COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT DEPARTMENT
TRIAL COURT DIVISION
CIVIL ACTION NO.

NEW DIA, LLC, a Massachusetts limited liability company, and ROSS BRADSHAW,

Plaintiffs,

v.

CR OPERATOR HOLDINGS, LLC, a California limited liability company, VICENTE SEDERBERG, LLP, a Colorado limited liability partnership, TRP HOLDCO, LLC, a Delaware limited liability company, COOKIES RETAIL, LLC, a California limited liability company, and COOKIES HOLDINGS, LLC, a California limited liability company,

Defendants.

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COMPLAINT

Plaintiffs New Dia, LLC (the "Company" or "New Dia") and Ross Bradshaw ("Mr. Bradshaw" or "Seller") bring this action to redress Defendant CR Operator Holdings, LLC's ("Buyer") breach of a Membership Interest Purchase Agreement ("MIPA"),[1] Promissory Note ("Note"), and ancillary agreements, under which Seller agreed to sell to Buyer an interest in the Company for $2,000,000. This action is also brought against Vicente Sederberg, LLP ("Vicente"), as the escrow agent for the transaction Plaintiffs are seeking specific performance as

[1] Ross Bradshaw is acting as Power of Attorney on behalf of the other Sellers (Amanda Bradshaw, Shanel Lindsay, and Susan Lindsay) under the MIPA, and all references herein to "Seller" shall collectively refer to Ross Bradshaw, Amanda Bradshaw, Shanel Lindsay, and Susan Lindsay.

to. TRP Holdco, LLC ("TRP"), Cookies Retail, LLC ("Cookies RE"), and Cookies Holdings, LLC ("CH"), are included as Defendants insofar as necessary to afford Plaintiffs complete relief.

Defendants have been engaged in a pattern of misconduct to seek to take an interest in New Dia and its unique social equity applicant cannabis license in Massachusetts without paying for the same. After having solicited New Dia and Seller to induce Seller to sell an interest in New Dia, and after obtaining necessary regulatory approval for that transfer of interest, Buyer has refused to close and pay for the interest that it seized. It has also refused to release executed closing documents but Buyer, TRP, Cookies RE, and CH hold themselves out as having an interest in New Dia (including in other securities offerings and attempts to raise funds and obtain investments). Defendants seek reap the benefits of owning an interest in New Dia without paying for those benefits.

Buyer is disgruntled with only being able to obtain 49% of New Dia even after agreeing in light of regulatory limitations requiring that social equity applicants maintain over 50% control of New Dia under Massachusetts law. That state of affairs is exactly what Buyer knew, should have known, and bargained for. Now, consistent with its business model to control the operations of the companies it enters into agreements with (which it has done in other circumstances, with other companies), Buyer (and TRP, Cookies RE, and CH) is attempting to seize control of New Dia by claiming ownership interest and the benefits of the parties' deal publicly, without paying and while refusing to close on the deal. After refusing to close, it then engaged in coercive attempts to re-trade the deal, while *admitting* that it has an obligation to pay, including in statements such as "[w]e simply don't have $2M in cash to pay you," and that the parties had a "deal." It has also publicly made contradictory statements, touting substantial profitability. Buyer's inequitable conduct is a breach of the parties' agreements, and is remedied

by an order granting specific performance, and requiring Buyer to close on the deal that it agreed to.[2]

INTRODUCTION

1. New Dia is a cannabis dispensary that was awarded a Massachusetts Cannabis Control Commission ("Control Commission") social equity applicant license in 2018, based on Mr. Bradshaw's status as a social equity applicant.

2. In 2020, New Dia was introduced to the "Cookies" business. Cookies, along with Buyer and other related entities, have a business model of acquiring companies with cannabis licenses in states where cannabis is recreationally legal, and then licensing the "Cookies" name to the entity and controlling the operations through another Cookies-related entity.

3. Applicable regulations prohibited New Dia, as a social equity licensee, from selling more than 50% of its business. Buyer initially stated that it was against the Cookies business model not to have a controlling interest in a business that it was partnering with, but that in this circumstance, it would concede in light of regulatory requirements.

4. After negotiating and executing the MIPA and Note with Buyer, and ancillary agreements including a licensing agreement with other entities related to Buyer, Seller agreed to the sale of 49% of New Dia in exchange for $2,000,000 ($400,000 due at closing under the MIPA and the remaining $1,600,000 due under the Note).

5. The sale of 49% of the Company required that the Control Commission approve a Change in Ownership request, which was submitted on July 27, 2021, by Vicente, with finalized versions of the MIPA, Note, and other ancillary documents.

