Court File No./N° du dossier du greffe: CV-21-00657564-00CL

Electronically issued
Délivré par voie électronique : 24-Feb-2021
Toronto

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

1235 FUND LP

Plaintiff

and

SOL GLOBAL INVESTMENTS CORP.,
SOL VERANO BLOCKER 2 INC., ANDREW DEFRANCESCO,
CATHERINE DEFRANCESCO,
DELAVACO HOLDINGS INC. (an Ontario corporation) AND
DELAVACO HOLDINGS, INC. (a Florida corporation)

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date ______________________ Issued by ________________________________

Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: SOL Global Investments Corp.
100 King Street West, Suite 5600
Toronto, ON M5X 1C9

AND TO: SOL Verano Blocker 2 Inc.
c/o Cogency Global Inc.
850 New Burton Road, Suite 201
Dover, Delaware 19904
United States of America

AND TO: Andrew DeFrancesco
1135 Royal York Road, Suite 1105
Toronto, ON M9A 0C3

AND TO: Catherine DeFrancesco
2300 E. Las Olas Boulevard, 5th Floor
Fort Lauderdale, Florida 33301
United States of America

AND TO: Delavaco Holdings Inc. (an Ontario corporation)
366 Bay Street #200
Toronto, ON M5H 4B2

AND TO: Delavaco Holdings, Inc. (a Florida corporation)
2300 E. Las Olas Boulevard, 5th Floor
Fort Lauderdale, Florida 33301
United States of America

CLAIM

1. The Plaintiff, 1235 Fund LP (“**1235**”), claims:

   (a) an Order compelling the Defendants to deliver to 1235 that number of New Verano Shares (as defined below) that is equivalent to 2,163,493 Verano Shares (as defined below), based either on the applicable exchange formula that was used to exchange Verano Shares for New Verano Shares pursuant to a Plan of Arrangement completed February 11, 2021 (as described below) or on a suitable exchange formula to be determined by the Court;

   (b) further, or in the alternative:

      (i) at least $550 million in damages for breach of contract, breach of the duty of good faith in contractual performance, inducing breach of contract and conspiracy; and

      (ii) consequential damages and damages for loss of chance in an amount to be determined;

   (c) a Declaration that the Defendants are jointly and severally liable for all damages and other relief that may be granted to 1235 in this proceeding, as well as for or pursuant to corresponding Orders giving effect to the Court’s Declaration;

   (d) further, or in the alternative, a constructive trust over, and accounting, disgorgement and equitable tracing in respect of, the number of New

Verano Shares specified in paragraph 1(a) hereof, together with any and all substitutions therefor and dividends and income derived therefrom, and any and all "proceeds" (within the meaning of the *Personal Property Security Act*, R.S.O. 1990, c. P.10 (the "***PPSA***")) derived from or obtained in respect of each of the foregoing;

(e) to the extent necessary, a Declaration that it is an implied term of the Debenture (as defined below) that SOL Global Investments Corp. ("**SOL**") is required to deliver to 1235 the number of New Verano Shares specified in paragraph 1(a) hereof;

(f) a Declaration that any and all New Verano Shares that have been or will be issued to, held by or obtained by SOL, whether pursuant to the Plan of Arrangement or otherwise, together with any and all substitutions therefor and dividends and income derived therefrom, as well as any and all "proceeds" (within the meaning of the *PPSA*) derived from or obtained in respect of each of the foregoing, constitute "Collateral" within the meaning of the General Security Agreement (as defined below), regardless of whether such New Verano Shares, substitutions, dividends, income and / or "proceeds" derived from or obtained in respect of each of the foregoing continue to be held by SOL;

(g) to the extent necessary, interim, interlocutory and permanent Orders compelling SOL and its subsidiaries and affiliates to:

(i) deliver to 1235 share certificates representing all New Verano Shares that form or formed part of the Collateral, endorsed in blank by an effective endorsement within the meaning of the *Securities Transfer Act, 2006*, S.O. 2006, c. 8; and

(ii) if and to the extent that such New Verano Shares are not certificated, deposit all such Shares into a securities control account under the dominion and control of 1235;

(h) a Declaration that 1235 is legally entitled to exercise all remedies available to it under the General Security Agreement, the Share Pledge Agreement (as defined below) and the *PPSA*, including the ability to vote, transfer, register in its own name, and sell securities, to enforce 1235's security interest over the shares of SOL Verano Blocker 2 Inc., all New Verano Shares that form part of the Collateral and any other property that constitutes Collateral;

(i) to the extent necessary, an Order appointing a Receiver or Receiver and Manager in respect of the shares of SOL Verano Blocker 2 Inc., the New Verano Shares that form part of the Collateral and any other property that constitutes Collateral, as permitted by the General Security Agreement and Share Pledge Agreement, and alternatively pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "***CJA***");

(j) further, or in the alternative, interim and interlocutory relief compelling the Defendants to deposit into escrow, or with the Accountant of the Superior

Court of Justice, the number of New Verano Shares specified in paragraph 1(a) hereof, together with any and all substitutions therefor and dividends and income derived therefrom, and any and all "proceeds" (within the meaning of the *PPSA*) derived from or obtained in respect of each of the foregoing;

(k) to the extent necessary to protect and preserve the rights and interests of 1235, including its ability to enforce any Orders or Judgment that may be issued by the Court in its favour in this proceeding, interim, interlocutory and permanent injunctive relief restraining the Defendants and their respective affiliates, directors, officers, agents, representatives and employees from:

(i) selling, disposing of, transferring, encumbering or similarly dealing with the number of New Verano Shares specified in paragraph 1(a) hereof, together with any and all substitutions therefor and dividends and income derived therefrom, and any and all "proceeds" (within the meaning of the *PPSA*) derived from or obtained in respect of each of the foregoing;

(ii) selling, disposing of, transferring, encumbering or similarly dealing with any of the assets of the Defendants, wherever situated;

(iii) instructing, requesting, counselling, demanding or encouraging any other person to take any acts that fall within subparagraphs (i) or (ii) of this paragraph 1(j); and

(iv) facilitating, assisting in, aiding, abetting or participating in any acts that have the purpose or effect of enabling conduct that falls within subparagraphs (i) or (ii) of this paragraph 1(j);

(l) to the extent necessary, interim, interlocutory and permanent injunctive relief restraining the Defendants and their respective affiliates, directors, officers, agents, representatives and employees from:

(i) pursuing in any way the action that has been commenced in the Supreme Court of the State of New York, County of New York by SOL and SOL Verano Blocker 2 Inc. against 1235 and MM Asset Management Inc. bearing Court File No. 650858/2021 (the "**U.S. Proceeding**"), and compelling SOL and SOL Verano Blocker 2 Inc. to cause that Proceeding to be dismissed or discontinued immediately on a with prejudice basis;

(ii) commencing or in any way pursuing any other legal proceeding against 1235, MM Asset Management Inc. or any of their respective affiliates, directors, officers, agents, representatives or employees in respect of the matters at issue, other than by way of Counterclaim in this action, and compelling them to cause any such proceeding that may already have been commenced to be dismissed or discontinued immediately on a with prejudice basis; and

(iii) instructing, requesting, counselling, demanding or encouraging any other person to commence or pursue any such legal proceeding;

(m) punitive damages in an amount to be determined by the Court;

(n) the costs of this proceeding and of the U.S. Proceeding on a full indemnity (or solicitor and their own client) basis, as well as all other costs and expenses associated with exercising, enforcing or protecting the rights of 1235 under the Debenture Documents (as defined below), plus in each case all applicable taxes;

(o) compound prejudgment and post-judgment interest, or alternatively prejudgment and post-judgment interest in accordance with sections 128 and 129 of the *CJA*, as amended;

(p) to the extent necessary, an Order substituting, validating or dispensing with service of this Statement of Claim and of any Notices that may be required to be delivered under the Debenture Documents;

(q) an Order abridging the time for the delivery of Statements of Defence in this action, and expediting every other step in this action;

(r) an Order appointing a Case Management Judge and directing that that Judge preside over all interlocutory steps that may be taken during the course of this proceeding, as well as over the trial of this action;

(s) an Order directing that this action proceed to trial on an expedited basis; and

(t) such further and other relief as this Honourable Court may deem just.

A. Overview

2. This action concerns the unlawful conduct of rogue participants in the Canadian capital markets who entered into a commercial transaction with 1235 in July 2019. The transaction was negotiated at arm's length between sophisticated parties, both of whom were represented by senior and experienced counsel from some of Canada's most prominent law firms. The Defendants now regret their bargain, and seek to resile from it instead of honouring their contractual and legal obligations. They have made considerable efforts to circumvent those obligations, and to vilify 1235 for insisting that its rights and interests be respected.

3. SOL is a publicly-traded investment company that focusses on the notoriously risky and volatile cannabis sector of the capital markets, including in companies that cultivate, produce, market and sell cannabis-related products in the United States. From July 2019 until February 2021, SOL's most significant investment was its equity investment in Verano Holdings LLC ("**Verano**").

4. In July 2019, 1235 purchased a carefully-negotiated Debenture from SOL for $50 million. In doing so, and in entering into a number of related agreements, 1235 obtained important rights and protections against various risks associated with this investment. As described more fully below, the Debenture provided that 1235 would be repaid through the delivery of securities of a new public company that would be formed from the proposed business combination of Verano and Harvest Health & Recreation, Inc. ("**Harvest**").

5. Critically, the Debenture granted to 1235 an option to receive repayment through the delivery of shares of Verano in the event that the Harvest transaction failed (the

“**Equity Option**”). The parties understood and agreed that this Equity Option might well have significant value to 1235 if the Harvest transaction did not close and the shares of Verano proved to be worth more than $50 million. 1235 also had the right under the Debenture to decline the Equity Option and opt for repayment in cash.

6. In the period immediately after SOL and 1235 closed their transaction in July 2019, it appeared that SOL had obtained the much better end of the bargain, and that the Equity Option was essentially worthless. The market price of Harvest’s shares cratered, with the result that 1235 faced the risk of suffering a serious loss if the business combination between Harvest and Verano went forward. Moreover, it appeared at the time that even if the Harvest transaction was abandoned, the Verano shares were unlikely to hold much value. Even 1235’s “safety net” option of obtaining repayment from SOL in the form of $50 million in cash was at significant risk, in view of SOL’s precarious financial condition.

7. With the passage of time, however, the bargain the parties agreed to in July 2019 proved to be a very good one for 1235. The Harvest transaction failed in March 2020. By the summer of 2020, it appeared that Verano’s operational results were strong. Starting in the Fall of 2020, valuations for cannabis-related companies in the public markets began to ramp up dramatically. There was also a real possibility that Verano could enter into a highly-accretive transaction. As a result, it appeared that the Equity Option could hold significant value.

8. In late 2020, Verano agreed to enter into a “going-public” transaction. Based on an announced public market valuation of nearly US$3 billion for Verano, 1235 was now

poised to achieve a substantial return by exercising the Equity Option it acquired in the Debenture transaction.

9. Regrettably, however, the Defendants implemented immediately an unlawful scheme to circumvent, breach and avoid the rights and interests of 1235. SOL issued manifestly misleading public disclosure concerning the Debenture, denied the existence of the Equity Option, breached repeatedly its obligations under the Debenture, wrongfully refused to deliver the Verano shares in repayment of the Principal Amount under the Debenture, and took active steps to circumvent the rights and interests of 1235. Moreover, despite having been made aware of the intention of 1235 to commence proceedings in this Court concerning the dispute that had arisen between the parties, SOL resorted to the extraordinary step of commencing improper and abusive litigation against 1235 before the Courts of New York. SOL did so for an improper purpose, in a transparent effort to obtain an unfair advantage and pre-empt the commencement of this action.

10. With the completion of Verano's going public transaction in February 2021, SOL obtained publicly tradeable securities that rightfully belong to 1235. When those securities began trading, their market price increased immediately by approximately 250%. As a result, 1235 has been wrongfully deprived of securities the value of which well exceeds $500 million. The significant damages that 1235 has already suffered will continue to escalate, and no doubt escalate dramatically, as time passes.

