4.11 Counterclaimants did not know that ICG was planning on exercising price control
11 and terminating employees after the merger.

12 4.12 ICG intended Counterclaimants to rely on the clauses in the Agreement prohibiting
13 ICG from firing and exercising price control and on which Counterclaimants did rely on, and had
14 right to rely on, those clauses.

15
16 4.13 Counterclaimants were damaged as a consequence of ICG false claims, which
17 damages were proximately caused by ICG bad acts.

18 V. PRAYER FOR RELIEF

19 Having answered, asserted affirmative defenses, and set forth their counter claims,
20 Counterclaimants hereby pray for the following:

21
22 5.1 For an entry of an injunction prohibiting ICG from interfering, operating,
23 managing, or asserting any influence over Counterclaimants' businesses, including accessing any
24 accounts, preventing Counterclaimants' access to accounts, preventing access to records, directing
25 employees, communicating with vendors or any other party on behalf of Counterclaimants, or in
26 any way operating Counterclaimants' establishments.

27
28 5.2 For entry of an order declaring that ICG breached the Agreements; that all of the

1 information relating to Counterclaimants' stores belongs to Counterclaimants; that ICG is
2 obligated to turn that information over to Counterclaimants and then permanently delete it so that
3 it cannot access it in the future; and that ICG is liable for any fines, penalties, or wages that are
4 assessed by any lawsuit, government entity, or union as a result of ICG wrongfully terminating
5 employees.
6

7 5.3 For damages that Counterclaimants suffered as a result of ICG's breach of the
8 Agreements, interference with Counterclaimants' contracts, and fraud/negligent
9 misrepresentation.
10

11 5.4 For an award of attorney fees and costs pursuant to the Agreements;

12 5.5 That the Agreements be rescinded

13 5.6 For such other relief as the Arbitrator deems just and proper.
14

15 Dated this 17th day of April, 2020.

16 GLEAM LAW, PLLC

17 s/ Justin P. Walsh

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DECLARATION OF SERVICE

I hereby declare that on April 17, 2020, I caused copies of the Answer to Notice of Intention to Arbitrate and Designation of Counter Claims for Breach of Contract; Preliminary Injunction; and Declaratory Relief on the following persons in the manner indicated below at the following address:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
Daniel J. Oates Andy G. Murphy Miller Nash Graham & Dunn LLP Pier 70 ~ 2801 Alaskan Way, Suite 300 Seattle, WA 98121 Email: Dan.Oates@millernash.com Andy.Murphy@millernash.com <i>Attorneys for Petitioners</i>	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: Dan.Oates@millernash.com Andy.Murphy@millernash.com

/s Wright A. Noel

Wright A. Noel