[2] Defendants' action also comprises additional actionable conduct, including violations of M.G.L. ch. 93A, violations of the Lanham Act, false advertising, securities fraud, and other causes of action. Seller and the Company reserve the right to pursue those claims separately, which they would need to do in arbitration per the arbitration provision in the MIPA.

6. That Change in Ownership request indicated that upon approval, Buyer, Cookies RE, and CH would own 49% of New Dia.

7. Despite representing to the Control Commission under penalty of perjury that the agreements (subject to execution upon approval of the Control Commission of the Change of Ownership request) were in final form (ready to be executed), after the Control Commission granted the change of ownership approval on May 12, 2022, Buyer, and Vicente (the escrow agent) refused to close on the transaction and remit payment to Seller.

8. Despite refusing to close on the transaction and failing to pay *any* amount for the interest Defendants had seized in New Dia, Buyer, and upon information and belief TRP, Cookies RE, and CH, publicly hold themselves out as the rightful owner of 49% of New Dia.

9. For months, Seller attempted to set a closing date, but was met with obfuscations and claims that Buyer did not have the funds, meanwhile referring to the parties' "deal" and acknowledging that knew that the parties had a binding agreement. Buyer also attempted to re-trade the deal and negotiate a new deal to have Seller pledge the 49% to a third party, all to avoid payment and closing on the MIPA and related agreements that Buyer had already agreed to. The deal that was agreed to was known to Buyer, and what Buyer bargained for.

10. New Dia has never been paid any consideration for the sale of nearly half of the Company, but Defendants have acted as if they rightfully own it, when they do not.

11. After the Control Commission granted the Change in Ownership request, Buyer began communicating with Seller as "TRP" and to afford complete relief, TRP is included as a party. Cookies RE and CH are included as parties as they, upon information and belief, purport to control 49% of New Dia.

12. Seller and the Company bring this action for specific performance in light of Buyer's breaches of both the MIPA and Note.

PARTIES

13. Ross Bradshaw is an individual residing in Massachusetts.

14. New Dia, LLC, is a Massachusetts limited liability company with its principal place of business in Worcester, Massachusetts.

15. CR Operator Holdings, LLC, is a California limited liability company with its principal place of business in Sacramento, California.

16. Vicente Sederberg, LLP, is a Colorado limited liability partnership with its principal place of business in Denver, Colorado, and offices in Massachusetts.

17. TRP Holdco, LLC, is a Delaware limited liability company with its principal place of business in Newport Beach, California.

18. Cookies Retail, LLC, is a California limited liability company with its principal place of business in Sacramento, California.

19. Cookies Holdings, LLC, is a California limited liability company with its principal place of business in Sacramento, California.

JURISDICTION AND VENUE

20. Jurisdiction and venue are also proper pursuant to Section 8.14 of the MIPA:

> If a Party violates or fails or refuses to perform any covenant or agreement made by it herein (including signing any documents required for Final Governmental Approval), the non-breaching Parties may (at any time prior to the earlier of a) valid termination of this Agreement pursuant to Article VIII and b) the Closing), subject to the terms hereof, institute and prosecute an action to enforce specific performance of such covenant or agreement. **The Parties irrevocably submit to the exclusive jurisdiction of the state courts located in Suffolk County, Massachusetts, with respect to this Section 8.14**. The Parties irrevocably waive defense of an inconvenient forum to the maintenance of any such action or other proceeding with respect to this Section 8.14.

MIPA § 8.14 (emphasis added).

21. The Note further provides that "[a]ll remedies set forth in the MIPA, and all rights to specific performance set forth in the MIPA, shall apply to this Note and be deemed incorporated herein by reference, *mutatis mutandis*." Note § 12.

FACTUAL ALLEGATIONS

The Cookies Brand and Introduction to the Company

22. In the early 2000s, hip-hop artist Gilbert "Berner" Milam, Jr. built a persona around smoking cannabis in the Bay Area of California.

23. Berner learned of, and was then introduced to, a cannabis breeder, Jai "Jigga" Chang. A cannabis "breeder" is generally someone who develops strains of cannabis.

24. Berner and Jigga first created a cannabis strain called "Girl Scout Cookies" and later "GSC" which became hugely popular in California.

25. In 2010, Berner and Jigga formed a company called Cookies. The "Cookies" brand, to avoid legal troubles given the illegality of cannabis at the federal level, licensed the name to retailers in states where cannabis was legal, to sell Cookies-licensed products.

