

ARIZONA COURT OF APPEALS

DIVISION ONE

AGRICANN LLC,

Plaintiff/ Appellee/
Cross-Appellant,

v.

NATURAL REMEDY PATIENT CENTER
LLC,

Defendant/ Appellant/
Cross-Appellee.

Court of Appeals
Division One
No. 1 CA-CV 20-0231

Maricopa County
Superior Court
No. CV2016-001283

**APPELLANT/CROSS-APPELLEE'S OPENING BRIEF
AND APPENDIX**

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INTRODUCTION

This is a dispute between two sides of a medical-marijuana joint venture (Natural Remedy and Agricann). After the parties did business together for a year and a half while operating under a Management Contract, they decided to split up. They could never reach agreement on how to unwind the joint venture. Agricann sued Natural Remedy, claiming it was owed money under both the Management Agreement and what this brief will call the alleged “Breakup Deal.”

The superior court ruled against Agricann on the Management Contract. But it erroneously held that the alleged Breakup Deal was enforceable through a fifteen-word napkin the parties signed early in their negotiations, even though the fifteen-word napkin omits more material terms than it includes and reflects only the parties’ preliminary negotiations.

Even if the alleged Breakup Deal was enforceable, the superior court further erred by awarding damages that required only one side (Natural Remedy) to fully perform, thereby making the other party (Agricann) better off than if both sides had fully performed.

This Court should reverse, vacate, and remand.

STATEMENT OF FACTS AND CASE*

I. The parties: Natural Remedy and Agricann.

This case primarily involves two companies: Defendant/Appellant/Cross-Appellee Natural Remedy Patient Center, LLC (“Natural Remedy”) and Plaintiff/Appellee/Cross-Appellant Agricann, LLC. It also involves a third entity, Natural Agriculture, LLC (not a party to this case).

Natural Remedy. Natural Remedy is a not-for-profit entity with a medical marijuana dispensary license issued by the Arizona Department of Health Services. [11/21/2019 Tr. at 174:22-175:11 ([APP325-26](#)).] Defendant/Cross-Appellee David Sanchez and his wife Kathy Sanchez were the members and principals of Natural Remedy, although they are no longer involved with the company. [IR-112 at 2 ([APP095](#)) (joint pretrial statement).] Shadi Zaki consulted for Natural Remedy. [*Id.* ([APP095](#)) (joint pretrial statement).]

Agricann. Agricann is a for-profit entity that “has never held a dispensary license.” [11/20/2019 Tr. at 152:12-16 ([APP260](#)).] Its members

* Selected record items cited are included in the Appendix attached to the end of this brief, cited by page numbers (e.g., [APP141](#)), which also match the PDF page numbers and function as clickable links. Other record items are cited with “IR-” followed by the record number.

were Brigham Burton and Imran Kazem. [IR-112 at 2 ([APP095](#)) (joint pretrial statement).] Agricann also initially involved Jay Galt, who eventually left for Canada. [11/20/2019 Tr. at 12:22-13:13 ([APP225-26](#)).] Burton, who, it turns out, is a frequent flyer in the judicial system, ran the show for Agricann.

Among other involvements in the court system, Burton has a fraud judgment against him. [11/20/2019 Tr. at 143:14-15 ([APP251](#)) (Q. There's a fraud judgment against you, correct? / A. Yes, that is correct.").] A jury assessed punitive damages against him, which were affirmed by this Court. [*Id.* at 143:23-144:16 ([APP251-52](#)); *see also id.* at 145:13-146:16 ([APP253-54](#)).]¹ Burton's real estate license was "suspended due to misrepresentations." [*Id.* at 148:20-149:1 ([APP256-57](#)).]

Kazem, a radiologist, had the unfortunate luck of running across Burton. [*Id.* at 155:7-8 ([APP263](#)).] Presumably ignorant of Burton's string of fraudulent activity, Kazem decided to be the "primary investor who put [up] most of the money" for Burton's latest escapade. [*Id.* at 10:24-12:3 ([APP223-25](#)).] Predictably, Kazem's relationship with Burton eventually broke down,

¹ This testimony concerns No. 1 CA-CV 14-0410.

with Kazem losing trust in Burton. [*Id.* at 220:3-5 ([APP309](#)).] Kazem, for example, found that Burton would prepare written agreements that did not reflect the parties' agreed-upon terms. [*Id.* at 219:6-10 ([APP308](#)).]

Neither Kazem nor Burton had any expertise in medical marijuana. [*Id.* at 155:11-25 ([APP263](#)).] But they did have a \$7,000/month lease to a facility on 26th Avenue that could be used as a grow facility. [*Id.* at 212:1-7 ([APP301](#)).]

II. The Management Contract.

A. The parties formed a joint venture to grow and sell medical marijuana.

Although Natural Remedy had a dispensary license, it lacked a production facility. Meanwhile, Agricann had a lease to a facility suitable for marijuana production, but lacked the requisite license. [*Id.* at 13:14-17:21 ([APP226-30](#)); *id.* at 152:12-16 ([APP260](#)).] So, Natural Remedy and Agricann teamed up and formed a joint venture.

Under their joint venture, Natural Remedy would grow and sell marijuana using Agricann's leased facility. The parties agreed to share revenues and expenses.

To complete the joint venture and provide a system for paying expenses, the parties created Natural Agriculture, LLC. [Ex. 1 at NRPC_000143, § 20 ([APP139](#)).]² Natural Agriculture was formed to pay the expenses from the joint venture between Natural Remedy and Agricann, including the rent, and to hold the lease rights to the 26th Avenue facility. [*Id.* ([APP139](#)); 11/20/2019 Tr. at 35:25-36:7 ([APP231-32](#)); *id.* at 39:22-41:10 ([APP235-37](#)); *id.* at 102:10-14 ([APP239](#)).] Natural Agriculture's members were Burton, Carly Rae Burton (Burton's wife), Kazem, and Kathy Sanchez. [Ex. 1 at NRPC_000143, ¶ 20 ([APP139](#)).] In other words, 75% of the membership belonged to Agricann-affiliated people; 25% to a Natural Remedy-affiliated person. [11/20/2019 Tr. at 40:1-12 ([APP236](#)).]

The parties memorialized their relationship in a two-year "Management Contract" signed in May 2014. [See Ex. 1 at NRPC_000139-44 ([APP135-40](#)).] Burton drafted the Management Contract. [11/20/2019 Tr. at 153:4-154:8 ([APP261-62](#)).]

² The Management Contract referred to "Nature's Agriculture," but the parties formed "Natural Agriculture."

B. The Management Contract was flawed from the beginning.

The Management Contract suffered from several structural flaws that made its terms impossible to perform. For example, the very first recital stated the purpose as granting “rights to AC [Agricann] to operate a medicinal marijuana cultivation and delivery facility in exchange for NRPC [Natural Remedy] receiving a percentage of all sales procured by and from AC [Agricann]’s grow and marketing efforts.” [Ex. 1 at NRPC_000139 ([APP135](#)).] According to Burton, “Agricann was the only party that had the right to cultivate marijuana under this agreement” [11/20/2019 Tr. at 161:10-13 ([APP269](#)).] But just as saying the sky is purple does not make it so, Agricann could not grow or sell *any* marijuana because it was a for-profit company without a license. [*Id.* at 157:21-161:13 ([APP265-69](#)).] The fundamental premise of the Management Contract, therefore, was upside-down and backwards.

In addition, many other provisions in the contract were also impossible, unworkable, or otherwise ignored by the parties:

Insurance. The Management Contract required each party to secure a \$500,000 insurance policy for the benefit of the other. [Ex. 1 at NRPC_000140, § 2 ([APP136](#)) (“each side”); 11/20/2019 Tr. at 166:12-14 ([APP274](#)) (Burton

agreeing that it “also requires Agricann to take out an insurance policy”).] Both Zaki and Burton confirmed that neither side complied with this, and neither party sent a demand letter about the failure to comply. [11/21/2019 Tr. at 192:2-13 ([APP332](#)) (Zaki); 11/20/2019 Tr. at 166:12-167:3 ([APP274-75](#)) (Burton).]

Production. The Management Contract required Agricann to produce 50 pounds per month. [Ex. 1 at NRPC_000143, § 18 ([APP139](#)).] Aside from the fact that the law prohibited Agricann from growing, the facility was “lucky to get . . . 25 to 30, maybe a little bit more than 30 pounds every month.” [11/21/2019 Tr. at 189:10-190:3 ([APP329-30](#)).]

Agricann’s expertise. In the Management Contract, Agricann represented that it had “an expert team developed and ready to grow quality product” [Ex. 1 at NRPC_000139 ([APP135](#)).] It did not. Kazem admitted that “at the time it was just [Burton] and [Kazem], [and] neither one of us really had expertise to grow. . . . neither one of us had been involved with medical marijuana before.” [11/21/2019 Tr. at 109:1-110:13 ([APP320-21](#)).] Burton likewise admitted that neither he nor Kazem had any marijuana cultivation expertise. [11/20/2019 Tr. at 155:11-25 ([APP263](#)).]

Escrow account. The Management Agreement required “a separate escrow account.” [Ex. 1 at NRPC_000141, § 10 ([APP137](#)).] Burton admitted that the parties never had one. [11/20/2019 Tr. at 179:10-17 ([APP277](#)).]

Invoices. The Management Agreement required Agricann to submit invoices to Natural Remedy. [Ex. 1 at NRPC_000141, § 7 ([APP137](#)).] Agricann never submitted a single invoice. [11/21/2019 Tr. at 193:24-194:15 ([APP333-34](#)) (“I never saw one invoice.”).] When asked to give an example of a single invoice Agricann sent to Natural Remedy, Burton pointed only to the damages calculation submitted in this case. [11/20/2019 Tr. at 181:12-182:10 ([APP279-80](#)) (referencing Ex. 31 ([APP142-46](#))).]

Replacements. The Management Contract required each side to act in good faith to help find a replacement joint venturer if the parties ended their relationship. [Ex. 1 at NRPC_000141, § 4 ([APP137](#)).] Natural Remedy complied with its obligation to find Agricann a new tenant. [11/22/2019 Tr. at 45:20-46:3 ([APP351-52](#)).] Agricann never complied with this requirement.

Interest penalty. The Management Agreement purported to impose a 1%/day penalty for late payments. [Ex. 1 at NRPC_000141, § 8 ([APP137](#)).] That never happened. [11/20/2019 Tr. at 193:23-25 ([APP286](#)).] Burton

testified that this paragraph did not reflect “the intent of the parties.”
[11/20/2019 Tr. at 186:11-21 ([APP284](#)).]

Salary. Burton claimed that he and his wife were “entitled to a salary,” even though the Management Agreement said nothing about such a salary.
[*Id.* at 208:22-25 ([APP297](#)).]

C. The parties disputed how to split the proceeds from the joint venture.

The biggest source of controversy at trial (although, tellingly, not disputed during the joint venture) concerned how the parties would split the proceeds from the joint venture. The Management Agreement included a poorly written statement that “Sales Income” (an undefined term) would be split on a “pro rata basis,” and then stated that “80% of all gross sales” (another undefined term) would be paid to Agricann, and “20% shall be retained by” Natural Remedy. [Ex. 1 at NRPC_000141, § 7 ([APP137](#)).] It also said that invoices submitted from Agricann to Natural Remedy “shall not *exceed* eighty percent (80%) of Sales Income,” but did not require the invoices to equal 80%. [*Id.* ([APP137](#)) (emphasis added).] At trial, Agricann claimed a right to 80% of all gross revenues. [11/20/2019 Tr. at 193:13-17 ([APP286](#)).]

The parties, however, never operated under that interpretation. “That was never the intent” of the parties. [11/21/2019 Tr. at 197:10-15 ([APP337](#)).] Even Burton admitted that “[t]hat is not how the parties conducted themselves.” [11/20/2019 Tr. at 193:12 ([APP286](#)).] Burton agreed that Natural Remedy “never paid Agricann 80% of gross sales within five days,” as he claimed the contract required. [*Id.* at 193:18-22 ([APP286](#)).]

All parties, including Agricann, operated on a 50/50 split of profits (i.e., revenue after expenses). The parties intended to, and in fact did, “split [the proceeds] 50/50 after covering all of the expenses and the taxes.” [11/21/2019 Tr. at 197:13-15 ([APP337](#)); *accord id.* at 187:14-18 ([APP327](#)).]

No one at Agricann ever said “no, this is not right” to the 50/50 split. [*Id.* at 216:4-5 ([APP341](#)).] To the contrary, even Agricann operated under the 50/50 split. In December 2014, Burton described “the agreed upon split” as meaning “the other half” would go to Natural Remedy, which can only mean that half would go to Agricann. [Ex. 82 at NRPC_000071 ([APP163](#)).]

In January 2015, Burton specifically demanded “All sales must be split and paid 50/50 between NRPC [Natural Remedy] and Agricann within 5

days of sale.” [Ex. 135 at AC002407, ¶ 6 ([APP208](#)).]³ At trial, Burton agreed that he told Zaki that the sales must be “paid 50/50.” [11/20/2019 Tr. at 198:24-199:6 ([APP291-92](#)).] The evidence left him no choice.

For example, when demanding payment in January 2015, Burton wrote that “Agricann’s share of the sales to date of \$96,525 are \$48,262” (i.e., 50/50). [Ex. 134 at AC002159 ([APP201](#)).] Burton agreed with that at trial. [11/20/2019 Tr. at 197:4-198:5 ([APP290-91](#)) (“Q. So in this email you’re telling Mr. Zaki that you’re entitled—that Agricann’s share is 50 percent. Would you agree with that statement? / A. As of this email, yes.”).]