11. As described below, the conduct of the Defendants has been high-handed, opportunistic and unlawful. They have flatly ignored or denied improperly the existence of their obligations to 1235. They must be held to account.

B. The Parties

(i) The Plaintiff

12. 1235 is a limited partnership existing under the laws of the Province of Quebec, with its registered office in Montreal. It holds investments in a number of companies that operate primarily in the cannabis industry. Leaving aside the assets that are at issue in this proceeding, the current aggregate market value of the assets held by 1235 is in the range of approximately $150 million.

13. The general partner of 1235 is 1235 Capital Ltd., a corporation existing under the laws of Bermuda. The sole limited partner of and investor in 1235 is MMCap International Inc. SPC, a Cayman corporation. The limited partner’s investment adviser is MM Asset Management Inc., an Ontario corporation with its registered office in Toronto.

(ii) The Defendants

14. SOL is a corporation existing under the laws of Ontario, with its registered office in Toronto. It is a public “venture issuer” whose shares are traded over the Canadian Securities Exchange, the Frankfurt Stock Exchange and in the over-the-counter markets on the “Pink Sheets”.

15. The Canadian Securities Exchange provides access to the Canadian capital markets for companies that may otherwise be unable to qualify for listing on more established stock exchanges, such as the Toronto Stock Exchange or the TSX Venture

Exchange. The over-the-counter markets, on the other hand, permit parties to trade securities directly with one another, without being subjected to the regulatory oversight and controls of a stock exchange.

16. SOL is principally in the business of investing in cannabis-related companies in the United States and Europe. The cannabis industry is inherently risky, including because applicable regulations are inconsistent from one jurisdiction to the next and in an almost constant state of flux. SOL frequently invests in companies with relatively high risk profiles even within the cannabis industry, whether because those companies are at an earlier stage or because they are on questionable financial footing. Such investments often carry the prospect of earning higher returns, but carry substantial risks of failure. Indeed, both before and after entering into the Debenture transaction with 1235 that is at issue in this action, SOL incurred significant losses due to unrelated failed investments.

17. On July 5, 2019, SOL issued and sold to 1235 a carefully negotiated debenture titled "6.00% Senior Secured Non-Convertible Debenture" (the "**Debenture**"). The principal amount of the Debenture was $50 million (the "**Principal Amount**"). As explained below, the parties entered into a number of other agreements at the same time as, and in conjunction with, the issuance of the Debenture. The Debenture and associated agreements and documents are referred to herein as the "**Debenture Documents**". The key terms of the Debenture Documents, as well as the circumstances in which the Debenture arrangements were entered into, are described in greater detail below.

18. Both at the time the Debenture arrangements were entered into and in the period since, SOL's most significant investment by far was its equity investment in Verano. Until

the completion of a reverse takeover transaction through a Plan of Arrangement effected in February 2021, Verano was a privately-held limited liability corporation existing under the laws of the State of Delaware. It was and continues to be in the business of cultivating, producing, marketing and selling cannabis and cannabis-related products in the United States.

19. Pursuant to the Plan of Arrangement, Verano was notionally acquired by Majesta Minerals Inc. ("**Majesta**"), a public shell corporation existing under the laws of Alberta. Majesta then renamed itself Verano Holdings Corporation. For the purposes of this Statement of Claim, Verano Holdings Corporation is referred to as "**New Verano**".

20. The subordinated voting shares of New Verano ("**New Verano Shares**") began trading over the Canadian Securities Exchange effective February 17, 2021. Verano continues to carry on business as a wholly-owned subsidiary of New Verano.

21. Immediately prior to the completion of the Plan of Arrangement, SOL held more than 3.3 million Class B common units of Verano ("**Verano Shares**") through two wholly owned subsidiaries: SOL Verano Blocker 1 Inc. ("**Blocker 1**") and SOL Verano Blocker 2 Inc. ("**Blocker 2**"). These Verano Shares (or the shares of Blocker 1 and Blocker 2 themselves) were exchanged for New Verano Shares pursuant to the terms of the Plan of Arrangement and separate arrangements entered into among SOL (and / or its subsidiaries), Verano and New Verano. In breach of its obligations under the Debenture Documents, SOL has failed or refused to disclose those separate arrangements to 1235. SOL has reported publicly, however, that it received directly or indirectly approximately

25.2 million New Verano Shares as a result of the completion of the Plan of Arrangement and these other arrangements.

22. The Defendant, Blocker 2, is a corporation existing under the laws of the State of Delaware. SOL caused Blocker 2 to be incorporated for the sole purpose of reducing or avoiding the payment of taxes by interposing a U.S. corporation between SOL and its Verano Shares. Blocker 1 served the same single tax-driven purpose. Blocker 2 has guaranteed the obligations of SOL under the Debenture. Before the completion of the reverse takeover involving Verano, Blocker 2 held 2,397,607 Verano Shares.

23. The Defendant, Andrew DeFrancesco, is a major shareholder of SOL. He has served as SOL's Chairman since September 2018 and as its Chief Investment Officer since November 2018. Since June 2020, he has also served as SOL's interim Chief Executive Officer. Regardless of his formal title or position, he is the principal and directing mind and management of SOL. He controls its operations.

24. Mr. DeFrancesco has personally guaranteed the obligations of SOL under the Debenture. While he maintains residences in Toronto, Florida and the Commonwealth of The Bahamas, his address for service (as set out in the written Guarantee by which he guaranteed the obligations of SOL under the Debenture) is located in Toronto.

25. The Defendant, Catherine DeFrancesco, is the spouse of Mr. DeFrancesco. She has also personally guaranteed the obligations of SOL under the Debenture. Ms. DeFrancesco is a Toronto native, but currently resides in Florida.

26. Mr. DeFrancesco also conducts business through his private equity firm, which he has named the Delavaco Group. The Delavaco Group operates through a number of corporations, including two of the Defendants in this action: (i) Delavaco Holdings Inc., a corporation existing under the laws of Ontario ("**Delavaco Ontario**") whose registered office is located in Toronto; and (ii) Delavaco Holdings, Inc., a corporation existing under the laws of Florida ("**Delavaco Florida**"). Delavaco Ontario and Delavaco Florida have also guaranteed the obligations of SOL under the Debenture. Ms. DeFrancesco is notionally the sole officer and director of both corporations. In reality, however, these corporations are owned, completely controlled and operated by, and are the alter egos of Mr. DeFrancesco. In respect of the matters at issue in this proceeding, they have acted both as principals on their own account and agents of Mr. DeFrancesco.

C. The Transaction between 1235 and SOL

27. On March 11, 2019, Harvest Health & Recreation Inc., a cannabis-related company based in Arizona whose shares are traded over the Canadian Securities Exchange, announced that it had agreed to acquire Verano for US$850 million. Harvest and Verano subsequently entered into a Business Combination Agreement on or about April 22, 2019. That Agreement contemplated that both Harvest and Verano would become subsidiaries of a new public company (the "**Harvest Resulting Issuer**"). Each Harvest share would be exchanged for one subordinate voting share of the Harvest Resulting Issuer ("**Harvest Resulting Issuer Shares**"), while each Verano Share would be exchanged for 4.7625 Harvesting Resulting Issuer Shares. This exchange ratio was subsequently revised to 4.7536.

28. Given how rapidly evolving and risky the U.S. cannabis industry was (and is), it was far from certain at the time that this transaction would close. It is not unusual for proposed business combinations to fail in the cannabis industry, including because of regulatory issues, legal risk and market volatility. Indeed, as explained in greater detail below, the proposed business combination of Harvest and Verano was abandoned in March 2020, almost a year after the Business Combination Agreement was entered into.

29. While this proposed business combination remained pending, 1235 became interested in acquiring an equity position in the Harvest Resulting Issuer in the event that the transaction between Harvest and Verano closed, as well as an option to acquire an equity position in Verano if it did not. SOL held a sizeable block of Verano Shares that would be exchanged for Harvest Resulting Issuer Shares if the proposed business combination was completed. What SOL did not have at the time, however, was a regular source of income. Rather, SOL was in critical need of cash to continue as a going concern. 1235 had what SOL needed, namely available funds to invest.

30. It was in these circumstances that 1235 and SOL agreed to do business with one another. The parties entered into their transaction in early July 2019, and documented and implemented it through the Debenture Documents. As stated above, the transaction was negotiated at arm's length by sophisticated commercial parties, both of which were represented throughout by experienced commercial lawyers from prominent law firms based in Toronto.

31. The fundamental economic terms of the Debenture arrangements included the following:

(a) 1235 purchased the Debenture from SOL for $50 million in cash;

(b) the parties agreed that if the pending business combination of Harvest and Verano was completed on substantially the terms set out in their Business Combination Agreement, 1235 would be required to take delivery of 8,227,507 Harvest Resulting Issuer Shares as repayment of the Principal Amount of $50 million. This was effectively a "forward" contract by which SOL sold these Harvest Resulting Issuer Shares to 1235 at a price fixed at the time the Debenture was sold. If this business combination was completed, 1235 was not permitted to elect to have the Principal Amount under the Debenture repaid in cash. The number of Harvest Resulting Issuer Shares that 1235 was entitled to receive was determined by dividing $50 million by a notional share price of $6.08. This price represented a 25% discount to the five-day volume weighted average price of Harvest's shares ending on the day before the closing of the Debenture transaction, which was approximately $8.10;

(c) if the business combination of Harvest and Verano was not completed, 1235 had the option to take delivery of 1,730,794 Verano Shares in repayment of the Principal Amount of the Debenture. As noted above, this option is referred to as the "**Equity Option**" in this Statement of Claim;

(d) 1235 was also given the right under the Debenture to decline to exercise the Equity Option and receive, instead, repayment of the Principal Amount in cash;

(e) to the extent that 1235 received Harvest Resulting Issuer Shares or Verano Shares that were subject to legal or contractual restrictions on resale, SOL was required to deliver additional Shares of the Harvest Resulting Issuer or Verano (as applicable). The Debenture prescribed two different formulas in this regard: one for calculating additional Harvest Resulting Issuer Shares and a separate one for calculating additional Verano Shares. The purpose of these "top up" rights was to compensate 1235 for the illiquid nature of any Shares that were subject to such restrictions; and

(f) the annual interest rate, or "coupon", for the Debenture would be 6.0% payable semi-annually in cash.

32. Although structured using a Debenture, the proposed transaction was not intended to be – and was not – a straight debt or fixed income investment. This is clear and obvious on the face of the terms of the Debenture, as summarized above.

33. 1235 is not in the business of making straight loans. Whenever 1235 purchases debt securities, those securities always carry equity upside – *i.e.*, the debt securities are either convertible or exchangeable into equity.

34. Moreover, in July 2019 no reputable financial institution or other sophisticated arm's length party would have loaned $50 million to SOL at a 6.0% coupon without a potentially significant equity upside. In order for SOL to have obtained a two-year loan of that size at that time from an arm's length party, the effective yield from interest would have had to have been many times higher than the coupon provided for in the Debenture, if in fact SOL could have obtained such a loan at all. This is so for a number of reasons,

including: (i) the highly speculative nature of SOL's business; (ii) the absence of any regular source of income to service tens of millions of dollars of debt; (iii) the significant and inherent risks associated with investing in companies operating in the cannabis industry; (iv) the frailty of SOL's credit; and (v) SOL's precarious financial condition at the time.

35. The interest rate provided for in the Debenture was as low as it was precisely because of the equity upside that 1235 was purchasing, including the Equity Option. Because the shareholders of Harvest had already approved the proposed business combination with Verano, 1235 expected at the time that if the proposed business combination was completed, closing would likely occur within a period of approximately three to four months. If it had been, and during the period pending closing the market price of Harvest's shares had stayed constant, 1235 would have earned a spread of approximately 33% on its investment (or a return in excess of 100% on an annualized basis). If, as 1235 expected at the time, the market price of Harvest's shares had increased in the period before Harvest's acquisition of Verano was completed, 1235 would have earned an even more robust return.