26. The first Cookies retail cannabis dispensary opened in Los Angeles, California, in 2018. After achieving some success, the Cookies brand began to expand nationwide.

27. In 2019, Cookies was approached by cannabis investors Brandon Johnson ("Mr. Johnson") and Daniel Firtel ("Mr. Firtel") who offered Cookies a business relationship whereby Cookies would remain the licensor, and entities formed by Messrs. Johnson and Firtel (and owned jointly with Cookies) would be responsible for operating the dispensary businesses.

28. These businesses jointly owned by Messrs. Johnson and Firtel, with an additional business partner named Ryan Christopher Johnson, would operate either independently or with partners with existing dispensary licenses and sought an affiliation with the Cookies brand.

29. Messrs. Johnson and Firtel and the Cookies entity formed and jointly own three entities, CH, and its two subsidiaries, Cookies RE and Buyer.

30. CH was formed as the vertically integrated cannabis holding and operating company for TRP's cannabis business. CH was owned 80% by a company owned by Messrs. Johnson and Firtel, called Bakery Partners, LLC ("Bakery"), and 20% by a Cookies' brand entity called Cookies Creative Consulting & Promotions, Inc. ("CCC&P").[3]

31. Over the following several years, CH and its two wholly owned subsidiaries of CCC&P and Bakery, Cookies RE and Buyer, continued to open new retail locations, initially in California, and then in other state cannabis markets around the United States.

32. CH eventually expressed interest in opening Cookies branded stores in Massachusetts and began seeking partners.

The Creation of the Company and Introduction to Buyer

33. In 2018, New Dia was awarded a Marijuana Retailer License, License Number MR281269, to open a cannabis dispensary in Worcester, Massachusetts.

34. The Marijuana Retailer License was awarded to the Company as a Massachusetts social equity license by the Control Commission as the Company qualified as an Economic Empowerment Priority Applicant ("Social Equity"), based on Mr. Bradshaw's personal demographics and circumstances.

[3] The Cookies brand includes numerous individuals and companies that collectively own CCC&P, referred to herein as the "Cookies" brand.

35. In order to maintain the Company's Social Equity designation, and the benefits associated with the Social Equity designation, those who qualified as Social Equity applicants who owned New Dia were required to maintain a greater than 50% controlling interest in the business, as required under 935 CMR 500.050(1)(b).

36. At the time that the Company was awarded the Marijuana Retailer License, the ownership of the Company was comprised of Mr. Bradshaw owning 93%; Amanda Bradshaw owning 2%; Shanel Lindsay owning 2.5%; and Susan Lindsay owning 2.5%.

37. In early 2021, before New Dia opened its dispensary but after having obtained its Social Equity designation and license, Mr. Bradshaw was introduced to CH and its related entity, Buyer.

38. Buyer informed Mr. Bradshaw that the Cookies brand was interested in becoming partners in the Worcester location that New Dia was opening.

39. For the next two months, Mr. Bradshaw negotiated with Buyer and its counsel, Jeremy Shaw, Esq., of Vicente, and CCC&P and its counsel, Michael Moulton, Esq., of Moulton Moore ("Moulton"). New Dia was represented at the time by Joshua Smith, Esq., of Bowditch & Dewey ("Bowditch").[4]

40. Given the Company's Social Equity designation, the Social Equity applicants (Sellers) needed to maintain a greater than 50% controlling interest in New Dia. For this reason, early in the negotiations with Buyer, the Company made it clear that it would not be able to sell more than 49% of the business, nor would it be able to give up a controlling position on the Company's Board of Managers ("Board").

[4] New Dia later engaged Shingle Hill, LLC, and its principal Robert Hunt, as cannabis business consults, to assist New Dia with its negotiations with Buyer and CCC&P.

41. CH and Buyer were upset and disappointed at this requirement due to their desire to obtain full control of New Dia, rather than, at most, a 49% ownership interest. While initially reluctant to concede to this requirement, citing that this was not in alignment with the CH business model, Buyer did ultimately acquiesce to an Amended Operating Agreement giving Sellers a 51% ownership stake in New Dia, and 3 of 5 seats on the Company's Board. *See* Operating Agreement §§ 3.02, 3.03, and 8.02(a), (b).

42. In order to placate Buyer, New Dia agreed to permit Buyer to maintain some negative controls in the form of requiring a supermajority of the Board to approve larger corporate decisions. New Dia and Seller understood that this would appease Buyer and satisfy its desire to have "control" and also comply with the requirements of 935 CMR 500.050(1)(b).