Agricann’s principals also took this position among themselves. In an internal email between Burton and Kazem, Burton referred to the “*normal* 50/50 split,” with no mention of any other arrangement. [Ex. 143 at AC004060 ([APP211](#)) (emphasis added).] Burton again agreed to this at trial. [11/20/2019 Tr. at 200:2-13 ([APP293](#)).]

Even after the joint venture had essentially broken down, Burton still never demanded the 80/20 split he demanded at trial. In November 2015,

³ In Exhibit 135, Burton wrote the black text and Zaki wrote the red text. [11/20/2019 Tr. at 198:19-23 ([APP291](#)).]

he insisted “we never agreed to be paid 50% of *profits*—EVER. We were to be paid based on *sales*. . . . This has been everyone’s understanding and agreement from the beginning. . . .” [Ex. 63 at AC006125 ([APP147](#)) (emphases added).] He focused on the difference between “profits” and “sales,” but never said anything about any split other than 50/50. In any event, at trial, he admitted that this was “not a true statement.” [11/20/2019 Tr. at 203:9-15 ([APP296](#)).] Tellingly, in an internal Agricann email, Carly Burton referred to “our agreement to split the *Net Profits*.” [Ex. 78 at NRPC_000029 ([APP152](#)).]

III. The alleged Breakup Deal.

About a year and a half into the joint venture, the parties decided to part ways. If the parties did nothing, the two-year Management Contract would expire a few months later, on May 2016. [Ex. 1 at NRPC_000140, ¶ 1 ([APP136](#)) (two-year term), NRPC_000144 ([APP140](#)) (signed in May 2014).] But before that occurred, Agricann hoped to improve its position. It sought to negotiate a new contract (an alleged “Breakup Deal”) that would include the following material terms: (1) Agricann would sublease the 26th Avenue facility to Natural Remedy, (2) the parties would alter their rights and obligations under the Management Contract, (3) Agricann would sell

substantial equipment to Natural Remedy, (4) Sanchez would personally guarantee the obligations for Natural Remedy, and (5) Natural Remedy would have a 1%/day interest penalty. See [Argument § I.B.2](#), below.

Representatives from each entity met in Kazem's living room in October 2015 to discuss how to unwind the joint venture (Sanchez and Zaki for Natural Remedy; Burton and Kazem for Agricann). [11/20/2019 Tr. at 103:11-23 ([APP240](#)).] Late in the evening, Burton scribbled out what he characterized as a "simple napkin," which contained some preliminary progress toward Agricann's desired Breakup Deal. [*Id.* at 215:20 ([APP304](#)); see also 11/22/2019 Tr. at 158:5 ([APP356](#)) (Zaki calling it a "napkin").] That preliminary napkin scribble, shown below, became Exhibit 2 at trial. [[APP141](#)).]

NOV. 2015 - NOV. 2018

3 yrs.

\$20k / mo

400k balloon

sub lease rate start Nov. 15th

Brig Burton, Agricann, LLC

Dave Sanchez, NRPC + PG

Shadi

Aside from the signatures, the napkin contained only fifteen words. It contained a date range (“Nov. 2015 - Nov. 2018”), which it then reiterated as “3 yrs.”. [Ex. 2 ([APP141](#)).] It then said “\$20k/mo” and “400k balloon.” [Id. ([APP141](#)).] And then off to the side, “sub lease rate start Nov. 15th.” [Id. ([APP141](#)).] It was signed by “Brig Burton, Agricann, LLC” and by “Dave Sanchez, NRPC + PG.” [Id. ([APP141](#)).] It also had a signature line for “Shadi” (i.e., Zaki), but Zaki never signed. [Id. ([APP141](#)).] That’s it. The napkin contains fifteen words, nothing more.

After that meeting, Burton prepared nearly 20 pages' worth of contract documents (consisting of a Personal Guarantee, a Promissory Note, a Purchase and Settlement Agreement and Release, and a Security Agreement). [Ex. 107 at AC006089-112 ([APP174-97](#)).] This contract, which would have gotten close to the Breakup Deal, was never signed.

At the time, no one viewed the napkin as a binding agreement. For that reason, they continued to have heated negotiations over terms that both sides viewed as material to reaching a binding agreement. From Natural Remedy's perspective, the parties "had just started these talks. . . . [T]here was no definitive document ever signed." [11/22/2019 Tr. at 158:7-8 ([APP356](#)).]

While Agricann continued to negotiate the terms, its correspondence and actions confirm that Agricann likewise thought that the parties had not yet reached any enforceable contract, i.e., that Natural Remedy had not yet intended to bind itself to any terms. Burton wrote, "[i]f we're unable to get these formal agreements signed . . . then the full balance of what is due today . . . will be handed over to our attorney[']s for collection." [Ex. 107 at AC006083 ([APP168](#)).] This comment would make no sense if the parties had already formed a contract.

Burton repeated this view multiple times within weeks of signing the preliminary napkin. He claimed that signing his proposed formal agreements “would end the need for litigation and procure a fair and equitable settlement for all.” [Ex. 104 at AC006013 ([APP167](#)).] And again after that: “Without a settlement in place, and not counting sales since August 15th, to date you and NRPC now owe Agricann \$6,614,983.07” [Ex. 162 at AC006122 ([APP213](#)).]

Ultimately, the parties never reached agreement and never executed a binding contract to unwind their joint venture.

Moreover, Agricann never transferred or assigned any lease rights, and in fact Agricann had no lease rights when Burton scribbled and signed on the napkin and engaged in further negotiations. In May 2014, Agricann (and the landlord) had transferred the 26th Avenue facility’s lease rights to Natural Agriculture, LLC. [Ex. 127 at NRPC_000226 ([APP200](#)).] Neither Agricann nor Natural Agriculture ever transferred any lease rights to Natural Remedy. [11/22/2019 Tr. at 45:6-8 ([APP351](#)).]

In May or early June 2016, Natural Remedy, with no lease rights or obligations on the lease, moved out of the 26th Avenue facility. [*Id.* at 45:14-19 ([APP351](#)).] This was the natural end of the parties’ Management Contract;

its two-year term had expired. [Ex. 1 at NRPC_000140, ¶ 1 ([APP136](#)) (two-year term), NRPC_000144 ([APP140](#)) (signed in May 2014).] Natural Remedy found a new tenant for Agricann “who started paying [the] rent.” [11/22/2019 Tr. at 45:20-46:3 ([APP351-52](#)).]

IV. Agricann sued Natural Remedy.

Several months after the parties’ negotiations broke down, Agricann sued Natural Remedy. [IR-1.] Agricann amended its two-count complaint to add Pay Now, LLC as a plaintiff and Sanchez as a defendant. [IR-5 ([APP088-93](#)).] Pay Now was unrepresented and never participated in trial. Agricann asked the superior court to appoint a receiver for Natural Remedy, which request the superior court declined. [IR-23.]

Count one asserted that Natural Remedy breached the Management Contract, in part for failure to pay what Agricann claimed was its “80% share of the gross sales.” [IR-5 at 3, ¶ 19 ([APP090](#)).] Count two asserted that Natural Remedy and Sanchez breached the alleged Breakup Deal, which Agricann called a “Promissory Note.” [*Id.* at 3, ¶ 23 ([APP090](#)).] Natural Remedy counterclaimed, asserting that “Agricann has failed to pay its portion of the Operating Expenses.” [IR-89 at 6, ¶ 8.] Natural Remedy later voluntarily dismissed its counterclaim. [11/21/2019 Tr. at 162:4-11

([APP324](#)).] On both counts, Agricann claimed an interest penalty of 1%/day. [Ex. 31 at 4 ([APP145](#)) (“Balance W/ Simple Interest” column).]

Agricann’s claims against Natural Remedy and Sanchez proceeded to a bench trial. Including interest, Agricann claimed damages of about \$30 million on count one (alleged breach of the Management Contract). [11/20/2019 Tr. at 243:14-18 ([APP312](#)).] On count two (alleged breach of the Breakup Deal never reached), Agricann claimed \$1.065 million in principal damages and \$15.5 million including interest. [*Id.* at 243:1-4 ([APP312](#)).] Agricann did not use a damages expert; Burton calculated the asserted damages himself. [11/22/2019 Tr. at 181:19-182:5 ([APP358-59](#)).] The damages calculations were deeply flawed.

In written closing arguments, Natural Remedy argued, among other things, that the Breakup Deal was unenforceable and that Agricann had failed to prove any proper measure of damages for this alleged contract. [IR-136 at 15 ([APP121](#)); *id.* at 10 ([APP116](#)).]

V. The superior court's rulings.

A. The superior court ruled against Agricann on the primary claim for multiple reasons.

After conducting a bench trial, the superior court found that “[t]he Management Contract often is difficult to interpret and included provisions that the parties apparently never followed.” [IR-141 at 2 ([APP124](#)).] The superior court cited paragraph 7 (the supposed 80/20 split) as the primary example, calling it “confusing and inconsistent.” [*Id.* ([APP124](#)).] The superior court found that “Burton agreed that the parties did not adhere to paragraph 7,” found that in practice, the parties used “an equal split,” and that the Management Contract, as modified by the parties, “called for [Agricann] to receive 50% of income (*i.e.*, after expenses).” [*Id.* at 2-3 ([APP124-25](#)).]

The superior court also found that Agricann’s demand for 1%/day interest “is a form of liquidated damages” that served as “an impermissible penalty” and was therefore unenforceable. [*Id.* at 3-4 ([APP125-26](#)).]

In addition, the superior court found that Agricann “did not meet its burden of proving breach or resulting damages under the Management Contract.” [*Id.* at 4 ([APP126](#)).] On damages, the superior court found that

Burton “could not explain his methodology persuasively,” that his damages exhibit “had several errors,” and that “it is difficult, if not impossible, to reconcile [Agricann’s] current damages calculation with emails” between Burton and his wife acknowledging the 50/50 split. [*Id.* (APP126).] The superior court specifically made a credibility finding that “Zaki’s testimony was more believable in terms of calculating expenses, what [Agricann] earned under the modified agreement, and payments to [Agricann].” [*Id.* (APP126).]

B. On the Breakup Deal, the superior court ruled for Agricann.

On the Breakup Deal (what the superior court called the “second agreement”), the superior court found that “[t]he parties anticipated and discussed signing more formal agreements after the meeting in Kazem’s house.” [*Id.* at 6 (APP128).] But the superior court held that the parties had nevertheless made an enforceable agreement. The superior court found that the fifteen-word napkin alone created an enforceable agreement, even though it was just part of their preliminary negotiations, and even though the court recognized that it “is sparse, to say the least.” [*Id.* at 5 (APP127).]

The superior court found that the Breakup Deal, as apparently reflected by the napkin, operated as “a novation—that is, replacing the

Management Contract” [*Id.* (APP127).] It also found that “[t]here is not competent evidence that Sanchez personally guaranteed” any obligations on the napkin, and that “[t]he ‘PG’ next to Sanchez’s signature” — which Agricann claimed imposed a personal guarantee — “is nearly meaningless.” [*Id.* at 7 (APP129).]

The superior court’s remedy could not possibly have been more favorable to Agricann—it required Natural Remedy to fully perform, without requiring Agricann to perform *any* of its obligations. It awarded \$1,065,000 to Agricann, calculated by adding up three years’ worth of \$20,000 monthly payments plus a \$400,000 balloon payment, less a couple of payments Natural Remedy had made that the superior court held were payments on the napkin. [*Id.* (APP129).]

Both sides requested attorneys’ fees as the successful party under A.R.S. § 12-341.01. [*Id.* (APP129).] The superior court held that neither side was the successful party. [*Id.* at 8 (APP130).]

C. Both sides moved for reconsideration and the superior court entered final judgment.

Both sides moved for reconsideration of the superior court’s rulings. Natural Remedy moved the court to reconsider (1) its ruling on the Breakup

Deal, including that Agricann had not proved any proper measure of damages, and (2) its ruling that Natural Remedy was not the prevailing party. [IR-148.] The superior court called for a supplemental brief from Natural Remedy and a response from Agricann. [IR-152 ([APP131](#)).] The superior court denied the motion. [IR-171.]

Agricann moved for reconsideration on the superior court's findings on the Management Contract. [IR-169.] The superior court denied the motion without calling for a response. [IR-170.]

The superior court entered judgment on March 16, 2020. [IR-172 ([APP132](#)).] Natural Remedy timely appealed; Agricann cross-appealed. [IR-179; IR-180.] This Court has jurisdiction under [A.R.S. § 12-2101\(A\)\(1\)](#).

STATEMENT OF THE ISSUES

1. Without an intention to be bound, without a meeting of the minds and mutual assent, preliminary negotiations do not create an enforceable contract, even if expressed in writing. Here, the parties never reached agreement on most of the material terms to be included in the Breakup Deal, and the parties' behavior confirms that they did not believe they had reached an enforceable agreement. Did the parties create an enforceable Breakup Deal contract?

2. Contract damages may not make the plaintiff better off than if the parties had fully performed. If a court orders one side to fully perform, then it must ensure that the other side will likewise fully perform. Did the superior court err by ordering Natural Remedy to fully perform on the alleged Breakup Deal without requiring any performance at all from Agricann, which necessarily made Agricann better off than if both sides had performed?