36. However, the Debenture arrangements also shifted substantial downside risk to 1235. If the business combination between Harvest and Verano had been completed but the market price of Harvest's shares had declined by more than 25% in the period before that business combination closed, 1235 would have suffered a loss. The amount of such a loss would have depended on how precipitous the decline in the market price of Harvest's shares turned out to be. For instance, if the market price of Harvest's shares had declined to $2.00 per share by the time of the closing of the proposed business

combination, 1235 would have received Harvest Resulting Issuer Shares worth less than $16.5 million in return for its $50 million investment.

37. The risks associated both with the completion of the proposed business combination between Harvest and Verano, and with potential fluctuations in the market price of Harvest's shares, were potentially serious given the notorious volatility of the market for cannabis stocks. Indeed, as described in more detail below, Harvest's shares ultimately lost nearly all of their value in the months following the completion of the Debenture transaction between 1235 and SOL in July 2019, and the proposed business combination between Harvest and Verano ultimately failed.

38. The Debenture arrangements allowed SOL to de-risk its investment in Verano by monetizing immediately, in July 2019, the value associated with a substantial percentage of its Verano Shares, without having to wait for the proposed business combination between Harvest and Verano to be completed. In effect, the Debenture arrangements offloaded onto 1235 all of the risk associated with those Verano Shares, through a forward sale to 1235 of Harvest Resulting Issuer Shares (for which Verano Shares would be exchanged) at a price that was fixed on the closing date of the Debenture.

39. The purpose of the Equity Option that, as stated above, enabled 1235 to receive Verano Shares in repayment of the Principal Amount under the Debenture, was to preserve 1235's potential equity upside associated with its investment in the event that the Harvest transaction failed. The Equity Option would ultimately "pay off" for 1235 if the value associated with the Verano Shares 1235 was entitled to receive under the Debenture exceeded $50 million at the time those Shares were delivered to 1235 (*i.e.*, if

the Equity Option was “in the money” at that time). The Equity Option was a fundamental economic term of the bargain agreed to by the parties at the time the Debenture arrangements were entered into given the very real risk that the Harvest transaction might fail.

40. The “in the money” value of the Equity Option could increase substantially in any number of circumstances. These included, without limitation, if: (i) Verano achieved operational improvements or organic growth; (ii) Verano engaged in one or more accretive transactions; or (iii) valuations for companies in the cannabis industry improved as a whole.

41. 1235 had no control over, or ability to influence, whether the Verano Shares would hold sufficient value to make the Equity Option valuable to it in the event that the Harvest transaction were to fail. The Equity Option rewarded 1235 appropriately and fairly for taking on this and other potentially significant risks in entering into the Debenture arrangements.

42. It was also critical to 1235 that it was given the <u>right</u> under the Debenture to elect to receive Verano Shares, rather than an <u>obligation</u> to receive them. This permitted 1235 to guard against the real risk that the value of the Verano Shares could decline significantly. The value of the target company in a failed merger and acquisition transaction frequently declines. Moreover, private company securities are frequently valued at a significant discount due to, among other factors, their illiquid nature.

43. There were other potentially significant risks to 1235 in entering into the Debenture transaction. If 1235 had elected to be repaid in cash, it could have lost most or all of its

$50 million investment to the extent that SOL was unable to repay the Principal Amount. This was a real possibility in view of SOL's poor credit and weak financial position. Even if 1235 had recovered $50 million in cash and SOL had satisfied in full its interest obligations, 1235 would still have received only a 6.0% return on the $50 million in capital it invested in July 2019.

44. It was entirely appropriate for sophisticated commercial parties such as 1235 and SOL to make the informed business decision to allocate risks in the way that they did under the Debenture Documents. The Debenture arrangements provided 1235 with substantial upside potential, but also burdened 1235 with significant downside risk. SOL would have "won" the trade agreed to by the parties if: (i) the market price of Harvest's shares had declined and the business combination between Harvest and Verano had closed; (ii) the business combination did not close and 1235 had elected to take delivery of Verano Shares but ultimately could not realize value on them exceeding $50 million; or (iii) the business combination did not close and 1235 had elected for repayment in cash. In all of these scenarios, SOL would have benefitted by selling "high" on Verano or obtaining a large amount of "cheap" cash at interest rates it would otherwise have had no access to.

D. The Debenture Documents

45. As alluded to above, 1235, SOL and the other Defendants entered into their Debenture arrangements on July 5, 2019. The parties effected their transaction through a number of agreements and documents, including: (i) a Subscription Agreement; (ii) the Debenture; (iii) a General Security Agreement; (iv) a Share Pledge Agreement; (v) Guarantees; and (vi) a Blocker Security Agreement. These are the main documents that

are referred to collectively in this Statement of Claim as the "**Debenture Documents**". Key provisions of the Debenture Documents are summarized below.

(i) Subscription Agreement

46. In the Subscription Agreement, 1235 agreed to purchase the Debenture from SOL for $50 million. Pursuant to section 5.2 of that Agreement, SOL agreed to deliver to 1235 a Debenture Certificate representing the Debenture.

47. As set out in section 7 of the Subscription Agreement, SOL made a number of representations and warranties to 1235 and acknowledged that 1235 was relying upon them in entering into the Debenture arrangements. These included representations and warranties concerning the number of Verano Shares held by Blocker 1 and Blocker 2.

48. In section 7.1.6 of the Subscription Agreement, SOL represented and warranted that as of July 5, 2019, Blocker 1 was the direct and beneficial owner of 1,652,094 Verano Shares. Similarly, in section 7.1.5, SOL represented and warranted that as of July 5, 2019, Blocker 2 was the direct registered and beneficial owner of 2,397,607 Verano Shares. The Verano Shares held by Blocker 1 and Blocker 2 represented approximately 6.3% and 9.2%, respectively, of all issued and outstanding Verano Shares at the time.

49. Unbeknownst to 1235, the representation and warranty made by SOL in section 7.1.6 of the Subscription Agreement was false. By the time that 1235 and SOL entered into that Agreement, Blocker 1 had, in fact, previously disposed of hundreds of thousands of Verano Shares. SOL never notified 1235 of this important fact, either before or after the Debenture Documents were entered into. The implications of this false representation are described in greater detail below.

50. The Subscription Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Moreover, pursuant to section 9.4 of the Subscription Agreement, 1235 and SOL irrevocably and unconditionally submitted and attorned to the exclusive jurisdiction of the Courts of Ontario to determine all issues arising from the Agreement. SOL ignored this provision in commencing abusive and tactical litigation in respect of this matter before the Courts of New York, as described below.

(ii) Debenture Certificate

51. The Debenture is represented by a Debenture Certificate dated July 5, 2019. The Terms and Conditions of the Debenture are appended to that Certificate as Schedule A. Where this Statement of Claim refers to specific sections of the Debenture, the references are to the corresponding provisions of the Terms and Conditions.

52. As stated on the face of the Debenture, SOL is obligated to pay to 1235 the Principal Amount of $50 million, along with any accrued and unpaid interest (and all other amounts payable by SOL), on the earlier of July 5, 2021, the completion of the business combination between Harvest and Verano, or such earlier date as the Principal Amount may become due and payable. Pursuant to section 2.2 of the Debenture, interest on the Principal Amount accrues at an annual rate of 6.0%, calculated and payable semi-annually starting on December 31, 2019.

53. One of the most important provisions of the Debenture is section 2.1(1)(b), in which SOL granted to 1235 the Equity Option that lies at the heart of this litigation. That Option entitles 1235 to require SOL to repay the Principal Amount of the Debenture by delivering Verano Shares to 1235 in lieu of repayment in cash. The Equity Option became available

to 1235 the moment that the proposed business combination between Harvest and Verano failed. As explained more fully below, that business combination was abandoned in March 2020.

54. Section 2.1(1) states:

> Subject to the terms and conditions hereof, **<u>the Principal Amount outstanding under this Debenture shall be repaid by [SOL] to [1235] on the Maturity Date in full in cash or, at the option of [1235]</u>:**
>
> (a) **<u>if the Verano Acquisition [*i.e.*, the business combination between Harvest and Verano] is completed, through delivery to [1235] of that number of Harvest Resulting Issuer Shares valued as follows:</u>**
>
> (i) if the Harvest Resulting Issuer Shares delivered to [1235] in repayment of the Principal Amount on the Maturity Date are not subject to any legal or contractual restriction on resale on the Maturity Date, $6.08 per Harvest Resulting Issuer Share (the "**Effective Harvest Share Price**"), being a 25% discount to the effective transaction price of the Verano Shares pursuant to the Verano Acquisition, based on the five (5) day volume weighted average price ("**VWAP**") of Harvest Shares ending on the trading day immediately prior to the Closing Date; or
>
> (ii) If any of the Harvest Resulting Issuer Shares delivered to [1235] in repayment of the Principal Amount on the Maturity Date are subject to a legal or contractual restriction on resale on the Maturity Date, a 25% discount to the Effective Harvest Share Price calculated on an annualized basis for the period that such Harvest Resulting Issuer Shares delivered to [1235] are subject to a legal or contractual restriction on resale; **<u>or</u>**
>
> (b) **<u>through delivery to [1235] of that number of Verano Shares valued as follows</u>:**
>
> (i) **<u>if the Verano Shares are not subject to any legal or contractual restriction on resale</u> on the Maturity Date, [SOL] shall deliver <u>1,730,794 Verano Shares</u>**

to [1235], determined on the basis of a 25% discount to the effective transaction price of the Verano Shares pursuant to the Verano Acquisition, based on the five (5) day VWAP of Harvest Shares ending on the trading day immediately prior to the Closing Date; or

(ii) **<u>if any of the Verano Shares delivered to [1235]</u> in repayment of the Principal Amount on the Maturity Date <u>are subject to a legal or contractual restriction on resale</u> on the Maturity Date, <u>[SOL] shall deliver additional number of Verano Shares to [1235] equal to 25% of the number of Verano Shares set out in Section 2.1(1)(b)(i)</u> above calculated on an annualized basis for the period that such Verano Shares delivered to [1235] are subject to a legal or contractual restriction on resale, subject to a maximum aggregate number of additional Verano Shares of 25%**. [emphasis added]

55. When the Debenture arrangements were entered into in July 2019, the parties understood and agreed that if the proposed business combination between Harvest and Verano was not completed, 1235 could choose at its sole discretion the consideration it would receive in repayment of the Principal Amount. If 1235 exercised its Equity Option to be repaid through the delivery to it by SOL of Verano Shares, it would receive exactly 1,730,794 of those Shares, unless any of those Shares were subject to restrictions on resale. In that event, 1235 would receive additional Verano Shares based on the formula prescribed by section 2.1(1)(b)(ii) of the Debenture, set out immediately above. The maximum number of additional Verano Shares that 1235 would be entitled to receive based on that formula was 432,699 (being 25% of 1,730,794). As such, the maximum number of total Verano Shares that 1235 would be entitled to receive in repayment of the Principal Amount of the Debenture was 2,163,493.

56. Significantly, section 2.1(5) of the Debenture makes clear that if the proposed business combination between Harvest and Verano had been completed on substantially

the terms set out in the relevant Business Combination Agreement, 1235 was not entitled to elect to be repaid in cash. Instead, 1235 would have had no choice but to be repaid in the form of Harvest Resulting Issuer Shares. This provision transferred to 1235 substantial downside risk, for the reasons set out above.

57. The Debenture also addressed the security interest to be granted to 1235 to secure the performance by SOL of its obligations. Pursuant to section 4.1 of the Debenture, SOL agreed to grant to 1235 a security interest over all of its present and after acquired property, other than property that was explicitly excluded under the terms of a General Security Agreement.

58. Moreover, section 4.7 of the Debenture obligated SOL to deliver to 1235 physical Share Certificates representing all of the outstanding securities of Blocker 2, to be held by 1235 in order to perfect its security interest over those pledged securities.