43. Upon information and belief, Buyer knew from the time it entered into the agreements that it would not pay, but nevertheless acts as if it controls New Dia, seeking to reap the benefits of control and use within its business model, without paying for the same.

44. New Dia opened the doors to its dispensary on March 1, 2021.

45. In May 2021, New Dia and Buyer, through counsel and other agents, negotiated several agreements. The licensing agreements were negotiated with counsel for Cookies, as the licensor is CCC&P.

46. The following agreements were negotiated by the parties and CCC&P: the MIPA; the Note; the Construction Note; the Amended and Restated Operating Agreement ("Operating Agreement"); the Advisory Services Agreement ("Advisory Agreement"); the Cookies Purchase Note ("Seller's Note"); the Pre-closing Licensing Agreement; and the Post-closing Licensing Agreement.

The MIPA

47. The MIPA states, in relevant part, that "Buyer desires to purchase from Seller forty-nine percent (49%) of the Membership Interests of the Company, in the amounts as set forth on Schedule 2.1 hereto (the 'Purchased Interests')."

48. Under the MIPA, the parties were to close on the deal "no later than three (3) Business Days after the satisfaction of all conditions to closing set forth in Article VI" (the "Closing"). MIPA § 2.4.

49. The following deliverables were required at Closing: the exchange of "Seller Closing Documents" which were documents held in escrow upon execution of the MIPA, and included: (i) an executed Seller's Certificate in the form attached to the MIPA as Exhibit A; (ii) an executed Bill of Sale in the form attached to the MIPA as Exhibit C; (iii) an Operating Agreement in the form attached to the MIPA as Exhibit F, duly executed by Seller, the Company, and all other members of the Company, if any; (iv) an executed Post-closing Licensing Agreement; and (v) an executed Advisory Agreement. MIPA § 2.5(a).

50. Meanwhile Buyer was required at closing to provide its "Buyer Closing Documents" which were also held in escrow upon execution of the MIPA, and included: (i) an executed Buyer's Officer Certificate in the form attached to the MIPA as Exhibit B; (ii) the Cash Payment (as defined below), (iii) the Purchase Note, and (iv) and the Operating Agreement, duly executed by Buyer. MIPA § 2.5(b).

51. Section 2.5 of the MIPA makes clear that the "Deliverables at Closing" included exchange of the fully executed copies of both "Seller Closing Documents" and "Buyer Closing Documents." MIPA § 2.5.

52. Section 2.6 provides that these documents would be held in escrow and states:

> Escrow of Closing Documents. Notwithstanding anything to the contrary set forth in Section 2.4, on the date of this Agreement, Seller shall sign its Seller Closing Documents, and Buyer shall sign its Buyer Closing Documents, after which counsel for Buyer, Vicente Sederberg, LLP ('VS') shall hold such Documents in trust until the Closing, at which time VS shall release the documents as provided in Section 2.4.

MIPA § 2.6.

53. The requirements for Closing, as set forth in Article VI of the MIPA, include:

a. All "Statements of Fact" including statements made that there were no conflicts, Seller had authority, Seller owned the Membership Interests, and other representations made by Seller be true and correct;

b. That Seller has performed and complied with the MIPA in all material respects and complied with all obligations under the MIPA;

c. There be no law, proceeding, or order prohibiting or making illegal the consummation of the MIPA;

d. That Seller has delivered its Seller Closing Documents to Buyer;

e. That all "terminations or expirations of waiting periods imposed by any Governmental Authority" with respect to the MIPA have occurred; and

f. That Final Government Approval has occurred.

54. "Final Government Approval" is defined in the MIPA as "approval from all Governmental Authorities required by the Marijuana Code in connection with the Change in Ownership, including, without limitation, from the Commission and the City."

55. "Governmental Authority" is defined in the MIPA as "any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity."

56. As to the Construction Note, the MIPA states that "Buyer shall pay all other costs necessary to renovate the Premises at specifications determined by Buyer in its sole discretion." MIPA § 2.3.

57. The MIPA provides that the Construction Note, required to begin renovation that would turn the New Dia store into a "Cookies" branded store, was to be forgiven at the Closing. *Id.*

58. The MIPA provides that, upon the Closing:

> as consideration for the Purchased Interests, Buyer shall convey to Seller (i) payment in the amount of Four Hundred Thousand Dollars ($400,000.00 USD) (the 'Cash Payment') pro rata in proportion to the percentage interests transferred to Buyer by each Seller as provided on Schedule A and (ii) a promissory note in the form attached hereto as Exhibit D with an aggregate principal amount of One Million Six Hundred Thousand Dollars ($1,600,000.00 USD) (the 'Purchase Note'), duly executed by Buyer.