STANDARD OF REVIEW

In an appeal following a bench trial, this Court “defer[s] to a superior court’s findings of fact unless clearly erroneous, but . . . review[s] its conclusions of law de novo.” *Town of Marana v. Pima Cty.*, [230 Ariz. 142, 152, ¶ 46](#) (App. 2012).

This Court reviews de novo mixed questions of fact and law, including “the validity and enforceability of a contract” and whether “a contract did not exist because the two [parties] did not have a meeting of the minds.” *Armiros v. Rohr*, [243 Ariz. 600, 605, ¶ 16](#) (App. 2018).

“Whether the trial court applied the correct measure of damages is a mixed question of fact and law” that the Court “review[s] de novo.” *Id.* at [606, ¶ 21](#).

ARGUMENT SUMMARY

This Court should reverse for two independent reasons, each of which is sufficient.

First, the parties' negotiations on the contemplated Breakup Deal never got far enough to form an enforceable contract. Without an intention to be bound, without a meeting of the minds and mutual assent, preliminary negotiations do not create an enforceable contract, regardless of whether the parties memorialized their preliminary negotiations in writing. ([Argument § I.A.](#)) The parties engaged in heated negotiations and signed the napkin as part of those preliminary negotiations. The parties' contemporaneous communications demonstrate neither side viewed the napkin as binding. ([Argument § I.B.1.](#)) In particular, neither side intended to be bound until the parties reached agreement on material terms not included on the napkin, including altering their rights and obligations under the Management Contract, the sale of equipment, a personal guarantee, and interest, if any. ([Argument § I.B.2.](#))

In the alternative, even if the parties did form an enforceable Breakup Deal, the superior court's damages ruling has no basis in the law. Contract damages cannot make the plaintiff better off than if the contract had been

fully performed. And if a court orders full performance from one side, then it must ensure that the non-breaching party will fully perform, too. ([Argument § II.A.](#)) Agricann did not prove any standard type of damages (e.g., expectancy, reliance, restitution). ([Argument § II.B.](#)) The damages the superior court awarded, however, effectively amount to one-sided specific performance. The court required Natural Remedy to fully perform its end of the bargain, without requiring Agricann to perform at all. The remedy will make Agricann better off than if both sides had performed, which violates a fundamental tenet of contract remedies. The superior court allowed Agricann to have its cake and eat it, too. ([Argument § II.C.](#))

ARGUMENT

I. The Breakup Deal is not an enforceable contract because the parties never had a meeting of the minds on material terms.

Agricann tried to enforce a sweetheart deal. It tried to use the court system to get \$1.065 million in damages (\$15.5 million including interest penalties) without having to do anything in return. Under the alleged Breakup Deal Agricann tried to enforce, Agricann would get fully paid, with a personal guarantee, regardless of whether it ever performed—even if it never transferred lease rights to Natural Remedy, even if Natural Remedy

used the facility for only a few months, and even if Agricann retained title to the equipment that the parties wanted to include as part of the contemplated agreement. Under Agricann's theory, it could get fully paid even though the parties never signed the formal contract that Agricann had pushed so hard.

The superior court erred as a matter of law by holding that the parties had reached an enforceable contract, and in particular by holding that the napkin represented an enforceable contract rather than just one step along the parties' preliminary negotiations.

Natural Remedy raised this argument below, among other places, at IR-136 at 15 ([APP121](#)).

- A. Preliminary negotiations are not enforceable if there is no meeting of the minds or mutual assent to the material terms.**
 - 1. Preliminary negotiations do not create an enforceable contract if the parties did not intend to be bound until they had a complete, full, written agreement.**

A meeting of the minds, or mutual assent, is a key requirement underpinning any enforceable contract. Without an intention to be bound, without a meeting of the minds and mutual assent, preliminary negotiations do not create an enforceable contract, regardless of whether the parties memorialized their preliminary negotiations in writing.

“[I]t is enough to prevent the formation of a contract, rather, that each of the parties have an understanding regarding the subject matter that differs from the other party’s understanding.” 1 Samuel Williston & Richard A. Lord, *Williston on Contracts* § 3:4 (4th ed. 1999). Under Arizona law, “[i]t is well-established that before a binding contract is formed, the parties must mutually consent to *all material terms*. A distinct intent common to both parties must exist without doubt or difference, and until all understand alike there can be no assent. If one party thinks he is buying one thing and the other party thinks he is selling another thing, no meeting of the minds occurs, and no contract is formed.” *Hill-Shafer P’ship v. Chilson Family Tr.*, 165 Ariz. 469, 473 (1990) (citations omitted; emphasis added).

Said another way, “[a] manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent.” *Restatement (Second) of Contracts* § 26 (1981) (hereafter “Restatement”). “As long as the misunderstandings of the parties are reasonable under the specific circumstances of the case, a court may properly find a lack of mutual assent.” *Hill-Shafer*, 165 Ariz. at 475.

Preliminary negotiations with the expectation of a more complete, thorough written contract, are not enforceable if “at least one of the parties has expressed the intention not to be bound until the writing shall have been executed.” [1 Williston on Contracts § 4:11](#). Moreover, “frequently where the parties contemplate a future written contract, it is obvious from their language or other surrounding circumstances that other matters, as to which no definite agreement has been reached, are expected to be included in the writing.” *Id.*

2. Courts consider a variety of factors in determining whether the parties have merely preliminary negotiations or instead have an enforceable contract.

Courts look to a variety of factors in distinguishing between preliminary negotiations and an enforceable contract based on a meeting of the minds. The factors focus on whether the document contains agreement on *all material terms* or just the bare outline of a few terms, particularly if the amount involved is large. The Restatement, for example, looks to “the extent to which express agreement has been reached on *all the terms to be included*,” and “whether it has *few or many details*.” [Restatement § 27 cmt. c](#) (emphases added). Said another way, “[t]he more terms the parties leave open, the less likely it is that they have intended to conclude a binding agreement.”

Offerman v. Granada LLC, [244 Ariz. 148, 150, ¶ 9](#) (App. 2017) (quoting Restatement § 33 (1981)). The Restatement also looks to “whether the amount involved is large or small,” because more substantial contracts tend to require more complete writings as compared to low-value contracts. [Restatement § 33](#).

More specifically, “[a] failure to specify entirely the *amount or property to be given* in exchange for a promise is almost always going to be too vague to enable a court to enforce a promise. Often, so indefinite a description will not only render the contract invalid for lack of certainty but will also show an entire *absence of intent to contract*.” [1 Williston on Contracts § 4:26](#) (emphases added).

The plaintiff has the burden of proving that a document is an enforceable contract, as opposed to merely the parties’ preliminary negotiations. [Id. at § 4:11](#). In conducting this evaluation, a court should look to “the number of terms agreed upon relative to all of the terms to be included, the number of details yet to be ironed out, the relationship of the parties, and the degree of formality attending similar contracts, among other factors.” [Id.](#); see also *Bamford Realty, Inc. v. Toll Bros., Inc.*, No. 1 CA-CV 19-0478, [2020 WL 4007051](#), at *4, [¶ 19 n.2](#) (Ariz. App. July 16, 2020) (mem.)

(unenforceable alleged contract “did not specify corporate form, name of the relevant terms such as future capital calls, percentage ownership of the partnership, voting shares, or funding future costs of development, among other things”).⁴

The factors that show either preliminary negotiations or a complete, enforceable contract “may be shown by [1] oral testimony or [2] by correspondence or [3] other preliminary or partially complete writings.” [Restatement § 27 cmt. c.](#) “A court may look to surrounding circumstances and the conduct of the parties to determine the parties’ intent,” *Johnson Int’l, Inc. v. City of Phoenix*, [192 Ariz. 466, 471, ¶ 26](#) (App. 1998); *see also Bamford*, [2020 WL 4007051, at *4, ¶ 20](#) (concluding that “no enforceable agreement existed” based on parties’ post-meeting “statements and conduct,” including email correspondence and contract drafts); [1 Williston on Contracts § 3:5](#) (“When making this determination, a court must consider the totality of the circumstances surrounding the parties at the time they manifest an intention to contract; all of the parties’ words, phrases,

⁴ Pursuant to Rules of the Supreme Court of Arizona 111(c)(3), a copy of this memorandum decision is attached at [APP362-66](#).

expressions and acts should be viewed in light of the circumstances that existed at that time, including the situation of the parties, both individually and relative to one another, and the objectives they sought to attain.”).

These rules serve an important function. They balance the risks of allowing parties to shirk their legitimate enforceable contracts with the risks of enforcing contracts against parties who never agreed to the alleged terms. Indeed, while aiming to permit people to enforce legitimate contracts, these rules guard against wrongdoers aiming to enrich themselves by seeking contract damages against a party who never manifested an intent to be bound by the alleged terms.

B. Here, the parties never reached a meeting of the minds based on mutual assent.

1. The parties’ contemporaneous communications show that they did not believe they had formed a binding contract.

“[T]he circumstances may show that the agreements are preliminary negotiations,” which do not result in a binding contract. [Restatement § 27](#).

“[I]t is possible and frequently occurs that the parties will contemplate reducing their agreement to writing before it will be considered complete, in which case there is no contract until the writing is executed.” [1 Williston on Contracts § 4:11](#).

“[I]f either party knows or has reason to know that the other party regards the agreement as incomplete and intends that no obligation shall exist until other terms are assented to or until the whole has been reduced to another written form, the preliminary negotiations and agreements do not constitute a contract.” [Restatement § 27 cmt. b.](#)

Particularly with an obligation as big as this one – over \$1 million – the best indication is how the parties behaved at the time. Indeed, “[s]uch circumstances may be shown by oral testimony or by correspondence or other preliminary or partially complete writings.” *Id.* [cmt. c.](#) Here, no one behaved as if they had reached “an enforceable agreement after the initial meeting.” *Bamford*, [2020 WL 4007051](#), at *3, ¶ 16.

From Natural Remedy’s perspective, the parties “had just started these talks. . . . [T]here was no definitive document ever signed.” [11/22/2019 Tr. at 158:7-8 ([APP356](#)).]

On Agricann’s side, the contemporaneous correspondence indicates that Burton thought that the parties would have no binding agreement until they signed a formal contract. Burton prepared nearly 20 pages’ worth of contract documents (consisting of a Personal Guarantee, a Promissory Note,

a Purchase and Settlement Agreement and Release, and a Security Agreement). [Ex. 107 at AC006089-112 ([APP174-97](#)).]

Although preparing formal documents is not itself dispositive, Burton did not stop there. He confirmed his views in writing even after the parties signed the napkin: “If we’re unable to get these formal agreements signed . . . then the full balance of what is due today . . . will be handed over to our attorney[]s for collection.” [*Id.* at AC006083 ([APP168](#)).] If the parties had reached an enforceable contract (e.g., if napkin were enforceable), then he would not have—and could not have—made this threat.

He repeated this view multiple times in writing in the weeks after he signed the napkin. He claimed that signing his proposed formal agreements “would end the need for litigation and procure a fair and equitable settlement for all.” [Ex. 104 at AC006013 ([APP167](#)).] And again after that: “Without a settlement in place, and not counting sales since August 15th, to date you and NRPC now owe Agricann \$6,614,983.07” [Ex. 162 at AC006122 ([APP213](#)).]

These threats confirm that Burton viewed the parties as still engaged in “preliminary negotiations,” and that their contemplated Breakup Deal would not be enforceable “until other terms are assented to [and] the whole

has been reduced to another written form.” [Restatement § 27 & cmt. b.](#) Thus, Agricann’s own “statements and conduct” following the October 2015 meeting demonstrate that “the parties had not entered into an enforceable contract” when they scribbled fifteen words on the napkin. *Bamford*, [2020 WL 4007051](#), at *5, ¶ 20. “[N]o meeting of the minds occur[red], and no contract [was] formed.” *Hill-Shafer*, [165 Ariz. at 473](#) (citation omitted).

2. The parties did not intend for any agreement to become binding until they had reached agreement on other terms.

“[T]he extent to which express agreement has been reached on all the terms to be included” also helps to distinguish between preliminary negotiations and an enforceable contract. [Restatement § 27 cmt. c.](#) This is measured by “the number of terms agreed upon relative to all of the terms to be included, the number of details yet to be ironed out.” [1 Williston on Contracts § 4:11](#); see also *Bamford*, [2020 WL 4007051](#), at *4, ¶ 20 (finding “no enforceable agreement existed” where plaintiff “did not present sufficient evidence that the parties agreed to specific terms”). Said another way, “frequently where the parties contemplate a future written contract, it is obvious from their language or other surrounding circumstances that other

matters, as to which no definite agreement has been reached, are expected to be included in the writing.” [1 Williston on Contracts § 4:11](#).

Here, the parties expected to reach agreement on at least five material terms, of which they reached agreement on only one.

1. The parties all agree that the contemplated agreement would include a sublease of the 26th Avenue facility. This is the only material term on which the parties apparently reached agreement. As the napkin specifies, “sub lease” would “Start Nov. 15th” and run from “Nov. 2015” to “Nov. 2018.” [Ex. 2 ([APP141](#)).] The parties never revisited this term during the further negotiations, but as explained below, they did not intend to have a binding contract until they reached agreement on four other terms.