59. Pursuant to section 8.9 of the Debenture, SOL is required to pay to 1235 on demand all expenses (including fees and disbursements) incurred by 1235 in connection with: (i) “the custody or preservation of, or the sale of, collection from or other realization of any collateral”; (ii) the exercise, enforcement or protection of any rights of 1235 under the Debenture Documents; and (iii) the failure of SOL to perform or observe its obligations under any of the provisions of the Debenture Documents. 1235’s claim for its costs of this action, the costs of the U.S. Proceeding described below and various other costs and expenses on a full indemnity (or solicitor and their own client) basis arises from this provision.

60. Section 2.6 of the Debenture required that the obligations of SOL be guaranteed by Blocker 2, Mr. DeFrancesco, Ms. DeFrancesco, Delavaco Ontario and Delavaco Florida.

61. Critically, in section 6.1 of the Debenture the parties turned their minds to the question of Events of Default. At least two types of Events of Default enumerated in that provision are directly relevant to this action.

62. *First*, section 6.1(1)(e) of the Debenture states that it is an Event of Default if any representation or warranty of SOL (or any of its subsidiaries) contained in the Debenture, the Subscription Agreement or other Debenture Documents proves to be materially untrue, or if SOL or any of its subsidiaries breach any covenant contained in the Debenture.

63. In this regard, two of the negative covenants contained in section 5.2 of the Debenture are particularly important:

(a) under section 5.2(5), SOL and its subsidiaries are prohibited from directly or indirectly, whether voluntarily or involuntarily, selling, transferring, assigning or similarly disposing of, or entering into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment or similar disposition of, securities of any subsidiary of SOL other than to 1235; and

(b) under section 5.2(7), SOL and its subsidiaries are prohibited from selling, transferring or otherwise disposing of any property, including shares of subsidiaries, subject to certain specified exceptions.

64. As described below, SOL breached both of these covenants by participating in the Plan of Arrangement that was completed in February 2021.

65. Pursuant to section 6.1(3) of the Debenture, upon the occurrence of a breach of covenant or other Event of Default under section 6.1(1)(e), 1235 has the option of declaring all or any portion of the Principal Amount under the Debenture, along with accrued interest, to be immediately due and payable.

66. *Second*, section 6.1(1)(j) of the Debenture states that it is an Event of Default if "there is a disposition or expropriation of all or substantially all of the property of [SOL] or any of its Subsidiaries". SOL's participation in the Plan of Arrangement also gave rise to an Event of Default under this provision.

67. Section 6.1(2) of the Debenture states that upon the occurrence of an Event of Default under section 6.1(1)(j) the entire unpaid Principal Amount and accrued interest automatically becomes due and payable.

68. Significantly, nothing in the acceleration provisions in sections 6.1(2) or (3), or elsewhere in the Event of Default provisions of the Debenture, permits SOL to repay in cash the Principal Amount. The form and amount of consideration to be paid in respect of the Principal Amount is addressed exclusively in section 2.1 of the Debenture.

69. Section 8.13 of the Debenture provides that the Debenture is governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Moreover, pursuant to that same provision, 1235 and SOL irrevocably and unconditionally submitted and attorned to the jurisdiction of the Courts of Ontario in connection with any disputes arising out of or pertaining to the Debenture. SOL also ignored this provision in commencing the abusive and tactical U.S. Proceeding before the Courts of New York, as described below.

(iii) General Security Agreement

70. As alluded to above, on July 5, 2019, 1235 and SOL entered into a General Security Agreement in respect of the security interest granted by SOL to 1235. This General Security Agreement was subsequently amended and restated on August 13, 2019. For the sake of convenience, the Amended and Restated General Security Agreement is referred to in this Statement of Claim as the "**General Security Agreement**".

71. Pursuant to section 3(a) of the General Security Agreement, SOL granted to 1235 a security interest in all of the "**Collateral**". The General Security Agreement defines "Collateral" as "all present and after-acquired undertaking and property of [SOL] of any nature whatsoever". The Collateral expressly includes, without limitation:

> all Accounts; Equipment; Goods; Inventory; fixtures; Documents of Title (whether negotiable or not); Instruments (including all promissory notes, drafts, bills of exchange or acceptances); Chattel Paper; **Securities (including any Uncertificated Securities and all substitutions therefor and dividends and income derived therefrom**, (collectively, the "Pledged Securities")); **Securities Accounts and Security Entitlements now owned or hereafter acquired by or on behalf of the Debtor** (including such as may be returned to or repossessed by the Debtor); **Investment**

> **Property; Financial Assets**; intangible personal property, including all contract rights, goodwill, patents, trademarks, copyrights and other intellectual property, and all other choses in action of the Debtor of every kind, whether due at the present time or hereafter (collectively, "General Intangibles"); Money; letters of credit or secondary obligations that support the payment or performance of an Account, Chattel Paper, Document of Title, General Intangible, Instrument or Investment Property; all books and records pertaining to the Collateral; and to the extent not covered previously in this Section 3, **all other personal property of such Debtor, whether tangible or intangible, and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing**, any and all Proceeds of any insurance, indemnity, warranty or guarantee payable to the Debtor from time to time with respect to any of the foregoing. [emphasis added]

72. Each of the capitalized terms in this provision bears the meaning assigned to it by the *PPSA* or the *Securities Transfer Act* (Ontario), as applicable.

73. The only property of SOL that was excluded from the Collateral was (and is): (i) "purchase-money security interests" within the meaning of the *PPSA*; and (ii) any and all rights, title and interests of SOL in and to the shares it holds in Blocker 1. Notably, "Proceeds" received by SOL in respect of the sale, transfer or other disposition of shares of Blocker 1 are <u>not</u> excluded from the Collateral.

74. The Collateral 1235 obtained security over in entering into the Debenture arrangements clearly includes SOL's shares in Blocker 2 and any Proceeds received therefor, as well as any other securities held by SOL (including securities acquired or obtained by SOL in the period after the Debenture Documents were entered into).

75. Pursuant to section 11 of the General Security Agreement, 1235 may enforce its security interest upon the occurrence and during the continuance of an Event of Default

under the Debenture that has not been waived or cured. Section 12 of the General Security Agreement provides for a series of remedies that 1235 is entitled to exercise in order to enforce its security interest. Those remedies are independent and cumulative in nature, and are in addition to any remedies that may be available to 1235 at law or in equity.

76. Of particular note, the remedies provided for in section 12 of the General Security Agreement include:

(a) possession and / or retention of Collateral by any method permitted by law;

(b) sale of Collateral;

(c) the voting of any Securities and Financial Assets that are part of the Collateral, the collection and receipt of any Distribution and, if necessary, causing such Securities and Financial Assets to be registered in the name of 1235 or transferred to an Account maintained with it;

(d) the appointment by instrument in writing of a Receiver or Receiver and Manager of the Collateral; and

(e) proceedings in any Court of competent jurisdiction for the appointment of a Receiver or Receiver and Manager of the Collateral, or for the sale of the Collateral.

77. The General Security Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

(iv) Share Pledge Agreement

78. 1235, SOL and Blocker 2 also entered into a Share Pledge Agreement made as of July 5, 2019. Pursuant to section 3 of the Share Pledge Agreement, SOL specifically granted to 1235 a security interest in the shares of Blocker 2 and all proceeds from those pledged securities. In section 8(a)(ii), SOL covenanted not to sell, exchange, transfer, assign or otherwise dispose of or deal in any way with those shares, or to enter into any agreement or undertaking to do so, except as permitted in the Debenture or Share Pledge Agreement. Blocker 2 similarly covenanted in section 8(b)(i) not to permit SOL to do so. This is consistent with the prohibition imposed by the Debenture on disposing of any securities of a subsidiary of SOL, as described above.

79. Section 10 of the Share Pledge Agreement provides that 1235 may enforce its security interest over the Blocker 2 shares immediately upon the occurrence of an Event of Default under the Debenture, subject to any applicable notice or period for remedying such an Event of Default. Section 11 enumerates contractual remedies that 1235 is entitled to exercise to enforce its security interest. As with the General Security Agreement, those remedies are independent and cumulative in nature, and are in addition to any remedies that may be available to 1235 at law or in equity.

80. The remedies provided for in section 11 of the Share Pledge Agreement include:

(a) taking possession of the shares of Blocker 2 by any method permitted by law, and transferring and registered any of those shares in the name of 1235;

(b) selling the shares of Blocker 2;

(c) voting the shares of Blocker 2;

(d) appointing by instrument in writing a Receiver or Receiver and Manager of the shares of Blocker 2; and

(e) taking proceedings in any Court of competent jurisdiction for the appointment of a Receiver or Receiver and Manager, or for the sale of the shares of Blocker 2.

81. The Share Pledge Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Moreover, pursuant to section 32 of the Share Pledge Agreement, 1235, SOL and Blocker 2 irrevocably and unconditionally submitted and attorned to the exclusive jurisdiction of the Courts of Ontario to determine all issues arising from that Agreement. SOL and Blocker 2 also ignored this provision in commencing the abusive and tactical U.S. Proceeding before the Courts of New York, as described below.

(v) Guarantees

82. As noted above, Blocker 2, Mr. DeFrancesco, Ms. DeFrancesco, Delavaco Ontario and Delavaco Florida were required to guarantee the obligations of SOL under the Debenture for the benefit of 1235. These guarantees were documented in three written Guarantees: one provided by Blocker 2; one provided by Mr. DeFrancesco, Ms. DeFrancesco and Delavaco Ontario on a joint and several basis; and one provided by Delavaco Florida.

83. The Guaranty provided by Blocker 2 is governed by the laws of the State of New York. In section 4.4(b) of this Guaranty, Blocker 2 agreed to submit to the non-exclusive jurisdiction of the Federal Courts of the United States for the Southern District of New York, or the Courts of the State of New York within the County of New York. Blocker 2 specifically agreed that “nothing [in the Guaranty] … shall limit the right to sue in any other jurisdiction”.

84. The Guarantee provided by Mr. DeFrancesco, Ms. DeFrancesco and Delavaco Ontario is governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Pursuant to section 23 of the Guarantee, Mr. DeFrancesco, Ms. DeFrancesco and Delavaco Ontario irrevocably attorned and submitted to the jurisdiction of the Courts of Ontario.

85. The Guaranty provided by Delavaco Florida contains choice of law and forum clauses that are identical to those contained in the Guaranty provided by Blocker 2.

(vi) Blocker Security Agreement

86. Blocker 2 also agreed to grant a security interest to 1235 in order to secure its obligations as a Guarantor under the Debenture. 1235 and Blocker 2 entered into a separate Security Agreement for that purpose (the “**Blocker Security Agreement**”). That Agreement, however, excludes the Verano Shares held by Blocker 2 from the “Collateral” over which 1235 has security. This effectively denudes the security interest granted by Blocker 2 of any practical utility or value, since Blocker 2 is a single purpose entity interposed between SOL and the Verano Shares for tax-related reasons. To the

knowledge of 1235, prior to the completion of the Plan of Arrangement, Blocker 2 did not possess any meaningful assets other than Verano Shares.

87. 1235 has not sought to enforce any of its remedies under the Blocker Security Agreement – whether in this proceeding or otherwise. 1235 is not, for instance, seeking to enter onto the premises of Blocker 2 and collect or sell the property of Blocker 2. Although 1235 is seeking a Declaration that it is entitled to exercise remedies to enforce its security interest over the shares of Blocker 2, those remedies arise from the General Security Agreement, from the Share Pledge Agreement and under the *PPSA*. They do not arise from the Blocker Security Agreement, for the simple reason that Blocker 2 does not own itself. The shares of Blocker 2 are part of the property and undertaking of SOL, rather than of Blocker 2.