MIPA § 2.2.

59. Each material requirement for "Closing" was met, as set forth below, yet Buyer refused to close or remit payment. Despite refusing to close or remit payment, Buyer and TRP has undertaken to rebrand the dispensary and its controlling affiliates have actively cited to the rebranded dispensary and held it out to the market and prospective investors as a Massachusetts asset belonging to Cookies or in which Cookies or its controlling affiliates hold an ownership interest.

60. The MIPA is not terminatable once Final Government Approval is granted, which has occurred. Section 7 of the MIPA states:

> Any Party may terminate this Agreement if a Party is notified that Final Governmental Approval will not occur or if the Final Governmental Approval has not been obtained by within one (1) year from the date hereof.

MIPA § 7.1. Because Final Governmental Approval has occurred, there is no basis to terminate the MIPA, nor has Buyer ever purported to terminate the MIPA.

The Note

61. The Note was executed on June 10, 2021, in the amount of $1,600,000,

62. Section 2.1 provides that:

> The entire unpaid principal amount of this Note, together with any accrued and unpaid interest, accruing at a rate equal to the applicable federal interest rate as of the date of this Note per annum, shall be due and payable on the date that is eighteen (18) months from the date that New Dia, LLC begins conducting sales under the name 'Cookies' (such initial date, the 'Start Date', and such date after such eighteen (18) month period, the 'Maturity Date').

Note § 2.1.

63. Pursuant to Section 2.2.1, payments under the Note were due to begin three months subsequent to the Start Date. Note § 2.2.1.

64. The payment scheduled under the Note required payments in the amount of $266,666.67 at three, six, nine, twelve, fifteen, and eighteen months from the State Date. Note §§ 2.2.1-2.2.1.5.

65. The Start Date was initially August 28, 2021, the opening date of the re-branded Cookies store. As the Control Commission had yet to approve the transaction, Seller agreed that the amounts due under the Note would not accrue until the approval from the Control Commission was received. The new "Start Date" was therefore modified to May 12, 2022. The Maturity Date was therefore November 12, 2023, 18 months after the Start Date.

66. The Note provides, with respect to a failure to pay "within ten (10) business days of receiving written notice of having failed to pay the amount on the date which such payment is due" constitutes an Event of Default under the Note. Note § 3.1.

67. The Note states, with respect to an Event of Default:

> Upon the occurrence of an Event of Default and during the continuance of such Event of Default, the unpaid Principal Amount shall bear interest at a rate equal to ten percent (10%) per annum until such Event of Default is cured. In addition, upon the occurrence of an Event of Default and at any time thereafter during the continuance of such Event of Default, Holder shall have the right and option, without notice or demand, (i) to accelerate the maturity of this Note and declare the entire unpaid balance of this Note, both outstanding principal and accrued but

> unpaid interest, immediately due and payable; and/or (ii) may enforce any or all of its rights, powers or remedies as are available to Holder under this Note, or any other rights, powers or remedies available to Holder at law or in equity.

Note § 4.

68. Although Buyer waived notice, written notices were sent on December 2, 2022, and October 13, 2023, reflecting an election to accelerate all payments and interest due under the Note. No payment has been made under the Note, to date.

69. The Note also contained Affirmative Covenants, namely that:

> Promptly upon the occurrence thereof, Maker will provide Holder with written notice of any Event of Default (hereinafter defined), or any act, event, condition or occurrence that upon the giving of any required notice or the lapse of time, or both, would constitute an Event of Default. In addition, Maker will promptly advise Holder in writing of any condition, act, event or occurrence which comes to Maker's attention that would materially prejudice Holder's rights in connection with this Note.

Note § 7.12. No notices have been served under this provision.

Final Government Approval Is Requested and Received, While the Cookies Dispensary Opens to the Public

70. On July 27, 2021, Vicente submitted a "Change in Ownership" request to the Control Commission pursuant to the MIPA, asking the regulators to begin the review process to change the ownership of New Dia.

71. The "Change in Ownership" request was submitted alongside a fully executed Pre-closing Licensing Agreement, the nearly completed MIPA, the unexecuted Bill of Sale, the unexecuted Seller's Note, the unexecuted Post-closing Licensing Agreement, the unexecuted Operating Agreement, the unexecuted Joinder Agreement, the unexecuted Advisory Agreement, and the fully executed Note.

72. The Change in Ownership request represented that, upon approval by the Control Commission, Buyer, Cookies RE, and CH would own 49% of New Dia.