2. The parties all agree that the proposed agreement would fundamentally alter the rights and obligations under the Management Contract, but did not come to an agreement about how and the extent to which it would do so. The superior court characterized the alteration as a “novation—that is, replacing the Management Contract.” [IR-141 at 5 ([APP127](#)).] Shortly after signing the napkin, Burton described the proposed framework as “created to resolve the now \$2,721,891.68 that NRPC owes Agricann . . . and to create a path for [Natural Remedy] to buy out

Agricann's JV interest in 26th Ave out over time" [Ex. 163 at AC006137 (APP214).] Soon thereafter, he described the proposed \$20,000/month payments as a "very affordable settlement and payment plan" that represented a "significantly reduced payment" to discharge the parties' obligations under the Management Contract. [Ex. 63 at AC006126 (APP148).] Burton further explained that "Agricann is owed and would continue to make a lot more money from you per our original JV agreement [the Management Contract]. The settlement and buyout agreements are a great deal for you at our expense." [Id. (APP148).] The draft formal agreement Burton prepared likewise explained that it would "resolve [Natural Remedy's alleged] failure to fulfill those obligations under the JV Agreement." [Ex. 107 at AC006097, § 10 (APP182).] None of Burton's contemporaneous statements make any sense if the napkin was an enforceable contract rather than a reflection of preliminary negotiations.

At trial, Agricann claimed that the proposed agreement would "discharge [] Agricann's 80% Contract rights going forward." [IR-138 at 13 (Agricann's closing argument); *see also* 11/20/2019 Tr. at 108:16-18 (APP245) (Burton agreeing that the proposal would "include Agricann giving up its rights to the 80/20 split of revenue going forward.").] In other words,

Agricann still contended that the proposed agreement would alter the parties' rights and obligations under the Management Contract; Agricann changed its tune only as to whether the alteration operated prospectively-only.

This alteration to the rights and obligations under the Management Contract is the main way to explain the difference between the \$7,000/month rent and the \$20,000/month + \$400,000 balloon payment written on the napkin. Yet the parties never reached agreement on it. The parties intended to resolve the scope of the alteration and reduce it to writing before having an enforceable contract based on a meeting of the minds.

3. The parties also all agree that the proposed agreement would include transferring title in valuable equipment from Agricann to Natural Remedy, but never addressed how or when the transfers would occur. [See IR-138 at 13 (Agricann's closing argument) ("all its equipment"); 11/21/2019 Tr. at 124:13-14 ([APP322](#)) ("they were going to get the equipment that we had in the building").] Kazem estimated the value of the equipment at "\$[150[,000] to 200,000." [11/21/2019 Tr. at 124:15-20 ([APP322](#)).] Burton's proposed formal contract addressed the transfer of equipment, including a

contemplated schedule of the included equipment. [Ex. 107 at AC006096 (APP181).] But again, the parties never reached a meeting of the minds.

4. The parties had extended negotiations on whether the proposed agreement would include a personal guarantee from the Sanchezes. Burton repeatedly pushed for a personal guarantee, explaining that “it was very important to us that the [personal guarantee] be in place.” [11/20/2019 Tr. at 112:13-14 (APP247).] The superior court, however, found that “Sanchez always pushed back on the idea of a personal guaranty.” [IR-141 at 7 (APP129).] Burton proposed an alternative: “If the personal guarantee is still an item of concern, one solution would be to put Imran and myself on the board until the note is paid off in full.” [Ex. 107 at AC006084 (APP169).] There wasn’t even agreement on what the personal guarantee would cover – whether it would cover just the value of the equipment or also the other items in the proposed contract. [See Ex. 167 at AC006474 (APP216) (“the personal guarantee from NRPC’s owners will not be for the entire amount, but rather, just the equipment and TI’s.”).]

Despite Burton testifying at trial that “we would not have accepted anything short of a personal guarantee” [11/22/2019 Tr. at 166:15-16 (APP357)] (or apparently a seat on the board), the parties never resolved this

issue. The parties never had a meeting of the minds on whether Sanchez would have any obligation, or what it would cover.

5. Burton also claimed that the proposed agreement would include a 1%-per-day interest penalty. [11/20/2019 Tr. at 215:16-216:5 ([APP304-05](#)) (“one percent per day for any late fees”).] Although he later tried to backtrack (claiming he “overstretch[ed]”), he claimed \$15,517,050 in damages on the napkin, “W/ Simple Interest.” [*Id.* at 216:9-10 ([APP305](#)) (“overstretching”); Ex. 31 at 4 ([APP145](#)) (“Total Owed AGC by NRPC & Sanchez Per Lease Buyout Note”); *see also* 11/20/2019 Tr. at 243:1-8 ([APP312](#)) (discussing damages).] Burton’s draft formal agreement included 30%/year interest. [Ex. 107 at AC006092 ([AP177](#)).] The parties never had a meeting of the minds on interest.

* * *

In summary, according to Agricann, the parties intended for the Breakup Deal to include five material terms: (1) a sublease, (2) an alteration of the Management Contract, (3) a sale of equipment, (4) a personal guarantee or seat on the board, and (5) interest, all for the same \$1.12 million total payment. Yet at best they reached agreement on only *one* of the five material terms (a sublease).

Under Arizona law, the parties never reached an enforceable meeting of the minds because there was no agreement on “all material terms.” *Hill-Shafer*, 165 Ariz. at 473; see also [Restatement § 27 cmt. c](#) (agreement “reached on all the terms to be included.”). In particular, “[t]he number of terms agreed upon relative to all of the terms to be included” is small (one out of five), and “the number of details yet to be ironed out” on material terms (four out of five) is large. 1 [Williston on Contracts § 4:11](#). The parties contemplated further negotiations over those four remaining material terms and a formal written contract that included all of them, but they could never reach agreement. Agricann “did not present sufficient evidence that the parties agreed to specific terms, and, therefore, no enforceable agreement existed.” *Bamford*, 2020 WL 4007051, at *4, ¶ 20.

3. Other considerations confirm that the parties never formed an enforceable contract.

Contract law also considers other factors in determining whether preliminary negotiations have resulted in a meeting of the minds and an enforceable contract. The law looks to “the relationship of the parties, and the degree of formality attending similar contracts.” 1 [Williston on Contracts § 4:11](#). Here, the parties were joint-venture partners and had

previously formalized their arrangement in a detailed contract prepared by Burton. They were operating under a detailed, 28-paragraph Management Contract. When Burton circulated a proposed formal contract purportedly reflecting the parties' discussions that took place on October 5, it was nearly 20 pages long, consisting of four separate documents plus additional exhibits. [Ex. 107 at AC006089-112 ([APP174-97](#)).]

Contract law looks to “whether [the agreement] needs a formal writing for its full expression.” [Restatement § 27 cmt. c](#). Under Arizona law, “an agreement for leasing for a longer period than one year” must satisfy the statute of frauds. [A.R.S. § 44-101\(6\)](#).⁵

Contract law also considers “whether the amount involved is large or small.” [Restatement § 27 cmt. c](#). Here, the Breakup Deal purportedly called for payments of \$1.12 million – large enough that the parties would not have intended to be bound without a formal contract. With a contract this large,

⁵ The superior court ruled that the statute of frauds does not apply because of “[t]he possibility of completing performance in one year,” and Natural Remedy could have performed within a year by pre-paying. [IR-141 at 6 ([APP128](#)).] But that concept of being *capable* of performance within a year applies only to the general provision of [A.R.S. § 44-101\(5\)](#), not to the specific provision for leases in [A.R.S. § 44-101\(6\)](#).

courts should ensure that the parties really did intend to be bound. And, as with the cryptic notes on the napkin addressing only one of at least five material terms, “if the writing evidencing the purported agreement is uncertain or ambiguous,” the parties’ “minds did not meet and there was no contract.” *Hill-Shafer*, 165 Ariz. at 474-75.

These factors confirm that the parties did not intend for the fifteen-word napkin to be their final, binding agreement.

C. The superior court erred by finding that the parties intended for the napkin to be enforceable.

1. By enforcing the napkin as the parties’ contract, the superior court gave Agricann a sweetheart deal that unquestionably is not what the parties intended.

The superior court recognized that “[t]he parties anticipated and discussed signing more formal agreements after the meeting in Kazem’s house.” [IR-141 at 6 (APP128).] It nevertheless held that the napkin itself was an enforceable contract. But the napkin unquestionably did not reflect a meeting of the minds on all of the material terms of the Breakup Deal that Agricann sought to enforce under count two. The preliminary negotiations reflected on the fifteen-word napkin include only a “sub lease” at a “rate” of “20k/mo / 400k balloon” that would “Start Nov. 15th” and run from “Nov. 2015” to “Nov. 2018.” [Ex. 2 (APP141).] That’s it. The napkin is completely

silent on the other four material terms that the parties intended to include in the Breakup Deal – terms without which there could be no deal:

- The napkin says nothing about altering the parties’ rights and obligations under the Management Contract (which both sides agree was a material term).
- The napkin says nothing about the valuable equipment, let alone specify what equipment is included, when title would transfer, or any other material terms, even though both sides agree that the \$1.12 million payment would have included equipment as a material term (worth about 15% of the total payments).
- Other than the notation “PG,” which the superior court found to be “nearly meaningless,” the napkin says nothing about a personal guarantee or seat on the board. [IR-141 at 7 ([APP129](#)).] The court found “[t]here is not competent evidence that Sanchez personally guaranteed the second agreement.” [*Id.* ([APP129](#)).] All this, even though Burton testified that Agricann “would not have accepted anything short of a personal guarantee.” [11/22/2019 Tr. at 166:15-16 ([APP357](#)).]

- And of course the napkin says nothing about interest – not one word – even though the claimed damages for interest was more than 10 times the damages claimed for the principal amount.

To top it off, the arrangement the superior court enforced would make no commercial sense. The napkin included only one term (the sublease) and the payment, which added up to \$1.12 million. The napkin called for \$20,000/month with a \$400,000 “balloon” payment. Spreading the balloon payment across the thirty-six-month term yields more than \$11,000/month. Combined with the \$20,000 payment, the napkin called for Natural Remedy to pay Agricann more than \$31,000/month. But the rent on the 26th Avenue facility was \$7,000/month. [11/20/2019 Tr. at 212:1-7 ([APP301](#)).] No one would pay \$31,000/month for a sublease on a \$7,000 space.

This analysis shows that the napkin did not reflect all of the material terms, as the parties’ testimony at trial confirmed. The other material terms, on which the parties never reached agreement, explain that massive difference. Although the parties had agreed on the sublease terms (i.e., a three-year sublease), the contemplated contract included far more than just the sublease. Without agreement on the other terms, it makes no sense to enforce the sublease term on its own. Where, as here, “neither party knew

or had reason to know the meaning intended by the other” for these other missing material terms, “there was no ‘meeting of the minds’ as to an essential term of the contract” and therefore no enforceable contract. *Buckmaster v. Dent*, [146 Ariz. 521, 523](#) (App. 1985).

Yet the superior court enforced the napkin, despite the missing material terms. This gave Agricann a golden ticket. It could get \$1.12 million for doing practically nothing, even though the parties never intended for that to reflect their complete contemplated contract.

“This is not an instance where the material terms have been decided and a few minor points remain to be negotiated.” *Cleveland Wrecking Co. v. Hercules Constr. Corp.*, [23 F. Supp. 2d 287, 297](#) (E.D.N.Y. 1998). Rather, the parties never had a meeting of the minds on four of the five material terms of the Breakup Deal that Agricann sought to enforce. The superior court erred as a matter of law in trying to enforce the napkin, which reflected the parties’ preliminary negotiations on only one of the material terms, far short of the requirement that the parties agree on “all material terms” to establish a meeting of the minds. *Hill-Shafer*, [165 Ariz. at 473](#).

2. The superior court's stated bases for enforcing the napkin as the parties' contract make no sense.

The superior court cited two facts in ruling that the napkin itself was an enforceable contract. First, it cited an email from Sanchez saying “Correct me if I’m wrong but didn’t we agree to start payments on November 15th for \$20,000, while you, me[,] Shadi and Imran were present[?]” [IR-141 at 6 ([APP128](#)) (quoting Ex. 63 ([APP147](#))).] Tellingly, Agricann never asserted this statement as evidence of an enforceable agreement. Instead, the superior court raised the issue sua sponte. [11/22/2019 Tr. at 156:24-157:21 ([APP354-55](#)).]

The context of the email shows that Natural Remedy did not intend for the napkin to be binding—only that certain terms (such as the payment amount) had been ironed out. Other terms still had not been resolved. For example, the same email addressed the personal guarantee Agricann wanted and also questioned the fundamental premise of creating a new agreement instead of “just [creating] an amendment to our agreement [the Management Contract] that was already in place.” [Ex. 63 at AC006126 ([APP148](#))]. These other statements in the same email would make no sense if Natural Remedy thought that an agreement had been reached. *See Bamford*, [2020 WL 4007051](#),

at *4, ¶ 19 (“All of these communications *by Bamford* establish that Bamford and TBI had not finalized an agreement in the initial meeting, as Bamford now claims.”).

The rest of the email chain confirms this context. When Burton responded on behalf of Agricann [Ex. 63 at AC006125 ([APP147](#))], he did not say “hey, we already have an enforceable contract.” That’s because the parties were in the middle of negotiating the other material terms and had not yet reached agreement. An isolated statement, read without context, does not demonstrate a meeting of the minds when all other contemporaneous communications show that the parties were in heated negotiations. *See Bamford*, 2020 WL 4007051, at **3-4, ¶¶ 16-20 (examining plaintiff’s “claim in the context in which it arose,” including plaintiff’s own “statements and conduct showing the parties had not entered into an enforceable contract” to determine that statements made in an initial meeting did not result in an enforceable agreement).