88. The Blocker Security Agreement is governed by the laws of the State of New York and the laws of the United States applicable therein. Importantly, Section 21 of that Agreement contains the following forum selection clause:

> Except as otherwise expressly provided in any of the other Transaction Agreements, in all respects, including all matters of construction, validity and performance, this agreement and the obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and performed in that state, and any applicable laws of the United States of America. **[Blocker 2] consents and agrees** that the State or Federal Courts located in New York County, City of New York, New York, shall have exclusive jurisdiction to hear and determine any claims or disputes between [Blocker 2] and [1235] pertaining to this Agreement or any of the other **Transaction Agreements** or to any matter arising out of or relating to this Agreement or any of the other **Transaction Agreements**, provided, that [Blocker 2] acknowledges that any appeals from those courts may have to be heard by a

> court located outside of New York County, City of New York, New York, and, provided, further, **nothing in this Agreement shall be deemed or operate to preclude [1235] from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of [1235]. [Blocker 2] expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and [Blocker 2] hereby waives any objection which it may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court.** [emphasis added]

89. The term "Transaction Agreements" is defined in the Blocker Security Agreement to mean the Blocker Security Agreement, the Guaranty provided by Blocker 2 (described below) and "the BACA". "BACA" is not defined in the Blocker Security Agreement, and appears to have been included as a drafting error. The term "Obligations" is defined in the Blocker Security Agreement to have the meaning ascribed to that term in the Guaranty provided by Blocker 2. That Guaranty defines "Obligations" as having the same meaning ascribed to it in the Debenture.

90. Section 21 of the Blocker Security Agreement entitles 1235 to sue Blocker 2 in New York in respect of any dispute pertaining to, arising from or relating to the Blocker Security Agreement or the Guaranty, but does not require 1235 to do so. This attornment provision is entirely one-way in nature. Moreover, this attornment provision does not extend to the Subscription Agreement, the Debenture, the General Security Agreement or the Share Pledge Agreement.

91. Although Blocker 2 attorned to the exclusive jurisdiction of the Courts of New York under section 21 of the Blocker Security Agreement, 1235 did not do so – whether for the

purposes of adjudicating disputes pertaining to the "Transaction Agreements" or otherwise. Indeed, section 21 says the exact opposite. It states explicitly that nothing in the Agreement prevents 1235 from taking legal action in <u>any other jurisdiction</u> to realize on the Collateral provided by Blocker 2 or on any other security in respect of the Obligations arising under the Debenture. Indeed, Blocker 2 expressly submitted to any such jurisdiction selected by 1235 and waived any ability it might otherwise have had to raise jurisdictional or forum-related challenges in such a proceeding.

92. As stated above, in this action 1235 is not seeking to realize on the Collateral provided by Blocker 2. 1235 is, however, seeking to realize on other security in respect of the Obligations arising under the Debenture, in that it is seeking to enforce its security interest by exercising remedies in respect of Collateral provided by SOL.

93. Section 21 of the Blocker Security Agreement therefore bars Blocker 2 from contesting the jurisdiction of this Court to hear or determine this action, and prevents it from asking this Court to stay or dismiss this action on the basis of the doctrine of *forum non conveniens*.

E. SOL Initially Has the Better End of the Bargain

94. In conjunction with the issuance of the Debenture and the entering into of the Debenture documents in July 2019, SOL delivered to 1235 a Share Certificate representing all of the issued and outstanding shares of Blocker 2. 1235 also perfected its security interest over the property and undertaking of SOL by way of registration under the *PPSA*.

95. In the months that followed, Harvest and Verano continued to work toward completing their business combination. Meanwhile, the market price of Harvest's shares declined dramatically. By the end of October 2019, the Harvest shares had traded down to $3.60 per share from more than $8.00 per share in early July 2019. If the business combination had closed at that time, 1235 would have received approximately $29.6 million in Harvest Resulting Issuer Shares in repayment of the Principal Amount under the Debenture – a significant loss on 1235's $50 million investment.

96. Moreover, in the period after the Debenture arrangements were entered into, SOL's financial condition deteriorated to the point where its ability to continue as a going concern was in doubt. On May 14, 2020, SOL filed its audited financial statements for the eight months ended November 30, 2019. The Auditor's Report prepared by SOL's independent auditors in respect of those financial statements included a "going concern" warning. The auditors cautioned that because SOL had incurred significant losses in the period in question and had no regular sources of income, there was "a material uncertainty that may cast significant doubt on [SOL's] ability to continue as a going concern".

97. Against this backdrop, the first interest payment owed by SOL under the Debenture came due on December 31, 2019. SOL failed to honour its obligation to pay interest on that date. Instead, SOL paid this interest in five tranches between February 18 and March 3, 2020.

98. At this juncture, it appeared that SOL had "won" its trade with 1235 by a landslide. If the business combination between Harvest and Verano had closed at that time, 1235

would have received Harvest Resulting Issuer Shares worth far less than $50 million. Even if that business combination had been abandoned, the Verano Shares that 1235 would have been entitled to receive if repayment of the Principal Amount under the Debenture had been due and 1235 had exercised its Equity Option did not appear to hold significant value at the time, particularly given the poor performance of cannabis-related companies in the public markets.

99. On March 26, 2020, not long after the COVID-19 pandemic arose, Harvest and Verano announced that they had terminated the Business Combination Agreement they had entered into almost a year earlier, and would not proceed with their transaction. They attributed the failure of their transaction to “[p]rolonged obstacles in meeting requirements for state and local regulatory authorities needed to transfer ownership and operational licenses, adverse capital market conditions, [and] a challenging environment for asset sales”. A number of the risks that typify investments in and transactions involving cannabis-related companies had materialized.

100. By the time the proposed business combination failed, the market price of Harvest’s shares had cratered. The closing price of Harvest’s shares on March 25, 2020, the day before the announcement of the abandonment of the business combination, was only $1.62. If the business combination had been completed at that time, 1235 would have received approximately $13.3 million in Harvest Resulting Issuer Shares in payment of the Principal Amount of $50 million under the Debenture.

101. The failure of the business combination between Harvest and Verano eliminated the obligation of 1235 under section 2.1(5) of the Debenture to take repayment of the

Principal Amount through the delivery of Harvest Resulting Issuer Shares. Instead, 1235 was entitled either to exercise its Equity Option or to receive cash in repayment of the Principal Amount under the Debenture. Based on the then-current market valuations for cannabis-related companies, the Verano Shares appeared to be worth considerably less than $50 million.

102. The second interest payment owed by SOL under the Debenture was due on June 30, 2020. Once again, SOL did not honour its obligation to pay interest on that date. Instead, SOL paid this interest in two tranches – one on July 3, 2020 and the other on July 13, 2020.

F. Announcement of Reverse Takeover Transaction and Misleading Disclosure of SOL

103. In the period following the failure of the proposed business combination between Harvest and Verano, circumstances changed dramatically. Publicly available information released in the Summer of 2020 indicated that Verano was doing well operationally, with the result that the Verano Shares that 1235 would be entitled to receive from SOL if it exercised the Equity Option could hold significant value. Moreover, starting in October 2020, public market valuations for cannabis-related companies surged after more than one year of lagging performance. This uptick in the cannabis sector brought with it an increased possibility that Verano would "go public" at an even higher public market valuation.

104. On October 30, 2020, in purported compliance with its continuous disclosure obligations under applicable securities laws, SOL filed its unaudited financial statements and associated Management's Discussion & Analysis for the period ended August 31,

2020. In its financial statements and MD&A, SOL provided the following disclosure to the investing public concerning the rights and obligations of 1235 and SOL under the Debenture:

> The Debenture shall be repaid in cash on maturity unless the Verano acquisition has occurred in which case [1235] has the right to demand certain shares of Verano or demand certain shares of Harvest Health and Recreation Inc. instead of cash. On March 26, 2020 both Verano Holdings and Harvest Health [and] Recreation Inc. announced the mutual termination of [the] Business combination agreement dated April 22, 2019. **Due to termination of the Harvest Deal, [1235] lost the right to demand shares of Verano and the debenture will be treated as straight debt**. [emphasis added]

105. This disclosure was materially misleading in purporting to describe the rights of 1235 under the Debenture Documents. SOL misled the investing public by claiming in its MD&A that the failure of the Harvest transaction in March 2020 somehow eliminated the Equity Option of 1235 under the Debenture Documents. The exact opposite was true.

106. Importantly, this was the fourth set of financial statements and MD&A filed publicly by SOL in purported compliance with its continuous disclosure obligations in the period since the failure of the Harvest transaction on March 26, 2020. None of the three previous disclosures of SOL claimed that the failure of that transaction had somehow eliminated the Equity Option. The rights of 1235 under the Debenture had not changed in that intervening period. The potential value of the Equity Option had, however, escalated dramatically.

107. Contrary to the public disclosure issued by SOL on October 30, 2020, the failure of the proposed business combination between Harvest and Verano did not in any way

eliminate 1235's "right to demand shares of Verano". To the contrary, and as stated above, the failure of the "Harvest Deal" was exactly what triggered that right.

108. On November 11, 2020, more than seven months after the proposed business combination between Verano and Harvest failed, Verano announced that it was entering into a transformative transaction. In a press release issued that day, Verano disclosed that it had entered into a definitive agreement to "acquire and combine operations" with a group of companies referred to as "**AltMed**". Verano went on to state that the "transaction is expected to result in a highly-accretive combination of Verano and AltMed with the resulting company operating under the Verano name".

109. This highly-accretive transaction, coupled with the concurrent surge of public market valuations for cannabis-related companies (and the subsequent revelation that Verano would soon go public), meant that the upside potential associated with the Equity Option that 1235 had negotiated for and obtained when it entered into the Debenture transaction in July 2019 had finally materialized.

110. The next day, on November 12, 2020, SOL issued its own press release concerning Verano's newly announced transaction with AltMed. SOL noted that Verano was "its largest core investment holding", and touted the AltMed transaction by stating that it would "have a significant positive impact on [SOL]'s recently announced net asset value". SOL also stated that it would "update the market regularly as information is available". SOL's press release made no mention of 1235's Equity Option, which entitled it to receive delivery of a substantial number of Verano Shares in payment of the Principal Amount under the Debenture.

111. 1235 had serious concerns with respect to the misleading nature of the public disclosure issued by SOL, for at least two reasons. *First*, 1235 was troubled by the fact that SOL had misdescribed its rights under the Debenture in the manner set out above. *Second*, this disclosure appeared to signal that SOL intended to dishonour or avoid its obligations under the Debenture given that it now appeared that the Equity Option had significant value. As it turns out, that is precisely what SOL was signalling.

112. 1235 brought its concerns to the attention of SOL on November 19, 2020. Through counsel, 1235 alerted SOL to the incorrect statement in its public disclosure of October 30, 2020, and cautioned that SOL "should take the necessary steps to correct its continuous disclosure to make clear that [1235] does, in fact, have the right to demand the delivery to it of the Verano Shares". 1235 also advised that it intended "to exercise its option to take delivery of the Verano Shares".

113. SOL failed to respond to or even acknowledge this letter, despite multiple requests that it do so. As a result, the letter of November 19, 2020 was forwarded directly to Mr. DeFrancesco on December 4, 2020.

114. Regrettably, SOL took no steps to correct its misleading public disclosure. Instead, SOL continued to misadvise investors concerning its obligations and the rights of 1235 under the Debenture Documents.

G. The Plan of Arrangement

115. On December 4, 2020, news reports indicated that in addition to Verano's highly-accretive acquisition of AltMed, Verano would take the necessary steps to "go public" by

way of a reverse takeover of Majesta Minerals Inc. At the time, Majesta was a corporation existing under the laws of Alberta. Bloomberg reported as follows:

> **Verano Holdings LLC is planning to go public this month with a valuation of nearly US$3 billion**, a sign that capital markets are warming up again to the marijuana industry following a chill in investment over the past year.
>
> According to a term sheet distributed to investors, **Verano is planning to offer up to US$75 million in shares through a reverse takeover of Majesta Minerals Inc. – a shell company listed on the Canadian Securities Exchange – that would value the company at US$2.88 billion.** Canaccord Genuity and Beacon Securities are joint book runners on the deal.
>
> If Verano completes its RTO and lists on the CSE, it would immediately become the third largest cannabis operator in the U.S. by revenue, and the fifth largest by valuation … [emphasis added]

116. Given the magnitude of SOL's position in Verano (held through Blocker 1 and Blocker 2), this notional valuation of nearly US$3 billion confirmed that the Equity Option 1235 had negotiated for and obtained when the Debenture arrangements were entered into in July 2019 had very substantial value.