73. Vicente submitted this paperwork to the Control Commission and did so representing that the various agreements between the parties were in final form, under penalty of perjury. Many of the documents were not fully executed, or were partially executed, because they were to be executed upon approval from the Control Commission.

74. In other words, Vicente, acting as an agent and counsel for Buyer, represented to the Control Commission that once the Control Commission provided the approval, the change of ownership, and the Buyer's attendant obligations under the MIPA, would immediately take effect.

75. Meanwhile, on August 28, 2021, Buyer's renovations to New Dia's existing dispensary were complete, such that Buyer re-branded New Dia as a Cookies branded store under the parties' Pre-closing Licensing Agreement.

76. In March 2022, the Control Commission conducted interviews with all related parties to better understand the nature of the transaction.

77. Soon after, on May 12, 2022, the Control Commission approved the change of ownership, rendering Buyer and the individuals associated with it, 49% owners of New Dia. This was the final component that was required as a condition precedent to the Closing.

78. Upon approval, the following individuals (who own an interest in Buyer via Bakery and CCC&P) became persons with direct or indirect control of New Dia: Mr. Johnson; Ryan Johnson; Mr. Firtel; Thomas Linovitz; Parker Berling; Gilbert Milam, Jr.; Charles Ramsey; Lesjai Peronnet Chang; CROH; Cookies RE; CH; Bakery; CCC&P; CR Management Co, LLC; TRP Holdco, LLC; TRP BR Holdings, LLC; and TRP Partners, LLC.

79. With the exception of final signatures, and the execution of the Buyers' and Sellers' Statement of Facts, all other Closing Conditions, pursuant to Section 6 of the MIPA, had been satisfied. All material requirements for the Closing to occur had been achieved.[5]

The Company Seeks to Close, But Buyer Fails to Close and Seeks to Impose New Conditions

80. At this time, the Company began to inquire as to when the Closing would take place and requested that Vicente release the Closing documents, as the state of affairs was exactly what Buyer knew it would be, and bargained for.

81. At first, Buyer appeared to be compliant, but that soon changed.

82. On June 3, 2022, Ryan Johnson contacted Mr. Bradshaw to finalize the documents needed for Closing, which he proposed would take place on June 10, 2022.

83. Ryan Johnson stated that routine information would need to be confirmed before closing, but that closing would occur once that information was received.

84. Mr. Bradshaw verified the information that Buyer was requesting for Closing (which included confirmation of ownership percentages and addresses of the Members of the Company), but by June 10, 2022, the proposed date of Closing, Ryan Johnson had stopped returning e-mails or telephone calls.

85. On June 27, 2022, while the Seller was waiting for Vicente to release the escrow documents and finalize a Closing date, Buyer suddenly requested that Seller pledge the assets of New Dia to a lending group called Silver Spike Capital ("Silver Spike") from whom TRP, on behalf of its subsidiary, Buyer, was interested in receiving debt capital.

86. The Company informed TRP that it was not interested in doing so for several reasons, including because there had been no formal Closing, the Company would receive no

[5] Both the Buyer's and Seller's Statement of Facts documents were being held in escrow by Vicente, and were to be completed at Closing.

benefit from the loan from Silver Spike to TRP, and the Company was not interested in becoming partners with Silver Spike should TRP default on its obligations under the loan. The parties' agreements do not require New Dia to pledge the 49% Buyer was to purchase.

87. TRP told the Company that Silver Spike was placing restrictions on the use of its proceeds such that TRP may only allocate funds to projects where Silver Spike had a secured interest.

88. Meanwhile, TRP represented on July 22, 2022, that it had adequate capital and expected significant company growth in 2023 and 2024.

89. Despite TRP's representation that Silver Spike was placing restrictions on the use of its proceeds, TRP confirmed that it *was* able to close on the transaction. New Dia continued to rely on this representation that Closing would occur. Neither Buyer, nor TRP, had ever represented that it was financially unable to close absent new funding, nor did the MIPA or other agreements reflect any such condition to Closing. The failure to represent that it would be unable to close absent funding breached Buyer's Affirmative Covenants under the Note. *See* Note § 7.12.

90. Throughout the summer of 2022, TRP refused to schedule a Closing, meanwhile it continued to act as if it had control, and reap the benefits of control by stating it had control publicly. Vicente ceased responding to emails and did not respond to requests to release the Closing documents as the escrow agent.

91. On September 6, 2022, Mr. Bradshaw received an email from Mr. Firtel that included a term sheet from a third party to purchase TRP's 49% interest in New Dia. The Company made it clear that it was not interested in partnering with individuals that it did not know, which New Dia had no obligation to do under the MIPA or ancillary documents.