Second, the superior court cited supposed payments that Natural Remedy made after the October meeting, which the court characterized as “\$20,000.00 in November and December 2015 and \$15,000.00 in January 2016.” [IR-141 at 6 ([APP128](#)).] The actual payments were \$3,400, \$16,600,

and \$15,000. [Ex. 89 ([APP166](#)).] None of those payments are \$20,000, and none were made under the napkin.

At the time, Agricann was still owed some amount of money for sales made under the Management Contract. The first two payments happen to add up to \$20,000, but Zaki testified that the payments “came off the 50/50 split” under the Management Contract, not the napkin. [11/22/2019 Tr. at 44:23-45:5 ([APP350-51](#)).] He explained that “whether it was 15,000 or 20,000, or whatever it was, I would always take right off of the contract. . . . I didn’t say, oh, this is from the napkin, this is from the contract, because in my mind, it was only the contract.” [*Id.* at 158:1-7 ([APP356](#)).] The superior court found that “Zaki’s testimony was more believable in terms of calculating expenses, what AC earned under the modified agreement, and payments to AC.” [IR-141 at 4 ([APP126](#)).]

Moreover, even if the payments were made under the napkin, “the mere fact that one party unilaterally undertakes to perform acts under a preliminary agreement is not sufficient, in and of itself, to establish the binding nature of the preliminary agreement.” 1 [Williston on Contracts](#) § 4:11. In light of the fact that neither side viewed the napkin as an enforceable contract, and the number of missing material terms, the napkin

was not an enforceable contract, regardless of whether the \$3,400, \$16,600, and \$15,000 payments were paid under the Management Contract or under the napkin.

For these reasons, the portions of the judgment concerning the napkin (§ 1(a)-(c) of IR-172 ([APP132](#))) must be vacated.

II. Even if the parties had formed a binding contract, the damages are unlawful as a matter of law because they require full performance from only one side, resulting in a windfall gain for Agricann.

In the alternative, the judgment should be vacated because the damages have no basis in the law. The judgment unlawfully requires full performance from only one side, thereby making Agricann better off than if the contract had been fully performed by both sides.

A. Although several different types of remedies are available, none of them can put the plaintiff in a better position than if the contract had been performed.

As the plaintiff, Agricann bears the burden of proving damages, which is a required element of a breach-of-contract claim. *Thomas v. Montelucia Villas, LLC*, [232 Ariz. 92, 96, ¶ 16](#) (2013) (“To bring an action for the breach of the contract, the plaintiff has the burden of proving the existence of the contract, its breach and the resulting damages.” (citation omitted)).

Damages must be proved to “reasonable certainty.” *Walter v. F.J. Simmons & Others*, [169 Ariz. 229, 236](#) (App. 1991) (citation omitted).

Several types of damages and other remedies may be available in contract claims, depending on the circumstances. Regardless of the measure of damages employed, “a party should not profit more from breach of a contract than its full performance.” *John Munic Enters., Inc. v. Laos*, [235 Ariz. 12, 18, ¶ 19](#) (App. 2014). “It is a basic tenet of contract law that the aggrieved party will not be placed in a better position than it would have occupied had the contract been fully performed.” 11 Joseph M. Perillo, *Corbin on Contracts* § 55.3 (rev. ed. 2005).⁶

⁶ This is a virtually universal principle of contract law. *See, e.g., Int’l Prod. Specialists, Inc. v. Schwing Am., Inc.*, [580 F.3d 587, 601](#) (7th Cir. 2009) (remanding where damages award placed non-breaching party “in a better position than it would have been in had [breaching party] performed”); *Martin v. U-Haul Co. of Fresno*, [251 Cal. Rptr. 17, 24](#) (Ct. App. 1988) (reducing damages award that would place the non-breaching “party in a better position than that resulting if the breaching party had performed in accordance with the terms of the agreement.”); *O’Neil v. Cont’l Bank, N.A.*, [662 N.E.2d 489, 499](#) (Ill. App. Ct. 1996) (“It is well-settled that the compensation awarded in a breach of contract action should not provide plaintiff with a windfall recovery.”); *Midland Mut. Life Ins. Co. v. Mercy Clinics, Inc.*, [579 N.W.2d 823, 831](#) (Iowa 1998) (A party “is not entitled to be placed in a better position than he would have been in if the contract had not been broken.” (citation omitted)); *M & W Dev., Inc. v. El Paso Water Co.*, [634 P.2d 166, 170](#) (Kan. Ct. App. 1981) (“A party is not generally entitled to be placed in a better position than full performance by the other party would

The most common remedies for breach of contract are expectancy damages, reliance damages, restitution, and specific performance. Expectancy damages are the “net loss caused by the defendant’s breach of contract,” [24 Williston on Contracts § 64:3](#), or the “benefit of [the] bargain” for the non-breaching party. [Restatement § 344\(a\)](#). Reliance damages reimburse the non-breaching party for its losses, to put that party in as good a position as if the contract had not been made. [Id. at § 344\(b\)](#). Restitution allows the non-breaching party to recoup any benefit conferred on the breaching party. [Id. at § 344\(c\)](#).

Specific performance essentially undoes the breach by requiring both parties to perform their obligations under the contract. “Before a [party] is awarded specific performance, he generally must satisfy the court that he is

have placed him.”); *Polk v. Sexton*, [613 So.2d 841, 844](#) (Miss. 1993) (“[I]t is never contemplated that the injured party be placed in a better position than he otherwise would have been in if the contract had been performed.”); *Fire Sprinklers, Inc. v. Icon Contracting, Inc.*, [279 S.W.3d 230, 235](#) (Mo. Ct. App. 2009) (“The non-breaching party cannot be put in a better position than it would have enjoyed had both parties performed under the contract.”); *Action Ads, Inc. v. William B. Tanner Co.*, [592 S.W.2d 572, 575-76](#) (Tenn. Ct. App. 1979) (reducing damages award where “the plaintiff would be in a better position than it would have been had the contract been fully performed”).

ready and able to perform.” *Woliansky v. Miller*, 135 Ariz. 444, 446 (App. 1983). If a court orders specific performance, it must enforce “*all of the contract* outstanding at the time of the suit, *including the promises of the plaintiff* as well as those of the defendant.” 25 Williston on Contracts § 67:29 (emphases added). When a court orders specific performance, “it is not within the superior court’s authority to flesh out an . . . agreement that lacks certainty.” *Offerman*, 244 Ariz. at 152, ¶ 16. A court should not order specific performance when it would “bestow[] a benefit beyond that needed to fulfill [the non-breaching party’s] expectations under the Agreement.” *Cty. of La Paz v. Yakima Compost Co.*, 224 Ariz. 590, 610, ¶ 64 (App. 2010).

B. Agricann did not prove any traditional type of contract damages.

Agricann did not prove any of these types of damages or remedies. Agricann did not even try to establish the various elements of any of those types of damages. Tellingly, Agricann did not have a damages expert testify at trial. Instead, it relied solely on a spreadsheet prepared by Burton, who is “not an accountant.” [11/20/2019 Tr. at 242:5 (APP311).]

Although the spreadsheet spans several pages and hundreds of cells, only two cells address damages on the Breakup Deal (the rest of the numbers

address the Management Contract). The spreadsheet lists “Total Owed AGC by NRPC & Sanchez Per Lease Buyout Note” as \$1,065,000 before interest and \$15,517,050 with interest. [Ex. 31 at 4 ([APP145](#)).] That’s it. The spreadsheet does not show any inputs into those numbers or any other analysis on the Breakup Deal. When asked for the basis for these numbers Burton simply said, “I don’t know. Some of the columns in here were put in there. I don’t remember what that reference is.” [11/20/2019 Tr. at 243:4-8 ([APP312](#)).] (By “put in there,” Burton meant that *he* had put them in there. [*Id.* at 243:9-13 ([APP312](#)).])

Because Agricann made “no effort . . . to quantify the damages incurred as a result of the breach,” Agricann was not entitled to recover damages for its breach of contract claim on count two. *Metro Phx. Bank Inc. v. RPM Private Wealth LLC*, No. 1 CA-CV 19-0106, [2020 WL 1312879](#), at *3, ¶ 14 (Ariz. App. Mar. 19, 2020) (mem.) (affirming summary judgment where parties “failed to substantiate their claim for damages arising from the purported breach of contract”).⁷

⁷ Pursuant to Rules of the Supreme Court of Arizona 111(c)(3), a copy of this memorandum decision is attached at [APP367-72](#).

C. The superior court erred as a matter of law by ordering Natural Remedy to fully perform without also requiring Agricann to fully perform.

Despite Agricann's lack of any basis or analysis for its damages demand, the superior court awarded precisely this amount. The court backed into the number by simply adding up all remaining payments from the napkin (\$20,000/month plus the \$400,000 balloon payment, less the payments the superior court characterized as having been paid on this obligation), which add up to \$1,065,000. [IR-141 at 7 ([APP129](#)).] In other words, the superior court ordered Natural Remedy to *fully perform* its end of the supposed bargain.

That methodology is alluringly simple, but has no basis in the law. Simply put, requiring only one party to fully perform is not how contract damages work. It is not expectancy damages, "which are intended to put the injured party 'to the extent possible in as good a position as he would have been in had the contract been performed,'" *Ramsey v. Ariz. Registrar of Contractors*, [241 Ariz. 102, 107, ¶ 12](#) (App. 2016) (quoting [Restatement § 347 cmt. a](#) (alteration incorporated)), because Agricann still had the lease (which, assuming it had lease rights in the first place, it could use or relet to another subtenant). Agricann also still had title to the equipment, which Kazem and

Burton valued at \$150,000 to \$200,000. It is not reliance damages because the remaining unpaid payments have nothing to do with losses Agricann actually incurred in reliance on the supposed contract. It is not restitution, which “seeks to compensate the plaintiff for the reasonable value of any benefit it conferred on the defendant pursuant to the parties’ contract,” *Hickcox-Huffman v. US Airways, Inc.*, [855 F.3d 1057, 1065](#) (9th Cir. 2017) (quoting [24 Williston on Contracts § 64:2](#)), because it has nothing to do with a benefit Agricann actually conferred onto Natural Remedy.

By requiring Natural Remedy to fully perform, without regard to ordinary contract damages principles, the superior court (perhaps unwittingly) ordered something akin to specific performance. “The theory behind [the law of specific performance] is that the parties should be put in the same position as if they had *both* fully performed the contract.” *Woliansky v. Miller*, [154 Ariz. 32, 34](#) (App. 1987) (emphasis added). But the remedy here was one-sided, and therefore unlawful, because the superior court ordered Natural Remedy to fully perform without also ordering Agricann to fully perform.

Under specific performance, *both* sides must fully perform. “It is a fundamental principle that specific performance of a contract will not be

decreed unless it can be rendered obligatory upon both parties. In other words, the remedy must be mutual; otherwise, it cannot be invoked.” *Pantages v. Grauman*, [191 F. 317, 323](#) (9th Cir. 1911). Said another way, it is “neither wise nor just as a general matter to enforce one or more of such promises in a contract unless it can enforce *all of the contract* outstanding at the time of the suit, *including the promises of the plaintiff* as well as those of the defendant.” [25 Williston on Contracts § 67:29](#) (emphases added).

Under Arizona law, “[a] plaintiff seeking a decree requiring complete performance on the part of defendant has an obligation to allege and prove not only that he has performed to date, but if the possibility of his future performance is challenged, he must give such assurances as the court may require that *he will completely perform* when the time arrives for him to meet such obligations.” *Sabin v. Rauch*, [76 Ariz. 71, 73](#) (1953) (emphasis added).

For example, in a contract for an interest in land, a court cannot require the buyer to fully pay without requiring the seller to fully deliver. “It is plaintiffs’ obligation to prove that when the entire purchase price is paid as required by the decree of the court, clear title will result from the confused situation here presented.” *Id.*; see also 12 Corbin on Contracts § 63.10 (“As a matter of course, a decree for specific performance by the purchaser should

be conditional upon actual conveyance of the agreed title by the vendor.”). This legal principle ensures basic fairness: “it is not just that the vendor should have the money and the land too. . . .” *Id.*

Here, the superior court’s lopsided quasi-specific performance remedy made Agricann better off than if both sides had simply performed on the supposed agreement. Agricann got *fully paid* on the contract without having to fully perform. It got three years’ worth of payments, plus a lump-sum balloon payment, even though Natural Remedy occupied the space under the terms of the Agricann Contract for only about six months (from November 15, 2015 to May or early June 2016). [11/22/2019 Tr. at 45:14-19 ([APP351](#)).] Agricann never transferred any lease interest to Natural Remedy and never transferred title to the equipment that supposedly added so much value to the arrangement.

This lopsided remedy did not enforce the parties’ supposed agreement or fairly compensate Agricann for any losses. It made Agricann better off. The superior court therefore allowed Agricann to “profit more from breach of a contract than its full performance,” *John Munic*, [235 Ariz. at 18](#), ¶ 19, which violated the “basic tenet of contract law that the aggrieved party will

not be placed in a better position than it would have occupied had the contract been fully performed,” 11 Corbin on Contracts § 55.3.

D. An example illustrates the problem with the superior court’s approach.

A simple example shows why the superior court’s remedy makes no sense and violates fundamental principles of contract law.