117. On December 15, 2020, Verano and Majesta issued press releases announcing that they had entered into a definitive Arrangement Agreement. If implemented, the Arrangement would effect the completion of the previously-announced acquisition by Verano of AltMed, as well as the completion of a going-public transaction by way of a reverse takeover of Majesta. Majesta would be renamed and become New Verano. New Verano would own all of the equity of Verano and AltMed.

118. The press releases issued by Verano and Majesta on December 15, 2020 also disclosed that these transactions would proceed by way of Plan of Arrangement pursuant to the laws of British Columbia. As a result, the transactions were subject to approval by the shareholders of Majesta as well as by the British Columbia Supreme Court. The completion of the Plan of Arrangement was also subject to receiving approvals from relevant regulatory authorities, and on receiving conditional approval from the Canadian Securities Exchange to list the shares of New Verano.

119. Two days later, on December 17, 2020, the British Columbia Supreme Court issued an Interim Order in respect of the proposed Plan of Arrangement. The Interim Order authorized Majesta to hold an annual general and special meeting of its shareholders to consider whether to approve the company's application to continue under the British Columbia *Business Corporations Act*, SBC 2002, c. 57, and to vote on a resolution approving the Plan of Arrangement. The Interim Order also directed Majesta to send to its shareholders a Management Information Circular by no later than 21 days before the date of the shareholders meeting.

120. On December 24, 2020, Majesta filed publicly a copy of the Arrangement Agreement (which had been entered into 10 days earlier, on December 14, 2020). The Arrangement Agreement appended a draft of the Plan of Arrangement.

121. Significantly, the Plan of Arrangement contemplated that any holder of Verano Shares resident in Canada that held its Shares indirectly through a U.S. blocker entity would exchange the securities of the blocker entity for New Verano Shares. This included SOL, a Canadian public company that held its Verano Shares through Blocker 1 and

Blocker 2. Put simply, under the Plan of Arrangement, Blocker 1 and Blocker 2 would become subsidiaries of New Verano. In exchange, SOL would cease to own shares in Verano and would own New Verano Shares directly (rather than through an interposed corporation). Any such exchange would occur in accordance with the Plan of Arrangement and with the terms of a separate Exchange Agreement.

122. This structure was entirely tax-driven. Resident Canadians such as SOL would achieve substantial tax efficiencies by qualifying for tax-deferred or “rollover” treatment on the transaction, such that no taxable gain would be realized on the exchange, and by holding directly their shares in New Verano, a Canadian public company (rather than by holding those shares through a U.S. corporation). By contrast, a so-called “sandwich” structure – whereby resident Canadians would own shares in a Canadian public company through a U.S. blocker entity – would carry with it potentially onerous tax burdens.

123. It was clear to 1235 that if SOL participated in the Plan of Arrangement, SOL would breach its obligations under the Debenture Documents and commit multiple Events of Default under the Debenture. In particular:

(a) by entering into an Exchange Agreement in relation to the shares of Blocker 1 or Blocker 2, SOL would breach the covenant set out in section 5.2(5) of the Debenture. As stated above, that provision prohibits SOL from entering into any contract with respect to the sale, transfer, assignment or similar disposition of securities of any of its subsidiaries, other than to 1235. This breach would constitute an Event of Default under section 6.1(1)(e) of the Debenture;

(b) by exchanging the shares of Blocker 1 or Blocker 2 for New Verano Shares, SOL would again breach the covenant in section 5.2(5) of the Debenture, since it prohibits SOL from voluntarily or involuntarily selling, transferring, assigning or similarly disposing of securities of any its subsidiaries, other than to 1235. This breach would also constitute an Event of Default under section 6.1(1)(e) of the Debenture;

(c) in addition, by exchanging the shares of Blocker 1 or Blocker 2 for New Verano Shares, SOL would breach the covenant in section 5.2(7) of the Debenture. As stated above, that provision prohibits SOL from selling, transferring or otherwise disposing of any of its property, including any shares of its subsidiaries. None of the exceptions specified in section 5.2(7) would be applicable. This breach would constitute another Event of Default under section 6.1(1)(e) of the Debenture;

(d) the exchange of the shares of Blocker 1 and Blocker 2 for New Verano Shares would constitute a disposition of all or substantially all of the property of SOL, and therefore constitute an Event of Default under section 6.1(1)(j) of the Debenture;

(e) if, instead of SOL exchanging the shares of Blocker 1 and Blocker 2 for New Verano Shares, Blocker 1 or Blocker 2 exchanged the Verano Shares held by them for New Verano Shares, this would still be a breach of the covenant in section 5.2(7) of the Debenture. That provision also prohibits subsidiaries of SOL from selling, transferring or otherwise disposing of any property.

None of the exceptions specified in section 5.2(7) would be applicable. This breach would constitute yet another Event of Default under section 6.1(1)(e) of the Debenture; and

(f) in addition, the exchange by Blocker 1 or Blocker 2 of the Verano Shares held by them for New Verano Shares would constitute a disposition of all or substantially of the property of Blocker 1 or Blocker 2 (as applicable), and therefore constitute an Event of Default under section 6.1(1)(j) of the Debenture.

124. Accordingly, SOL's participation in the Plan of Arrangement would result in 1235's security interest becoming enforceable in accordance with the General Security Agreement and Share Pledge Agreement.

125. Moreover, if implemented, the Plan of Arrangement could expand the Collateral over which 1235 had a security interest. As matters then stood, 1235 did not have a security interest over the shares of Blocker 1 (since, as stated above, that property was specifically excluded from the Collateral as defined in the General Security Agreement). Nor did 1235 have a security interest over the Verano Shares held by Blocker 2 (since, as stated above, that property was excluded from the Collateral as defined in the Blocker Security Agreement). On the other hand, 1235 <u>would</u> have a security interest over any New Verano Shares obtained directly by SOL pursuant to the proposed Plan of Arrangement. Pursuant to the General Security Agreement, securities and other property acquired by SOL after the date of that Agreement form part of the Collateral over which 1235 has a security interest.

126. Put differently, if SOL were to participate in the proposed Plan of Arrangement in a tax efficient manner, SOL would commit multiple breaches of the Debenture Documents and 1235 would end up in an enhanced security position. This was a natural consequence of the bargain the parties had negotiated for and agreed to when the Debenture arrangements were entered into in July 2019.

127. This enhanced security position was entirely consistent with the original business deal that the parties negotiated in July 2019. 1235 and SOL originally agreed that the security package to be granted to 1235 would include the Verano Shares held by SOL through Blocker 2. In the process of finalizing the term sheet for the Debenture transaction, however, SOL informed 1235 that those Verano Shares would have to be excluded from the security package provided to 1235 because SOL had been unable to obtain Verano's consent to a pledge of those Shares.

128. On December 29 and 30, 2020, SOL paid another instalment of interest to 1235. This was the first time that SOL had paid interest on a timely basis as required under the Debenture. As described above, by then 1235 had retained counsel and asserted its rights under the Debenture Documents. 1235 had also objected to SOL's manifestly misleading public disclosure.

129. On January 4, 2021, Majesta filed its Management Information Circular in connection with the proposed Plan of Arrangement. The Circular was dated December 28, 2020, and indicated that the shareholders' meeting to approve a resolution authorizing the Plan of Arrangement was scheduled for January 27, 2021.

H. Good Faith Efforts of 1235 to Enable SOL to Participate in the Plan of Arrangement on a Tax Efficient Basis

130. In the weeks that followed, SOL made clear that it wished to participate in the Plan of Arrangement on a tax efficient basis, whereby it would exchange its shares of Blocker 1 and Blocker 2 for New Verano Shares. SOL could not, however, exchange the shares of Blocker 2 without assistance from 1235. As stated above, 1235 had a security interest over the shares of Blocker 2 and also had possession of the Share Certificate associated with those shares.

131. In late January 2021, 1235 and SOL engaged in discussions and negotiations in this regard. 1235 made clear repeatedly on a "with prejudice" basis that it was ready and willing to assist SOL by releasing its security interest over the shares of Blocker 2, as long as this assistance would not be used to undermine or impair 1235's rights and interests under the Debenture Documents. In this regard, 1235 required SOL to provide explicit acknowledgments and take steps to ensure that none of the actions that 1235 was being asked to undertake would prejudice or compromise its rights or remedies under the Debenture Documents. This included acknowledgments that, by enabling SOL to exchange the shares of Blocker 2 for New Verano Shares, 1235 would not be deemed to have consented to SOL's participation in the Plan of Arrangement or to have waived its right to assert that one or more Events of Default had occurred.

132. 1235 was open and transparent in asserting its position in this regard. 1235 specifically advised SOL and its counsel on multiple occasions of its view that SOL's participation in the Plan of Arrangement would give rise to one or more Events of Default under the Debenture. 1235 also made clear that it understood that SOL had a different

view. 1235 did not ask or insist that SOL abandon its position that no breach of the Debenture Documents or Event of Default had occurred or would occur. Instead, 1235 proposed that this issue be decided expeditiously in this Court.

133. 1235 also informed SOL that any New Verano Shares obtained by it pursuant to the Plan of Arrangement would become part of the Collateral over which 1235 has a security interest under the General Security Agreement. This was – and is – the inevitable consequence of applying the operating terms of the General Security Agreement to the transaction SOL intended to participate in. 1235 asked SOL to acknowledge the validity and perfection of that security interest.

134. Regrettably, SOL ultimately demanded that it be able to have its cake and eat it too. It wanted 1235 to release its security interest over the shares of Blocker 2 (thereby allowing SOL to participate in the Plan of Arrangement on a tax efficient basis), but also to be able to argue that by doing so 1235 had consented to or waived the various Events of Default referred to above. SOL also sought to undermine the security interest it had previously granted to 1235. This was the very outcome 1235 had made clear from the outset of its discussions with SOL it would not accept. No sophisticated commercial party in 1235's position would have acceded to such extravagant demands, and 1235 did not do so.

135. As a result, 1235 did not release its security interest over the shares of Blocker 2. The Share Certificate representing those shares remains in the possession of 1235.

I. Completion of the Plan of Arrangement

136. On January 26, 2021, Majesta and Verano agreed to amend the proposed Plan of Arrangement at the request of 1235 to clarify that the completion of the Plan would not prejudice the rights or interests of 1235. The following clause was added to the Plan: "nothing in this Plan of Arrangement shall have the purpose or effect of compromising or affecting the rights as between 1235 Fund LP, on the one hand, and SOL Global Investments Corp., SOL Verano Blocker 2 Inc. and SOL Verano Blocker 1 Inc., on the other hand".

137. The next day, on January 27, 2021, Majesta held its shareholders' meeting as scheduled. The shareholders voted to approve the company's continuance as a British Columbia corporation, as well as a resolution authorizing the Plan of Arrangement.

138. Majesta then sought a Final Order from the British Columbia Supreme Court approving the Plan of Arrangement. The Court issued that Order on or shortly after February 1, 2021. The Plan of Arrangement was not, however, implemented immediately upon the issuance of that Order, as several steps remained to be completed.

139. On February 5, 2021, 1235 delivered to SOL a Notice exercising its Equity Option to receive Verano Shares in repayment of the Principal Amount under the Debenture. 1235 delivered this Notice out of an abundance of caution; 1235 had made its intentions in that regard clear repeatedly in the period from November 19, 2020 onward.

140. On Sunday, February 7, 2021, 1235 sent to SOL a formal Notice of Events of Default under the Debenture. The Notice identified and explained the Events of Default arising from SOL's participation in the Plan of Arrangement, as described above, and

declared the Principal Amount of the Debenture (together with accrued and unpaid interest) to be immediately due and payable. The fact that these Events of Default would occur had previously been explained to SOL in the weeks preceding the delivery of this Notice.

141. In addition, by this time 1235 had learned that hundreds of thousands of Verano Shares held by Blocker 1 had been disposed of in the period before the Subscription Agreement was entered into on July 5, 2019. SOL had concealed this important information from 1235 for approximately one and a half years. Since Blocker 1 owned less than 950,000 Verano Shares, SOL's representation and warranty in section 7.1.6 of the Subscription Agreement that Blocker 1 owned directly and beneficially 1,652,094 Verano Shares was untrue in a material respect. This false representation and warranty constituted another Event of Default under section 6.1(1)(e) of the Debenture. Even if the sale of Verano Shares held by Blocker 1 had occurred in the period after July 5, 2019, such a sale would still have contravened the covenant set out in section 5.2(7) of the Debenture and therefore constituted an Event of Default under section 6.1(1)(e). The Notice of Events of Default dated February 7, 2021 identified and explained this issue as well.