92. On September 20, 2022, Mr. Bradshaw emailed TRP to discuss the potential new buyer, in an effort to seek a resolution in order to ensure that Closing would occur.

93. In its response, TRP stated that it required the potential new buyer to purchase its interest in New Dia in order to make payment under the MIPA and Note. The following day Mr. Bradshaw responded to TRP reminding it that (at that point) nearly all monies under the Note had become due, and that New Dia required that it receive cash payment from TRP as soon as possible.

94. On September 28, 2022, Mr. Firtel emailed Mr. Bradshaw expressing concerns about being able to close on the finalized and agreed-upon terms, referring to them as "our deal." Referring to the "deal" indicated Buyer's knowledge it had a binding agreement, on the terms it agreed to.

95. On October 6 and 7, 2022, Mr. Bradshaw sent emails to Vicente requesting that Vicente confirm whether there were, in its view, any incomplete Closing conditions, in an attempt to facilitate the Closing that was now months overdue. Vicente refused to respond.

96. On October 20, 2022, Mr. Bradshaw emailed Vicente again, to which no response was received, and no emails were exchanged between the parties until early December 2022.

97. On December 2, 2022, counsel for New Dia sent a "Notice of Default and Acceleration of Indebtedness" to TRP by New Dia's then-counsel Douglas Radigan, Esq., of Bowditch & Dewey, LLP.

98. That letter notified Buyer that it was in default of the Note and MIPA.

99. In response to this letter, TRP emailed Mr. Bradshaw on December 28, 2022, and attempted to re-trade the parties' agreement with a proposal that was far removed from what had already been agreed. TRP attempted to change the deal yet again, and stated that if Seller

wanted to close, Seller would need to accept new terms. TRP, in this communication, admitted that TRP had the obligation to make payment to Buyer, but stated that TRP was unwilling to do so.

100. A telephone call followed, during which TRP informed New Dia to "forget about the original agreements" as, according to TRP, "that deal was dead."

101. On April 3, 2023, TRP (again) reiterated that it was unable to close on the agreed-upon transaction and proposed yet another alternative structure. By April 2023, all amounts were then due under the Note per the acceleration clause and notice of acceleration from December 2, 2022.

102. On April 6, 2023, TRP once again attempted to convince the Company to accept the third parties that had been proposed as new buyers in September 2022. TRP represented in this e-mail that it believed it held an ownership interest of 49% in New Dia, despite having never closed on the transaction or paid a cent of the purchase price due under the MIPA and the Note. TRP, after expressly repudiating the deal, continued with its coercive seizure of New Dia.

103. On April 19, 2023, Mr. Bradshaw emailed TRP asking for information from TRP so that the Company and the Sellers could conduct due diligence around the proposals that TRP had made over the prior several months. Again, Mr. Bradshaw did so without agreeing to TRP's unilateral terms, in an effort to determine whether an alternative proposal would be appropriate for New Dia.

104. In its response to New Dia's request, TRP refused to provide information, citing confidentiality concerns. TRP yet continued to represent that it had access to capital, but that there were restrictive covenants in place that prevented them from allocating capital to the New Dia sale at Closing. The Company requested to review these documents to gain a better sense of

what these restrictions were, as no such funding limitations or restrictions had ever been raised during negotiations of the MIPA or Note and were, in fact, contrary to Buyer's representations in the MIPA and Note. TRP refused.

105. In e-mails from May and June 2023, TRP continued to reference the "existing" agreement, yet refused to close.

106. On August 1, 2023, Mr. Bradshaw emailed TRP informing it that the Sellers could be amenable to a modification of the existing agreement, as long as the new proposal put the Sellers in as good as, if not better than, position as that which was originally agreed to.

107. On August 12, 2023, TRP responded saying "[w]e simply don't have $2M in cash to pay you" and confirmed that it wished to purchase less than the 49% it had already agreed to purchase.

108. Mr. Bradshaw responded on August 14, 2023, with a framework for a modification that the Sellers might be willing to accept. TRP would not agree to the proposed alternative framework, and no modification of the parties' original agreement was ever executed.

109. On October 13, 2023, the Company sent TRP a final demand letter reminding it of its obligation to close and pay the consideration due under the MIPA and Note.

110. On November 29, 2023, TRP made a counteroffer of what was offered as a proposed settlement in the October 13, 2023, demand letter. In a subsequent telephone call, Mr. Johnson indicated that TRP would terminate and "walk away" from the transaction. However, the MIPA does not include a termination clause absent a failure to obtain Final Government Approval within one year of execution of the MIPA (which occurred).