Consider two friends who decide to become roommates. Adam secures a three-year lease to an apartment and also buys expensive art to hang on the walls. Nick moves in. They split the \$2,000/month rent evenly (\$1,000 each). After getting into a fight one year into the lease, Adam decides to move back in with his parents. He offers to let Nick keep the apartment for \$3,000/month for the remaining two years on the lease, plus a flat \$34,000 payment at the end of the lease term, at which point Nick gets to keep the art. Nick agrees, makes the \$3,000 payments for two months, but then promptly loses his job and moves out.

In that scenario, Adam’s damages are not the \$100,000 in remaining payments (\$3,000/month for the remaining 22 months, plus the \$34,000 payment). Nick having to pay Adam \$100,000 would mean Nick fully performed on the contract. If that were the case, then he would get to move

back in and would get title to the expensive art. If a court ordered Nick to pay that money without making Adam perform his part of the contract, then that would improperly make Adam better off than if the contract were fully performed by both sides. Once Nick moved out, Adam could move back in (which would give him some benefit over living with his parents) or find another subtenant to offset part or all of the remaining payments. And Adam would still retain title to the expensive art, which he could either use himself (which gives him value), include as part of a deal with a new subtenant, or sell. If Adam got \$100,000 from Nick on top of that, then Adam could essentially triple-dip by the taking all of the \$100,000, all of the value of the remaining 22 months on the lease, and all of the value of the art. That would make no sense.

Adding additional complications similar to this case does not change the analysis. For example, consider that Nick paid the \$2,000 lease payments from his own bank account during the year the friends lived together. (The friends agreed to split the lease, but Adam paid \$1,000/month in joint food, cable, and cleaning expenses to even things out.) Once the friends split up and agreed to the new arrangement (with Nick paying \$3,000/month plus a promise to pay \$34,000 at the end of the lease), Adam had to ensure that he

kept the lease current with the landlord – unless the agreement provided otherwise, Adam would have to pay the \$2,000/month rent. If he stopped paying rent and the landlord changed the locks, Adam would have no right to the \$3,000/month rent or the \$34,000 payment.

The same is true even if the lease is actually in Adam's father's name. Adam cannot demand payment from Nick if his father stops paying the rent and the landlord changes the locks.

These hypothetical facts are close to the facts of this case, including the complicated history of the lease. Agricann had no lease rights to the 26th Avenue facility when Burton scribbled and signed on the napkin. In May 2014, Agricann (and the landlord) transferred the lease rights to the 26th Avenue facility to Natural Agriculture, LLC. [Ex. 127 at NRPC_000226 ([APP200](#)).] Natural Agriculture was 75% controlled by Agricann's principals; Burton claimed he "managed and controlled it." [11/20/2019 Tr. at 102:11-14 ([APP239](#)); Ex. 1 at NRPC_000143, § 20 ([APP139](#)).] Natural Agriculture did not sign the napkin. Neither Agricann nor Natural Agriculture ever transferred any lease rights to Natural Remedy. [11/22/2019 Tr. at 45:6-8 ([APP351](#)).]

In May or early June 2016, Natural Remedy, with no lease rights or obligations on the lease, moved out of the 26th Avenue facility. [*Id.* at 45:14-19 ([APP351](#)).] Natural Remedy found a new tenant for Agricann “who started paying [the] rent.” [*Id.* at 45:20-46:3 ([APP351-52](#)).]

Natural Remedy never had any obligation to make any payments to the owner of the 26th Avenue facility. The parties’ Management Contract required Natural Agriculture to “forward[] the rent payments to the owner.” [Ex. 1 at NRPC_000143, § 20 ([APP139](#)).]⁸ Nothing on the napkin required Natural Remedy to pay the owner *on top of* the \$20,000 Natural Remedy supposedly had to pay Agricann – and if that were the case, then that would be yet another material term missing from the napkin, further undermining any claim of mutual assent.

To the contrary, for Agricann to claim *any* damages, Agricann had to ensure that Natural Remedy could continue to occupy the facility, including by keeping the lease current. The fact that the landlord supposedly kicked Agricann out [11/20/2019 Tr. at 119:13 ([APP249](#))] does not give Agricann

⁸ Although the Management Contract refers to “Nature’s Agriculture,” the parties instead created “Natural Agriculture.” See [Facts & Case § II.A](#), above.

the right to full performance from Natural Remedy's side. Quite the opposite. If it ended up being impossible for Agricann to perform its end of the bargain, then as a matter of law Agricann cannot require Natural Remedy to fully perform its end of the bargain. Cf. *Sabin*, 76 Ariz. at 73 ("It is plaintiffs' obligation to prove that when the entire purchase price is paid as required by the decree of the court, clear title will result from the confused situation here presented.").

Here, like Adam in the example, after Natural Remedy moved out, Agricann retained whatever lease rights it had and retained title to the valuable equipment. If Natural Remedy moving out harmed Agricann, then Agricann had to prove the existence of a contract, a breach, and resulting damages (whether expectancy, reliance, or restitution). Agricann had no right to force Natural Remedy to fully perform. And by doing so without also requiring Agricann to perform, the superior court made Agricann better off than it would have been had both sides fully performed. Agricann got a judgment for \$1,065,000, plus the value in the 26th Avenue facility, plus the valuable equipment. This was error as a matter of law.

This fatal flaw renders the damages award unlawful as a matter of law. And because Agricann offered no other damages theory, analysis, or

evidence, the portions of the judgment concerning count two (§ 1(a)-(c) of IR-172 ([APP132](#))) must be vacated.

ARCAP 21 REQUEST FOR ATTORNEYS' FEES

Natural Remedy requests its attorneys' fees under [A.R.S. § 12-341.01](#).

In addition, because the superior court's denial of Natural Remedy's request for attorneys' fees relied on the outcome of count two [IR-141 at 8 ([APP130](#))], this Court's remand should instruct the superior court to reconsider the prevailing party for purposes of attorneys' fees and costs.

CONCLUSION

This Court should reverse, vacate, and remand with instructions to reconsider the prevailing party and to enter judgment in Natural Remedy's favor.

RESPECTFULLY SUBMITTED this 29th day of July, 2020.

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4.	CIVIL COVERSHEET	Feb. 16, 2016
5.	(PART 1 OF 4) FIRST AMENDED VERIFIED COMPLAINT	Feb. 23, 2016
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No.	Document Name	Filed Date
45.	MOTION TO DISMISS FOR FAILURE TO PROSECUTE AND OBJECTION TO PLAINTIFFS' MOTION TO SET RULE 16 PROCEDURES AND SCHEDULE	Jun. 28, 2017
46.	ME: ORDER ENTERED BY COURT [06/30/2017]	Jul. 5, 2017
47.	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DAVID SANCHEZ	Jul. 12, 2017
48.	APPLICATION FOR SUBSTITUTION OF COUNSEL (WITH CLIENT CONSENT)	Jul. 26, 2017
49.	ORDER OF WITHDRAWAL OF COUNSEL OF RECORD FOR DAVID SANCHEZ	Aug. 14, 2017
50.	ORDER	Aug. 14, 2017
51.	JOINT REPORT	Aug. 14, 2017
52.	PLAINTIFF'S NOTICE OF ERRATA TO REVISED JOINT REPORT WITH ATTACHMENTS	Aug. 14, 2017
53.	ME: SUBSTITUTION OF COUNSEL [08/14/2017]	Aug. 15, 2017
54.	ME: WITHDRAWAL OF COUNSEL [08/14/2017]	Aug. 15, 2017
55.	ME: ORDER ENTERED BY COURT [08/24/2017]	Aug. 28, 2017
56.	SCHEDULING ORDER	Sep. 1, 2017
57.	ME: ORDER SIGNED [09/01/2017]	Sep. 5, 2017
58.	ME: ORDER ENTERED BY COURT [09/01/2017]	Sep. 5, 2017
59.	RETURNED MAIL	Sep. 21, 2017
60.	(PART 1 OF 2) MOTION TO DISMISS FOR FAILURE TO PROSECUTE, AND FOR AWARD OF ATTORNEYS' FEES	May. 7, 2018
61.	(PART 2 OF 2) MOTION TO DISMISS FOR FAILURE TO PROSECUTE, AND FOR AWARD OF ATTORNEYS' FEES	May. 7, 2018
62.	ME: SCHEDULING CONFERENCE SET [05/08/2018]	May. 9, 2018
63.	REQUEST FOR SUMMARY DISPOSITION OF MOTION TO DISMISS	May. 31, 2018
64.	ME: ORAL ARGUMENT SET [06/12/2018]	Jun. 13, 2018

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No.	Document Name	Filed Date
65.	RETURNED MAIL	Jun. 21, 2018
66.	PLAINTIFFS' RESPONSE TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 13, 2018
67.	RETURNED MAIL	Jul. 16, 2018
68.	(PART 1 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
69.	(PART 2 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
70.	(PART 3 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
71.	(PART 4 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
72.	(PART 5 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
73.	(PART 6 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
74.	(PART 7 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
75.	(PART 8 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
76.	(PART 9 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
77.	(PART 10 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
78.	(PART 11 OF 11) MOTION TO STRIKE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FOR FAILURE TO PROSECUTE	Jul. 16, 2018
79.	ME: HEARING [07/17/2018]	Jul. 18, 2018
80.	STIPULATION FOR SUBSTITUTION OF COUNSEL	Jul. 26, 2018
81.	RETURNED MAIL	Aug. 10, 2018

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No.	Document Name	Filed Date
82.	ORDER GRANTING STIPULATION FOR SUBSTITUTION OF COUNSEL	Aug. 13, 2018
83.	MODIFIED SCHEDULING ORDER	Aug. 13, 2018
84.	(PART 1 OF 2) STIPULATION TO FILING OF VERIFIED FIRST AMENDED ANSWER AND COUNTERCLAIM	Sep. 17, 2018
85.	(PART 2 OF 2) STIPULATION TO FILING OF VERIFIED FIRST AMENDED ANSWER AND COUNTERCLAIM	Sep. 17, 2018
86.	STIPULATION TO FILING OF VERIFIED FIRST AMENDED ANSWER AND COUNTERCLAIM	Sep. 17, 2018
87.	ORDER GRANTING STIPULATION TO FILING OF VERIFIED FIRST AMENDED ANSWER AND COUNTERCLAIM	Sep. 20, 2018
88.	ORDER GRANTING STIPULATION TO FILING OF VERIFIED FIRST AMENDED ANSWER AND COUNTERCLAIM	Sep. 20, 2018
89.	VERIFIED FIRST AMENDED ANSWER AND COUNTERCLAIM	Sep. 20, 2018
90.	RETURNED MAIL	Oct. 31, 2018
91.	RETURNED MAIL	Oct. 31, 2018
92.	STIPULATED REQUEST FOR ENTRY OF SECOND AMENDED SCHEDULING ORDER	Dec. 21, 2018
93.	SECOND AMENDED SCHEDULING ORDER	Jan. 4, 2019
94.	STIPULATED REQUEST FOR ENTRY OF THIRD AMENDED SCHEDULING ORDER AND SETTING TELEPHONIC STATUS CONFERENCE	Apr. 24, 2019
95.	ME: CONFERENCE RESET/CONTINUED [04/26/2019]	Apr. 29, 2019
96.	THIRD AMENDED SCHEDULING ORDER	Apr. 29, 2019
97.	ME: SETTLEMENT CONFERENCE SET [05/06/2019]	May. 6, 2019
98.	NOTICE OF SETTLEMENT CONFERENCE	Jun. 24, 2019
99.	RETURNED MAIL	Jul. 2, 2019
100.	ME: TRIAL SETTING [09/11/2019]	Sep. 12, 2019

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No.	Document Name	Filed Date
101.	DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION IN LIMINE NO. 2 TO EXCLUDE PLAINTIFFS' CALCULATION OF DAMAGES REGARDING THE MANAGEMENT CONTRACT	Sep. 18, 2019
102.	DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION IN LIMINE NO. 1 TO EXCLUDE PLAINTIFFS' DAMAGES SPREADSHEET	Sep. 18, 2019
103.	JOINT STIPULATED MOTION TO EXTEND DEADLINE FOR DEPOSITION DESIGNATIONS	Sep. 30, 2019
104.	ORDER	Oct. 2, 2019
105.	UNOPPOSED MOTION FOR EXTENSION TO RESPOND TO DEFENDANTS' MOTIONS IN LIMINE 1 AND 2	Oct. 2, 2019
106.	ME: ORDER SIGNED [10/02/2019]	Oct. 4, 2019
107.	DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION IN LIMINE NO. 1 TO EXCLUDE PLAINTIFFS' DAMAGES SPREADSHEET	Oct. 7, 2019
108.	(PART 1 OF 2) RESPONSE TO DEFENDANT'S MOTION IN LIMINE NO. 1 TO EXCLUDE PLAINTIFFS' DAMAGES SPREADSHEET	Oct. 7, 2019
109.	(PART 2 OF 2) RESPONSE TO DEFENDANT'S MOTION IN LIMINE NO. 1 TO EXCLUDE PLAINTIFFS' DAMAGES SPREADSHEET	Oct. 7, 2019
110.	(PART 1 OF 2) RESPONSE TO DEFENDANT'S MOTION IN LIMINE NO. 2 TO EXCLUDE PLAINTIFFS' CALCULATION OF DAMAGES REGARDING THE MANAGEMENT CONTRACT	Oct. 7, 2019
111.	(PART 2 OF 2) RESPONSE TO DEFENDANT'S MOTION IN LIMINE NO. 2 TO EXCLUDE PLAINTIFFS' CALCULATION OF DAMAGES REGARDING THE MANAGEMENT CONTRACT	Oct. 7, 2019
112.	(PART 1 OF 2) JOINT PRETRIAL STATEMENT	Oct. 8, 2019
113.	(PART 2 OF 2) JOINT PRETRIAL STATEMENT	Oct. 8, 2019
114.	ME: RULING [10/04/2019]	Oct. 9, 2019
115.	PLAINTIFFS' RESPONSE TO DEFENDANT NATURAL REMEDY PATIENT CENTER, LLC'S MEMORANDUM REGARDING CLAIMS AND AFFIRMATIVE DEFENSES	Oct. 10, 2019
116.	RETURNED MAIL	Oct. 11, 2019
117.	DEFENDANT NATURAL REMEDY PATIENT CENTER'S TRIAL MEMORANDUM	Oct. 11, 2019