142. Due to 1235's prior election to exercise its Equity Option to receive Verano Shares in repayment of the Principal Amount, as well as 1235's declaration accelerating the maturity of the Debenture as a result of the occurrence of continuing Events of Default, SOL was obligated to: (i) pay immediately the Principal Amount of the Debenture through the delivery to 1235 of the requisite number of Verano Shares; and (ii) pay immediately all accrued and unpaid interest in cash. SOL failed or refused to do so.

143. The Plan of Arrangement was implemented several days later, on February 11, 2021. According to a press release issued by SOL, upon the completion of the Plan of Arrangement SOL disposed of all of its Verano Shares and became instead the direct or indirect owner of approximately 25.2 million New Verano Shares. If SOL had delivered to 1235 the Verano Shares it was entitled to receive under the Debenture, 1235 would have exchanged those Shares pursuant to the Plan of Arrangement and would have received in excess of 16 million New Verano Shares (*i.e.*, the equivalent of 2,163,493 Verano Shares, being 1235's entitlement to Verano Shares under the Debenture).

144. 1235 has requested repeatedly that SOL provide to it documentation and information concerning the exact manner in which it ultimately structured and implemented its participation in the Plan of Arrangement. In breach of its obligations under the Debenture Documents, SOL has failed or refused to do so. SOL's conduct in this regard constitutes a breach of the covenant set out in section 5.1(9) of the Debenture. That covenant requires SOL to provide notice of the existence of an Event of Default within five business days after a responsible officer of SOL becomes aware of such Event of Default. SOL is also in breach of section 8.14 of the Debenture, which obligates SOL to "forthwith … do or file, or cause to be done or filed, all such things and … deliver all such documents … reasonably requested by [1235] or its counsel as may be necessary or desirable to complete the transactions contemplated by this Debenture and carry out its provisions and intention".

145. From the limited information currently available to 1235, it appears that SOL exchanged its shares of Blocker 1 for New Verano Shares, while being unable to similarly exchange its shares of Blocker 2 for New Verano Shares for the reasons set out above.

It also appears that the Verano Shares held by Blocker 2 were exchanged directly for New Verano Shares (at the direction of SOL) on a fully taxable basis, and that SOL now holds those New Verano Shares indirectly through Blocker 2.

146. The Shares of New Verano began trading over the Canadian Securities Exchange on February 17, 2021. The market price of the New Verano Shares at the start of trading was approximately $13.00 per share (US$10.00). By the close of trading that day, the share price had increased to $32.30. On February 18, 2021, the share price reached a high of $33.00 per share.

147. At this price, the New Verano Shares that 1235 would have owned had SOL complied properly and on a timely basis with its obligations under the Debenture Documents were worth more than $500 million. 1235 has been deprived of those New Verano Shares, as well as of the right, ability and opportunity to invest the proceeds of disposition associated with those Shares on a profitable basis.

J. SOL's Tactical and Improper Attempt To Pre-empt this Action

148. As set out above, 1235 acted reasonably and in good faith and made every reasonable effort to enable SOL to participate in the Plan of Arrangement on a tax efficient basis. 1235 incurred significant time and considerable expense in doing so. It now appears, however, that SOL was not reciprocating 1235's good faith efforts. Instead, the Defendants were plotting an entirely different course of action.

149. Unbeknownst to 1235, throughout late January and early February 2021, SOL was preparing to sue 1235 and MM Asset Management Inc. in the United States. SOL chose

not to disclose this important fact to 1235 during the parties' discussions and negotiations. SOL's conduct in this regard was, at best, unfair and duplicitous.

150. As stated above, MM Asset Management Inc. is the investment adviser to the Cayman corporation that is the sole limited partner of 1235. It is an Ontario corporation, and is not a signatory of or party to any of the Debenture Documents.

151. Nevertheless, on Sunday, February 7, 2021, SOL and Blocker 2 filed a Complaint against 1235 and MM Asset Management Inc. in the State Courts of New York (the U.S. Proceeding referred to above). In their Complaint, SOL and Blocker 2 purport to seek Declarations that: (i) 1235 is obligated to accept $50 million in cash in repayment of the Principal Amount under the Debenture, and is not entitled to demand Verano Shares notwithstanding the Equity Option provided for in section 2.1(1)(b) of the Debenture; (ii) the "refusal" of 1235 to accept payment in cash, and 1235's insistence on receiving Verano Shares pursuant to its Equity Option, is somehow wrongful and in breach of both the Debenture and the Blocker Security Agreement; and (iii) 1235's purported threat to exercise remedies over the New Verano Shares is somehow wrongful and in breach of the Debenture and the Blocker Security Agreement. SOL and Blocker have made these claims even though 1235 has not, in fact, threatened to enforce its remedies under the Blocker Security Agreement or taken steps to do so (for the reasons set out above).

152. The commencement of the U.S. Proceeding was and is a transparent, abusive and unlawful ploy to pre-empt this action. Having been advised repeatedly of the intention of 1235 to commence proceedings in the Ontario Superior Court of Justice in respect of the dispute that had arisen between the parties, SOL and Blocker 2 engaged in a tactical

game of stealth by rushing off to commence proceedings in New York, while making no disclosure of their intention to do so. That is so even though the parties and their counsel, including U.S. counsel for SOL and Blocker 2, were in regular, daily contact throughout the period in which SOL and Blocker 2 were preparing their U.S. Complaint. Rather than deal with 1235 in a fair, forthright, honourable and transparent fashion, SOL and Blocker 2 engaged in an unseemly "race to the starting gates" in an effort to be the first party to file a lawsuit in respect of this matter.

153. Their purpose in doing so was entirely tactical in nature. They sought to set up an ill-considered jurisdictional and / or forum-related battle, in an effort to inhibit the right and ability of 1235 to seek and obtain an expeditious resolution of the matters at issue in this proceeding before the Ontario Superior Court of Justice. They also sought to inflict pain on 1235 by forcing it to litigate in multiple jurisdictions, and therefore incur substantial and entirely unnecessary legal expenses.

154. This dispute has no business being heard or decided in a U.S. Court. Ontario is the only proper forum in which to seek a judicial determination of the matters at issue, including because:

(a) the primary parties to the dispute are a Quebec limited partnership (1235) and an Ontario corporation whose registered office is in Toronto (SOL);

(b) this dispute concerns the rights and obligations of 1235 and SOL under the Debenture, as well as the Subscription Agreement, General Security Agreement and Share Pledge Agreement. All of those Debenture Documents are governed by the laws of the Province of Ontario;

(c) SOL has attorned irrevocably to the jurisdiction of the Courts of Ontario under the Debenture, and to the exclusive jurisdiction of the Courts of Ontario under the Subscription Agreement and the Share Pledge Agreement;

(d) Blocker 2 has attorned to the exclusive jurisdiction of the Courts of Ontario under the Subscription Agreement. Moreover, Blocker 2 has attorned to the jurisdiction of the Courts of Ontario under section 21 of the Blocker Security Agreement, as set out above;

(e) the Guarantee provided by Mr. DeFrancesco, Ms. DeFrancesco and Delavaco Ontario is governed by the laws of the Province of Ontario. Each of these three parties has attorned to the jurisdiction of the Courts of Ontario under that Guarantee;

(f) Mr. DeFrancesco's address for service, as set out in that Guarantee, is located in Toronto;

(g) Delavaco Ontario is an Ontario corporation with its registered office in Toronto;

(h) the New Verano Shares are traded over the Canadian Securities Exchange, which has its main office in Toronto; and

(i) the Share Certificate representing the shares of Blocker 2 is located in Toronto.

155. Remarkably, the U.S. Complaint is deliberately deceptive in making no mention of any of this. SOL and Blocker 2 ostensibly seek declarations from the Courts of New York concerning the parties' rights and obligations under the Debenture, yet do not advert in their Complaint to the important fact that the Debenture is governed by Ontario law. Nor does the Complaint so much as refer to any of the other Debenture Documents that actually bear on this dispute: namely, the Subscription Agreement, the General Security Agreement and the Share Pledge Agreement.

156. The alleged jurisdictional basis for the U.S. Proceeding is an untenable allegation that 1235 supposedly consented irrevocably to the exclusive jurisdiction of the Courts of New York under section 21 of the Blocker Security Agreement. Leaving aside that 1235 is not seeking to enforce its security interest under the Blocker Security Agreement, the description of section 21 of that Agreement in the U.S. Complaint is manifestly misleading, and deliberately so. As explained above, 1235 most assuredly <u>did not</u> consent to the exclusive jurisdiction of the Courts of New York, whether in the Blocker Security Agreement or otherwise.

157. In their U.S. Complaint, SOL and Blocker 2 purport to quote from section 21 of the Blocker Security Agreement. Inexplicably, however, they do so in a manner that is calculated to mislead, including by omitting key passages of that provision that put the lie to their contorted interpretation of it. They claim that pursuant to section 21 of the Blocker Security Agreement, 1235 somehow consented irrevocably that "the state or federal courts located in New York County, City of New York, New York, shall have exclusive jurisdiction to hear and determine any claims or disputes between [Blocker 2] and [1235] pertaining to this Agreement or any of the other Transaction Agreements or to any matter

arising out of or relating to this Agreement or any of the other Transaction Agreements". That assertion is plainly wrong. In making this manifestly misleading assertion, SOL and Blocker 2 fail to mention in their Complaint that:

(a) the language relied upon by SOL and Blocker 2 is preceded immediately by the phrase "[Blocker 2] consents and agrees that" (emphasis). Significantly, as stated above, 1235 provided no such consent or agreement;

(b) the language relied upon by SOL and Blocker 2 is followed by an express acknowledgment that "nothing in this Agreement shall be deemed or operate to preclude [1235] from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations";

(c) that express acknowledgment is, in turn, followed immediately by an additional acknowledgment that "[Blocker 2] expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and [Blocker 2] hereby waives any objection which it may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court"; and

(d) the term "Transaction Agreements" is defined narrowly in the Blocker Security Agreement to include only that Agreement and the Guaranty provided by Blocker 2. It does not include the Debenture, the Subscription

Agreement, the General Security Agreement or the Share Pledge Agreement.

158. 1235 and MM Asset Management Inc. intend to move to dismiss and / or stay the U.S. Proceeding, including for want of jurisdiction and on the basis of the doctrine of *forum non conveniens*, and to hold SOL and Blocker 2 fully accountable for all amounts incurred by them in addressing or respond to the U.S. Proceeding. To the extent necessary, 1235 also reserves its right to seek an anti-suit injunction from this Court.

K. Breach of Contract

159. For the reasons set out above, SOL is liable for breach of contract.

160. As noted above, 1235 has exercised its rights pursuant to its Equity Option in section 2.1(1)(b) of the Debenture. Consequently, SOL was obligated to repay the Principal Amount of the Debenture through the delivery to 1235 of Verano Shares when the Principal Amount became due and payable. Numerous Events of Default have arisen under the Debenture, and 1235 duly declared the Principal Amount to be immediately due and payable as provided for in section 6.1(3) of the Debenture. Pursuant to section 2.1(1)(b) of the Debenture, SOL was therefore required to deliver the requisite number of Verano Shares to 1235 by no later than February 8, 2021.

161. There is no provision in the Debenture that permits SOL to eliminate 1235's Equity Option, and instead to repay the Principal Amount to 1235 in cash over the objections of 1235. SOL can only repay the Principal Amount in cash if 1235 so chooses (which it has not).

162. In breach of its contractual obligations, SOL has failed or refused to deliver to 1235 the requisite Verano Shares. Further, or in the alternative, the Debenture includes or is subject to an implied term requiring SOL to deliver to 1235 the equivalent number of New Verano Shares. SOL breached its contractual obligations by failing or refusing to deliver to 1235 a corresponding number of New Verano Shares following its participation in the Plan of Arrangement referred to above.