111. Since December 2023, there have been no further conversations, yet: Buyer has never paid any amounts under the Note or MIPA; Buyer still lists on its website "New Dia" as an

asset; Buyer still represents publicly that it has ownership of New Dia; and the Control Commission still recognizes Buyer as a 49% owner of New Dia.

CAUSES OF ACTION

COUNT I
BREACH OF CONTRACT

112. Plaintiffs restate the allegations contained in the paragraphs above as if fully set forth herein.

113. Buyer, Seller, and the Company entered into the MIPA, which is a valid and binding contractual obligation that remains in full force and effect.

114. Buyer and Seller also entered into the Note, which is a valid and binding contractual obligation that remains in full force and effect.

115. Seller and the Company have fully complied with all materials terms and conditions of the MIPA and Note.

116. At all times, Seller has been ready, willing, and able to close and sell 49% of the Company at Closing in accordance with the terms and conditions of the MIPA and Note.

117. Closing was to take place within three Business Days after satisfaction of all closing conditions. The final closing condition, Final Government Approval, occurred on May 12, 2022.

118. Buyer has failed, neglected, and refused to comply with the terms and conditions of the MIPA and Note.

119. Specifically, the MIPA required that Buyer deliver a cash payment in the amount of $400,000 at Closing.

120. In violation of this term, Buyer refused to close and has never paid Seller or the Company any cash payment.

121. The Note also required payment in the amount of $1,600,000 on a schedule that has fully matured since the last payment date was 18 months from the Start Date (the parties agreed the Start Date would be the date of approval from the Control Commission). It has been over 18 months since May 12, 2022, yet no payment has been made under the Note.

122. Seller and the Company have been injured by Buyer's failure to comply with the terms and conditions of the MIPA and Note. Buyer is controlling 49% of the Company since the date the Control Commission approved the Change in Ownership, yet Seller and the Company have never been paid for selling 49% of the Company.

123. Seller and the Company are entitled to specific performance of the MIPA and Note given Buyer's refusal to close. Specific performance is appropriate because the rights of the parties are unique.

124. The parties agreed that "[t]he rights of the Parties to consummate the transactions contemplated [ ] are special, unique, and of extraordinary character, and if a Party violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching Parties may be without an adequate remedy at law." MIPA § 8.14.

COUNT II
DECLARATORY JUDGMENT

125. Plaintiffs restate the allegations contained in the paragraphs above as if fully set forth herein.

126. An actual controversy exists between the Buyer, Seller, TRP, Cookies RE, CH, and the Company with respect to ownership rights in the Company.

127. Buyer, TRP, Cookies RE, CH, and Vicente continue to refuse to close on the deal and pay Seller and the Company the $2,000,000 now due under the MIPA and Note.

128. Buyer should not be entitled to remain in possession of 49% of the Company according to the Control Commission without Closing on the deal. Cookies RE and CH should not be entitled to purport to control 49% of the Company without the Buyer having closed on the deal.

129. Accordingly, Seller asks that this Court declare the rights of the parties with respect to the deal including, without limitation: (i) the MIPA and Note remain in full force and effect; (ii) Buyer has an obligation to close on the deal; and (iii) Seller and the Company are entitled to payment in the amount of $2,000,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant them the following relief:

A. Enter judgment for Plaintiffs against Defendants on all counts;

B. Award Plaintiffs their interest, costs, and attorneys' fees, if appropriate;

C. Grant specific performance requiring Defendants to close on the deal and pay the amounts due under the MIPA and Note;

D. Order that Buyer, TRP, Cookies RE, CH, Vicente, and any other entity necessary to close take all actions necessary to close, including delivering executed Buyer Closing Documents, and making payment to Seller in the amount of $2,000,000 plus interest;

E. Declare that Defendants have an obligation to close on the deal and pay the amounts due under the MIPA and Note; and

F. Any such further relief that the Court deems just and proper.

Respectfully Submitted,

NEW DIA, LLC, and ROSS BRADSHAW

By its attorneys,

By: /s/ Colin R. Hagan
Colin R. Hagan, BBO No. 684798
David J. Shlansky, BBO No. 565321
SHLANSKY LAW GROUP, LLP
1 Winnisimmet St.
Chelsea, MA 02150
Phone: (617) 497-7200
Fax: (866) 257-9530
E-mail: Colin.Hagan@slglawfirm.com
David.Shlansky@slglawfirm.com

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