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No.	Document Name	Filed Date
118.	ME: PRETRIAL CONFERENCE [10/18/2019]	Oct. 22, 2019
119.	MOTION TO ASSOCIATE COUNSEL PRO HAC VICE	Oct. 30, 2019
120.	RETURNED MAIL	Nov. 1, 2019
121.	ORDER GRANTING PRO HAC VICE ADMISSION OF STUART KNIGHT	Nov. 5, 2019
122.	STATEMENT OF STUART KNIGHT REGARDING COURT PROTOCOLS IN SUPPORT OF HIS PRO HAC VICE ADMISSION	Nov. 5, 2019
123.	PARTIES'S(SIC) JOINT REQUEST FOR COURT REPORTER FOR NOVEMBER 20-22, 2019 TRIAL	Nov. 5, 2019
124.	RETURNED MAIL	Nov. 8, 2019
125.	PARTIES' JOINT LIST OF DEPOSITION TESTIMONY OF IMRAN KAZEM THAT MAY BE OFFERED AT TRIAL	Nov. 8, 2019
126.	NOTICE OF APPEARANCE	Nov. 19, 2019
127.	ORIGINAL DEPOSITION OF CARLY BURTON TAKEN 09/16/2019	Nov. 20, 2019
128.	(PART 1 OF 2) ORIGINAL DEPOSITION OF IMRAN KAZEM TAKEN 10/28/2019	Nov. 20, 2019
129.	(PART 2 OF 2) ORIGINAL DEPOSITION OF IMRAN KAZEM TAKEN 10/28/2019	Nov. 20, 2019
130.	EXHIBITS	Nov. 21, 2019
131.	ME: TRIAL [11/20/2019]	Nov. 22, 2019
132.	ME: TRIAL [11/21/2019]	Nov. 26, 2019
133.	ME: TRIAL [11/22/2019]	Nov. 26, 2019
134.	RETURNED MAIL	Dec. 9, 2019
135.	RETURNED MAIL	Dec. 9, 2019
136.	(PART 1 OF 2) DEFENDANT NATURAL REMEDY PATIENT CENTER'S POST-TRIAL CLOSING BRIEF	Dec. 11, 2019
137.	(PART 2 OF 2) DEFENDANT NATURAL REMEDY PATIENT CENTER'S POST-TRIAL CLOSING BRIEF	Dec. 11, 2019

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No.	Document Name	Filed Date
138.	PLAINTIFF'S POST-TRIAL CLOSING BRIEF	Dec. 11, 2019
139.	(PART 1 OF 2) CLOSING ARGUMENT OF DEFENDANT DAVID SANCHEZ	Dec. 11, 2019
140.	(PART 2 OF 2) CLOSING ARGUMENT OF DEFENDANT DAVID SANCHEZ	Dec. 11, 2019
141.	ME: UNDER ADVISEMENT RULING [12/20/2019]	Dec. 23, 2019
142.	EXHIBIT WORKSHEET HD 11/20/2019	Dec. 27, 2019
143.	RETURNED MAIL	Dec. 31, 2019
144.	RETURNED MAIL	Jan. 2, 2020
145.	APPLICATION FOR ATTORNEYS' FEES AND COSTS	Jan. 10, 2020
146.	STATEMENT OF COSTS	Jan. 10, 2020
147.	AFFIDAVIT IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES AND COSTS	Jan. 10, 2020
148.	DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION FOR RECONSIDERATION	Jan. 13, 2020
149.	(PART 1 OF 3) NOTICE OF LODGING PROPOSED FORM OF JUDGMENT, WITH PREJUDGMENT INTEREST	Jan. 13, 2020
150.	(PART 2 OF 3) NOTICE OF LODGING PROPOSED FORM OF JUDGMENT, WITH PREJUDGMENT INTEREST	Jan. 13, 2020
151.	(PART 3 OF 3) NOTICE OF LODGING PROPOSED FORM OF JUDGMENT, WITH PREJUDGMENT INTEREST	Jan. 13, 2020
152.	ME: ORDER ENTERED BY COURT [01/16/2020]	Jan. 21, 2020
153.	DEFENDANT NATURAL REMEDY PATIENT CENTER'S SUPPLEMENT IN SUPPORT OF MOTION FOR RECONSIDERATION	Jan. 24, 2020
154.	(PART 1 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
155.	(PART 2 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
156.	(PART 3 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
157.	(PART 4 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020

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No.	Document Name	Filed Date
158.	(PART 5 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
159.	(PART 6 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
160.	(PART 7 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
161.	(PART 8 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
162.	ME: RULING [02/11/2020]	Feb. 12, 2020
163.	(PART 1 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
164.	(PART 2 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
165.	(PART 3 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
166.	(PART 4 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
167.	(PART 5 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
168.	(PART 6 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
169.	PLAINTIFF'S (MODIFIED) MOTION TO RECONSIDER	Feb. 14, 2020
170.	ME: RULING [02/19/2020]	Feb. 20, 2020
171.	ME: RULING [03/12/2020]	Mar. 13, 2020
172.	JUDGMENT	Mar. 16, 2020
173.	NOTICE OF LODGING FORM OF ORDER	Mar. 27, 2020
174.	(PART 1 OF 2) MOTION TO FILE EXHIBITS TO DEFENDANT NATURAL REMEDY PATIENT CENTER LLC'S MOTION TO STAY EXECUTION AND SET SUPERSEDEAS BOND UNDER SEAL	Mar. 27, 2020
175.	(PART 2 OF 2) MOTION TO FILE EXHIBITS TO DEFENDANT NATURAL REMEDY PATIENT CENTER LLC'S MOTION TO STAY EXECUTION AND SET SUPERSEDEAS BOND UNDER SEAL	Mar. 27, 2020

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No.	Document Name	Filed Date
176.	(PART 1 OF 3) DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Mar. 27, 2020
177.	(PART 2 OF 3) DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Mar. 27, 2020
178.	(PART 3 OF 3) DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Mar. 27, 2020
179.	NOTICE OF APPEAL	Mar. 27, 2020
180.	ME: ORDER ENTERED BY COURT [03/30/2020]	Apr. 1, 2020
181.	NOTICE OF APPEAL AND CROSS-APPEAL	Apr. 10, 2020
182.	NOTICE OF TRANSCRIPT ORDER	Apr. 13, 2020
183.	NOTICE OF STIPULATED EXTENSION TO RESPOND TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Apr. 14, 2020

APPEAL COUNT: 1

RE: CASE: UNKNOWN

DUE DATE: 04/24/2020

CAPTION: AGRICANN VS NATURAL REMEDY

EXHIBIT(S): HD 03/14/2016 LIST # 1 2 4 5 6 8 IN A MANILA ENVELOPE

HD 11/20/2019 LIST # 1 2 3 4 5 6 7 16 17 22 29 31 32 44 46 47 60 61 63
76 77 78 79 80 81 82 83 90 93 97 100 102 103 104 107 120 125 126 127
130 134 135 138 142 143 156 157 161 162 163 167 IN A BOX

LOCATION ONLY: NONE



**Electronic Index of Record
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SEALED DOCUMENT: NONE

DEPOSITION(S): NONE

TRANSCRIPT(S): NONE

COMPILED BY: fuentesi on April 24, 2020; [2.5-17026.63]
\\ntfsnas\C2C\C2C-7\CV2016-001283\Group_01

CERTIFICATION: I, JEFF FINE, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

The bracketed [date] following the minute entry title is the date of the minute entry.

CONTACT INFO: Clerk of the Superior Court, Maricopa County, Appeals Unit, 175 W Madison Ave, Phoenix, AZ 85003; 602-372-5375

Lance R. Broberg (SBN 024103)



SEVENTH FLOOR CAMELBACK ESPLANADE II
2525 EAST CAMELBACK ROAD
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Attorneys for Plaintiffs

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

AGRICANN, LLC, an Arizona limited
liability company; and PAY NOW, LLC, an
Arizona limited liability company,

Plaintiffs,

vs.

NATURAL REMEDY PATIENT
CENTER, LLC, an Arizona limited liability
company; and DAVID SANCHEZ,

Defendants.

Case No. CV2016-001283

**FIRST AMENDED VERIFIED
COMPLAINT**

(Breach of Contract)

Plaintiffs, by and through their attorneys undersigned, for their complaint state and
allege as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff Agricann, LLC ("Agricann") is an Arizona limited liability
company. Agricann was at all relevant times conducting business in Maricopa County,
Arizona.

2. Plaintiff Pay Now, LLC ("Pay Now") is an Arizona limited liability
company. Pay Now was at all relevant times conducting business in Maricopa County,
Arizona.

3. Defendant Natural Remedy Patient Center, LLC ("NRPC") is an Arizona
limited liability company. Defendant was at all relevant times transacting business in

1 Maricopa County, Arizona, and caused the events and injuries complained of herein in
2 Maricopa County, Arizona.

3 4. Upon information and belief, Defendant David Sanchez (“Sanchez”) was at
4 all relevant times a resident of Maricopa County, Arizona, and caused the events and
5 injuries complained of herein in Maricopa County, Arizona.

6 5. Jurisdiction and Venue are proper in this Superior Court of Maricopa
7 County.

8 GENERAL ALLEGATIONS

9 6. Plaintiffs incorporate by this reference all prior paragraphs as though fully
10 set forth herein.

11 7. Upon information and belief NRPC holds Arizona Department of Health
12 Dispensary Certificate #00000064DCTS00268592 to dispense, deliver, and cultivate
13 medicinal marijuana.

14 8. In May 2014, Agricann and NRPC entered into a certain Management for
15 Grow and Dispensary Agency Contract (the “Contract”).

16 9. A copy of the Management for Grow and Dispensary Agency Contract is
17 attached as **Exhibit 1**.

18 10. The Contract provides that NRPC would grant Agricann the exclusive legal
19 rights to cultivate medical marijuana under its dispensary certificate.

20 11. The Contract governed Agricann’s operations at 1434 N. 26th Avenue,
21 Phoenix, AZ 85009.

22 12. Pursuant to the Contract at Section 2, NRPC agreed to:

23 . . . take out and maintain an insurance policy that would pay
24 the beneficiary, [Agricann] five-hundred thousand dollars
25 (\$500,000) should NRPC withdraw, revoke, suspend, or sever
the agency relationship with [Agricann] . . .”

26 13. Section 2 of the Contract also provides:

27 To the extent such a policy is unable to be obtained, NRPC
28 agrees to pay [Agricann] the same sum should NRPC

1 withdraw, revoke, suspend, or sever the agency relationship
2 with [Agricann] . . .”

3 14. NRPC has failed to take out or maintain any such insurance policy for the
4 benefit of Agricann.

5 15. Pursuant to the Contract at Section 7, NRPC was to pay for all of
6 Agricann’s “management expenses, including but not limited to rent, security,
7 management and agricultural expenses.”

8 16. NRPC has failed to pay for any of Agricann’s management expenses.

9 17. Section 7 of the Contract provides:

10 80% of all gross sales from both the retail and wholesale
11 operations shall be paid to [Agricann,] and 20% shall be
12 retained by NRPC.

13 18. NRPC has failed to pay Agricann any of the gross sales from both the retail
14 and wholesale operations.

15 19. Agricann’s 80% share of the gross sales equals an amount no less than
16 \$600,000 plus any applicable interest as allowed by contract.

17 20. Section 9 of the Contract requires NRPC to maintain a bank account in its
18 name and on which Agricann shall be a co-signer “for the purpose of [Agricann] being
19 able to manage cashflows (sic), pay bills, and make timely disbursements....”

20 21. The NRPC bank account has been closed.

21 22. To Agricann’s knowledge a new account, complying with Section 9 of the
22 Contract, has not been established.

23 23. In November 2015, NRPC executed a Promissory Note in favor of
24 Agricann. Sanchez guaranteed the Note as a personal guarantor.

25 24. A copy of the Note is attached as **Exhibit 2**.

26 25. The Note calls for NRPC to pay Agricann \$20,000 per month for three
27 years, beginning on November 15, 2015 through November 15, 2018. The Note has a
28 \$400,000 balloon payment.

39. Pay Now has been damaged by NRPC's and Sanchez's breach in an amount to be proven at trial.

40. Pay Now is entitled to an award for its reasonable attorneys' fees and costs pursuant to the contract and A.R.S. §§ 12-341 and 12-341.01.