163. Moreover, SOL has not paid in cash any of the interest that has accrued in the period since December 31, 2020, as is also required under the Debenture.

164. Instead, SOL has dishonoured repeatedly its obligations under the Debenture and other Debenture Documents. It has conducted itself as if none of those obligations or agreements exists.

165. Because SOL has not delivered any freely tradeable Verano Shares or New Verano Shares to 1235, SOL must deliver additional Shares in accordance with the formula prescribed by section 2.1(1)(b)(ii) of the Debenture.

166. Each of Blocker 2, Mr. DeFrancesco, Ms. DeFrancesco, Delavaco Ontario and Delavaco Florida has guaranteed the performance by SOL of all of its obligations under the Debenture. Each of them is therefore legally responsible for SOL's failure or refusal to comply with its obligations under the Debenture, and is jointly and severally liable (with SOL) for all associated damages suffered by 1235.

L. Breach of the Duty of Good Faith

167. Further, SOL was required to act in good faith in the performance of its contractual obligations under the Debenture Documents. SOL owed specific duties to 1235 to, among other things: (i) cooperate in order to achieve the objects of the Debenture Documents; (ii) not seek to evade obligations or responsibilities imposed under the Debenture Documents; and (iii) perform its obligations honestly, and not lie or knowingly mislead 1235 in respect of matters directly linked to the Debenture Documents.

168. As set out above, SOL has breached all of these duties. Far from cooperating with 1235 to achieve the objects of the Debenture Documents, SOL has set out to frustrate, undermine and avoid those objects. It has sought to evade and deny the existence of its obligations under the Debenture Documents from the moment it appeared that the parties' bargain had begun to favour 1235, for the purpose of enriching itself improperly at the direct expense of 1235.

169. Moreover, SOL has engaged in an unfortunate pattern of deceptive and dishonest conduct. Among other things, SOL:

(a) issued materially misleading and self-serving public disclosure concerning its obligations under the Debenture, in an effort to deceive the investing public while simultaneously "coopering up" a flimsy basis to deny 1235's rights. SOL failed or refused to correct that disclosure despite 1235's request that it do so;

(b) plotted with Blocker 2 to initiate improper and abusive litigation in the United States, and failed to disclose its intention to do so during the period that

1235 was attempting in good faith and at great expense to enable SOL to participate in the Plan of Arrangement on a tax efficient basis. SOL undertook this underhanded and deceptive conduct in an effort to steal a march on 1235 by being the first to arrive at the courthouse doors in a jurisdiction of its choice;

(c) together with Blocker 2, prepared and filed a U.S. Complaint that is deliberately deceptive, in an effort to mislead the Courts of New York into permitting them to proceed in that forum; and

(d) failed or refused to respond to requests for information and documents that were not only reasonable, but which SOL was also obligated to provide to 1235 under the Debenture Documents.

170. The conduct of SOL and Blocker 2 was and is unseemly, and antithetical to the manner in which contractual counterparties must behave. This Court should not countenance unlawful conduct of this nature.

M. Inducing Breach of Contract

171. Further, or in the alternative, Mr. DeFrancesco is liable for inducing SOL to breach its contractual obligations in the manner set out above. Mr. DeFrancesco was fully aware of the existence, terms and binding nature of the Debenture Documents, both because he was involved intimately in negotiating them and because he was and remains the directing mind and management of SOL. With full knowledge of the Debenture Documents and the obligations of SOL thereunder, he wilfully caused SOL to breach

those obligations. He did so for reasons of naked self-interest, without regard for the best interests of SOL (or its public shareholders).

N. Conspiracy

172. The Defendants agreed to join in concerted action, to be carried out by unlawful means, for the purpose and with the effect of: (i) denying the Equity Option; (ii) depriving 1235 of the Verano Shares it was entitled to receive under the Debenture; and (iii) absconding with those Shares, the New Verano Shares for which they were exchanged, and the considerable value thereof. The unlawful means employed by the Defendants are described above. All of the Defendants knew or ought to have known that their conduct would inflict harm on 1235. Considerable harm to 1235 has, in fact, resulted from the conduct complained of herein.

173. Other than as set out herein, the Defendants conspired with each other at times and places known only to them. Further particulars of the conspiracy and the acts undertaken in furtherance of their conspiracy are within their sole knowledge, and will be provided prior to and at trial.

O. Contractual and Statutory Remedies to Enforce 1235's Security Interest

174. Because numerous Events of Default have occurred under the Debenture, the security interest that SOL granted to 1235 in respect of the Collateral (as defined in the General Security Agreement and the Share Pledge Agreement) is enforceable. That Collateral includes all New Verano Shares held by SOL, as well as the shares of Blocker 2.

175. 1235 is entitled to exercise all enforcement remedies available to it under the General Security Agreement, the Share Pledge Agreement, and otherwise by law or in equity. Those remedies include, without limitation:

(a) taking possession of New Verano Shares that are held by SOL;

(b) voting those New Verano Shares and / or the shares of Blocker 2;

(c) transferring, registering in 1235's name and selling those New Verano Shares and / or the shares of Blocker 2;

(d) seeking the appointment by this Court of a Receiver or Receiver and Manager in respect of those New Verano Shares and / or the shares of Blocker 2; and

(e) selling or foreclosing on those New Verano Shares and / or the shares of Blocker 2 pursuant to sections 63 and 65 of the *PPSA*.

176. To this end, 1235 has demanded that SOL deliver up possession of the New Verano Shares held by it in accordance with section 12 of the General Security Agreement. 1235 has made this demand in an effort to preserve and protect its rights and interests.

177. To date, SOL has failed or refused to deliver up possession of the New Verano Shares held by it.

P. Other Interim and Interlocutory Relief

178. 1235 has serious concerns that, absent the intervention of this Court, SOL and Blocker 2 will take immediate steps to dissipate the New Verano Shares they now hold, for the purpose or with the effect of defeating the rights of 1235 or rendering themselves judgment-proof.

179. The concerns of 1235 are based upon, among other things, the past conduct of SOL and Blocker 2, as well as the failure or refusal of SOL to provide appropriate assurances that it will not seek to defeat the rights of 1235 before this action can be tried. In this regard:

(a) SOL previously engineered – and concealed from 1235 – a sale of a substantial number of Verano Shares held by Blocker 1;

(b) SOL and Blocker 2 have demonstrated that they are willing to engage in abusive and tactical litigation in another jurisdiction in an effort to obtain improper advantages in this matter; and

(c) on February 14, 2021, 1235 notified SOL that any disposition by it, Blocker 1 or Blocker 2 of New Verano Shares would constitute a breach of the covenant set out in section 5.2(7) of the Debenture, and therefore an additional Event of Default under section 6.1(1)(e). Moreover, any use of the proceeds of such a disposition by SOL or its subsidiary to make an investment would constitute a breach of the covenant set out in section 5.2(9) of the Debenture, which prohibits any investments by SOL or its subsidiaries where (as here) there are continuing Events of Default (subject

to certain exceptions that are inapplicable). SOL has failed or refused to confirm that New Verano Shares held by it or its subsidiaries will not be disposed of without the prior written consent of 1235 (which SOL has not asked for and 1235 has not given).

180. There is an acute risk that in the absence of intervention by this Court, significant value will be stripped out of SOL in the period before this Court can determine the merits of the dispute between the parties.

181. In these circumstances, it is appropriate for this Court to safeguard the rights and interests of 1235 by ordering the Defendants to deposit in escrow or with the Accountant of the Superior Court of Justice a suitable number of New Verano Shares, together with any and all substitutions therefor and dividends and income derived therefrom, and any and all "proceeds" (within the meaning of the *PPSA*) of each of the foregoing.

182. A suitable number of New Verano Shares is the number that is equivalent to 2,163,493 Verano Shares (based on the exchange formula that was applied pursuant to the Plan of Arrangement), being the maximum number of Verano Shares that 1235 is entitled to under section 2.1(1)(b) of the Debenture.

Q. Damages

183. 1235 has suffered and will continue to suffer considerable damages due to the misconduct described above. Those damages include, without limitation:

(a) the gains that 1235 would have made upon receipt of the requisite number of Verano Shares or New Verano Shares, and from disposing of those securities at appropriate times;

(b) consequential loss flowing from the inability of 1235 to invest the proceeds it would otherwise have obtained from or in respect of the disposition of New Verano Shares;

(c) the "loss of chance" associated with being deprived improperly of the right, ability, or opportunity to invest on a profitable basis proceeds it would have received if the Defendants had honoured their obligations under the Debenture Documents fairly, properly and on a timely basis; and

(d) the significant costs and expenses incurred by 1235 in seeking to enforce its rights and interests, which 1235 is entitled to recover on a full indemnity basis pursuant to section 8.9 of the Debenture. This includes, but is not limited to, all costs and expenses associated with: (i) negotiating and documenting arrangements between the parties concerning the participation by SOL in the Plan of Arrangement; (ii) the ill-conceived and improper U.S. Proceeding commenced by SOL and Blocker 2; and (iii) this action.

184. Full particulars of the damages sustained by 1235 will be provided in advance of the trial of this action.

185. Blocker 2, Mr. DeFrancesco, Ms. DeFrancesco, Delavaco Ontario and Delavaco Florida are jointly and severally liable (with SOL) for the full amount of all damages sustained by 1235.

R. Punitive Damages

186. The conduct of SOL and Blocker 2 was and is egregious and high-handed. They have shown that they will stop at nothing in their improper and unlawful attempts to evade, frustrate, undermine or prejudice the rights and interests of 1235 under the Debenture Documents. They have done so because a commercial transaction they entered into consensually in July 2019 with their eyes wide open, and which appeared to favour them for more than a year after they entered into it, is no longer to their liking.

187. In pursuit of these illegitimate aims, SOL has issued materially misleading disclosure to the investing public. SOL has also accused 1235 of “bad faith” for simply insisting on protecting and preserving its rights, even as 1235 was making considerable efforts to enable SOL to participate in the Plan of Arrangement on a tax efficient basis. In addition, SOL and Blocker 2 conducted themselves in a devious manner by commencing the abusive and tactical U.S. Proceeding described above, in which they have filed a manifestly misleading Complaint that, among other things, misstates and distorts beyond recognition a forum selection clause in an attempt to achieve a tactical advantage while avoiding the scrutiny of the Ontario Superior Court of Justice.

188. The disreputable conduct engaged in by SOL and Blocker 2 shocks the conscience of the Court, and warrants this Court’s strong condemnation.

189. The Court, 1235 and the investing public all deserve better. In the circumstances, a substantial award of punitive damages is appropriate, both to penalize SOL and Blocker 2 for their misconduct and to send the unmistakeable message that the Canadian capital markets are not a proverbial "Wild West" in which market participants can ignore their contractual and legal obligations with impunity.

S. General

190. This Statement of Claim may be served on Blocker 2, Ms. DeFrancesco and Delavaco Florida outside of Ontario pursuant to Rules 17.02(a), (c), (e), (f) and (i) of the *Rules of Civil Procedure*. To the extent necessary, this Statement of Claim may also be served on Mr. DeFrancesco in accordance with those same Rules.

191. 1235 proposes that this action be tried in the Commercial List in Toronto, Ontario, on a case managed and expedited basis.

February 23, 2021

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO #24264J)
Tel: 416.863.5566
kentthomson@dwpv.com

Steven G. Frankel (LSO #58892E)
Tel: 416.367.7441
sfrankel@dwpv.com

Fax: 416.863.0871

Lawyers for the Plaintiff,
1235 Fund LP

1235 FUND LP
Plaintiff

-and-

SOL GLOBAL INVESTMENTS CORP. et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO #24264J)
Tel: 416.863.5566
kentthomson@dwpv.com
Steven G. Frankel (LSO #58892E)
Tel: 416.367.7441
sfrankel@dwpv.com

Fax: 416.863.0871

Lawyers for the Plaintiff,
1235 Fund LP