WHEREFORE, Plaintiffs pray for Judgment as follows:

A. For judgment in an amount to be proven at trial;

B. For accrued and accruing interest both pre and post judgment;

C. For Plaintiffs' reasonable costs and attorneys' fees pursuant to the parties' contract and pursuant to A.R.S. §§ 12-341 and 12-341.01; and

D. For other and further relief as the Court deems equitable and proper.

DATED this 23rd day of February, 2016.

TB TIFFANY & BOSCO
P.A.

By: /s/ Lance R. Broberg
Lance R. Broberg
Seventh Floor Camelback Esplanade II
2525 East Camelback Road
Phoenix, Arizona 85016-4237
Attorneys for Plaintiff

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3
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VERIFICATION

I, Brigham Burton, declare and state that I have read the foregoing First Amended Verified Complaint and know the contents thereof, and that the matters and things therein stated are true to my own knowledge, except as to those matters therein stated upon my information and belief and as to those matters I believe to be true.



Brigham Burton, Manager of Agricann, LLC

1 Mark Deatherage (010208)
2 GALLAGHER & KENNEDY, P.A.
3 2575 East Camelback Road
4 Phoenix, Arizona 85016-9225
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8 Attorneys for Plaintiff

9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**
12

13 AGRICANN LLC, an Arizona limited
14 liability company,

15 Plaintiff,

16 vs.

17 NATURAL REMEDY PATIENT
18 CENTER LLC, an Arizona limited
19 liability company,

20 Defendants.

21 NATURAL REMEDY PATIENT
22 CENTER LLC, an Arizona limited
23 liability company,

24 Counterclaimant,

25 AGRICANN, LLC, an Arizona limited
26 liability company,

27 Counterdefendant.

Case No. CV2016-001283

JOINT PRETRIAL STATEMENT

(Assigned to the Hon. James D. Smith)

28 Pursuant to Rules 16(f) & (g), and this Court's 9/11/19 Minute Entry Order, the
29 parties hereby submit their Joint Pretrial Statement, together with the Witness Information
30 Form (**Exhibit 1** hereto), Deposition Designations (**Exhibit 2**),¹ Exhibit List (**Exhibit 3**),
31 and each party's separate Memoranda regarding claims and affirmative defenses
32 (**Exhibits 4 and 5**). The parties will not be proffering any expert witness testimony.²

33
34 ¹ Pursuant to stipulation and order, designations from the deposition of Imran Kazem will
35 be submitted by November 8, 2019.

36 ² Plaintiffs provided a draft of this JPTS to individual defendant David Sanchez, but he
37 did not respond, and has not participated in this process.

1 **A. Stipulations of Material Fact and Law**

2 Plaintiffs Agricann, LLC (“Agricann”) and Pay Now, LLC (“Pay Now”), and
3 Defendant Natural Remedy Patient Center, LLC (“NRPC”), are Arizona limited liability
4 companies. Defendant David Sanchez (“Sanchez”) is a resident of Maricopa County,
5 Arizona. Agricann’s principals were its majority and minority members, Brig Burton and
6 Imran Kazem. During the relevant time periods, NRPC’s principals were its members
7 David and Kathy Sanchez and its consultant Shadi Zaki.

8 At all relevant times, NRPC held Arizona Department of Health Dispensary
9 Certificate #00000064DCTS00268592 to dispense, deliver, and cultivate medicinal
10 marijuana (the “License”).

11 In May 2014, Agricann and NRPC entered into a Management for Grow and
12 Dispensary Agency Contract (the “Contract,” **Trial Exhibit 1**).

13 **B. Contested Issues of Fact and Law, as agreed by the Parties**

- 14 1. Whether NRPC is a non-profit limited liability company.
- 15 2. Whether the Contract granted Agricann the exclusive rights to manage the growing
16 and cultivation of medical marijuana under NRPC's License at Agricann’s facility
17 located at 1434 N. 26th Avenue in Phoenix.
- 18 3. Whether NRPC’s business was conducted primarily through cash transactions.
- 19 4. Under the terms of the Contract, how revenues from and expenses of the NRPC
20 medical marijuana business were to be allocated and shared between Agricann and
21 NRPC, and whether the share of “revenues” was permitted under Arizona law.
- 22 5. Whether NRPC breached the Contract.
- 23 6. Whether Agricann breached the Contract and whether any such breach bars it from
24 recovering any claimed damages.
- 25 7. What the Contract required with regard to how the expenses of the medical marijuana
26 operation were to be funded and shared as between Agricann and NRPC.
- 27 8. To the extent the Contract required each party to fund and contribute 50% of the
28 expenses, what expenses were included in that obligation.

- 1 9. Whether Agricann sent invoices to NRPC for amounts it contended NRPC owed
2 under the Contract; and, did NRPC waive any requirement for Agricann to send
3 invoices, and/or did the parties' course of conduct vary that requirement.
- 4 10. Whether NRPC reported and/or accounted for all sales and revenues governed by
5 the Contract and its revenue sharing/allocation provisions.
- 6 11. What communications the parties had during and after the term of the Contract
7 regarding revenues, expenses, allocation, funding, and sharing responsibilities,
8 amounts paid and owed under the Contract, and reports and other written
9 accountings.
- 10 12. The total amount, if any, NRPC owes Agricann under the Contract.
- 11 13. The entity Natural Agriculture, LLC, including its purpose and its relation to the
12 Contract (including without limitation Section 9 of the Contract), and the parties'
13 respective rights, obligations, access, and control with respect to that entity.
- 14 14. Whether NRPC and/or Agricann breached Section 2 of the Contract regarding
15 insurance.
- 16 15. Whether NRPC interfered with or refused to issue or obtain ADHS ("Arizona
17 Department of Health Services") cards for employees Agricann selected to hire.
- 18 16. Whether Agricann had the requisite experience, as represented by Brigham Burton,
19 to perform its obligations under the Contract.
- 20 17. Whether, among other things, paragraph 8 of the Contract provides: "NRPC will
21 pay AC immediately for any and all product made by AC and sold to or through
22 NRPC, and will pay an interest-rate of one-percent (1%) per day for each day AC
23 has not received payment from NRPC after five (5) days of NRPC receiving
24 payment."
- 25 18. Whether the interest rate provision in Section 8 of the Contract is enforceable, and
26 if so, to what claimed damages does it apply.
- 27 19. Whether in November 2015, Agricann, NRPC, and Sanchez executed a one-page
28 handwritten document, **Trial Exhibit 2**.

1 20. The context, terms, purpose, and enforceability of the November 2015 document,
2 **Trial Exhibit 2**, and its relation to the Contract, if any.

3 21. Whether the November 15 document contains all material terms such that it may be
4 an enforceable contract, whether it provides any consideration to NRPC and/or
5 Sanchez and whether it is barred by the statute of frauds.

6 22. If it is an enforceable contract, whether NRPC and/or Sanchez have breached the
7 November 2015 document.

8 23. If it is an enforceable contract, what amount, if any, do NRPC and/or Sanchez owe
9 Agricann under the terms of the November 2015 document.

10 24. If it is an enforceable contract and if there was a breach, whether NRPC and/or
11 Sanchez owe Agricann pre-judgment interest on the amounts owed under the
12 November 2015 document, if any, and if so at what rate and in what amount.

13 25. Whether the parties' relationship terminated in or about April 2016.

14 **C. Other Issues of Fact and Law Believed to be Material**

15 **Plaintiffs:**

16 1. As to any expenses, if any, not covered by the 50% expense sharing obligation in the
17 Contract, which party was responsible for any such other expenses.

18 2. Whether NRPC performed, or breached, its obligations to fund and contribute its
19 required share of the operation's expenses.

20 3. The total amount of the operation's expenses, and how much each party paid, funded,
21 or contributed to such expenses.

22 4. What constitutes an invoice under the Contract.

23 5. Whether the monthly, weekly, and/or periodic sales revenue reports prepared by
24 NRPC accurately set forth NRPC's relevant sales revenues, and whether Agricann's
25 claimed damages are supported by NRPC's sales reports.

26 6. Whether NRPC reported and paid Agricann its revenue share from sales of extract
27 products.

- 1 7. Whether NRPC or its personnel retained some of the product grown at the cultivation
2 facility for its/their personal or other use, without paying Agricann for such product.
- 3 8. What the work of accountants retained or used by NRPC showed with respect to
4 NRPC's business and amounts owed to Agricann under the Contract.
- 5 9. Whether NRPC and/or its principals diverted revenues to other medical marijuana
6 or other business ventures, including without limitation Holistic Patient Wellness
7 Group ("HPWG") and East Valley Patient Wellness Center ("EVPWC").
- 8 10. Whether NRPC breached Sections 6 and 7 of the Contract for failure to pay and/or
9 reimburse rent on the grow facility, and for failure to pay Agricann's management
10 fee.
- 11 11. Whether NRPC breached Section 9 of the Contract, which required NRPC to open
12 and maintain a bank account on which Agricann would be a co-signer "for the
13 purpose of [Agricann] being able to manage cash flows, pay bills, and make timely
14 disbursements...."
- 15 12. The use of, accounting from, access to, control over, and closure of, the bank account
16 for Natural Agriculture, LLC; and whether NRPC breached its obligations to deposit
17 all sales revenues into the Natural Agriculture bank account and to provide adequate
18 and timely reserves into that account to fund its share of operating and related
19 expenses.
- 20 13. Whether NRPC breached Section 15 of the Contract for failure to permit Agricann
21 to review and inspect the books and records of the business, including the POS
22 system, the MJ Freeway system, and other accounting and business software,
23 spreadsheets, and records.
- 24 14. What amount of interest has accrued and is owed under Section 8 of the Contract
25 on revenues and other amounts NRPC failed to pay within five days after NRPC's
26 receipt of such revenues.
- 27 15. Whether NRPC undermined and/or interfered with the operation of the cultivation
28 facility and operation by hiring unqualified and difficult employees, sometimes

1 relatives or friends, without Agricann's consent, and whether employees NRPC
2 hired and refused to fire caused problems, fights, and other disturbances that affected
3 the operation.

4 16. Whether, in its March 14, 2016 Minute Entry following the March 11, 2016
5 evidentiary hearing on Agricann's application for appointment of a receiver, the
6 Court "ORDERED that by noon, Friday, March 18, 2016, Defendant (NRPC) shall
7 provide to Plaintiff (Agricann) the printed copies of the Natural Remedies Patient
8 Center, LLC monthly financial spreadsheets starting with the first spreadsheet
9 created in 2014 and each spreadsheet thereafter as updated on a monthly or more
10 frequent basis."

11 17. Whether NRPC complied with or violated the Court's March 2016 order to provide
12 financial spreadsheets and reports.

13 18. Whether NRPC committed spoliation of evidence.

14 19. Whether the Court should make a negative/adverse inference against NRPC based
15 on its failure to comply with the Court's March 16, 2016 order and/or for spoliation
16 of evidence, to the effect that the evidence, data, and records NRPC did not maintain,
17 protect, preserve, disclose, and produce would have been adverse to NRPC and likely
18 would have supported Agricann's damages spreadsheet and calculations.

19 20. Whether NRPC and Sanchez ratified and confirmed the terms of the November 2015
20 document by partial performance and by course of performance and conduct.

21 **Defendant:**

- 22 1. Whether the Contract is void for illegality.
- 23 2. Whether the interest rate set forth in Paragraph 8 of the Contract is unconscionable.
- 24 3. The meaning of Section 7 of the Contract and how to interpret its terms in
25 conjunction with conflicting language in Section 11.
- 26 4. Whether Plaintiffs seek double recovery under the Contract and the alleged
27 November 2015 document.
- 28

1 5. Whether the parties waived or varied the terms of the Contract by their course of
2 dealing and conduct.

3 6. Whether NRPC is entitled to a set-off against Plaintiff's claimed damages.

4 7. Whether NRPC's performance under the Contract is excused by impracticability.

5 8. Whether Plaintiff is barred from recovery in whole or in part for failure to mitigate
6 damages.

7 **D. List of Witnesses and Objections:** *See Exhibit 1*, Witness Information Form

8 **E. Exhibits to be Used at Trial:** *See Exhibit 3*, Exhibit List (with objections)

9 **F. Deposition Summaries/Designations:** *See Exhibit 2*, Deposition Designations

10 **G. Statement of the Case for Jury:** Not applicable, bench trial

11 **H. Technical Equipment**

12 **I. Requested Interpreters:** None

13 **J. Jurors and Alternates:** Not applicable, bench trial.

14 **K. Rule 615:** Plaintiff invokes the rule.

15 **L. Settlement Efforts:** The parties participated in a settlement conference on July
16 24, 2019 with settlement judge pro tem Andy Gordon. That conference did not
17 produce a settlement, and the parties were significantly apart at the end of it. The
18 parties intend to continue to engage in settlement discussions, and will promptly
19 notify the Court if a settlement is reached.

20 **M. Verbatim Record:** An electronic digital record of the trial will be sufficient.

21 **N. Miscellaneous**

22 Request for Finding of Fact and Conclusions of Law under ARCP 52

23 Copies of Expert Disclosures Pursuant to ARCP 26.1

24 RESPECTFULLY SUBMITTED this 8th day of October, 2019.

25 GALLAGHER & KENNEDY, P.A.

26 By: /s/ Mark Deatherage

27 Mark Deatherage

28 *Attorney for Plaintiffs*

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GREENSPOON MARDER LLP

By: /s/ Sharon Urias
Sharon Urias
Attorney for Defendant

ORIGINAL of the foregoing
E-filed with the Clerk of the Court
this 8th day of October, 2019

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Attorneys for Defendants/Counterclaimants Natural Remedy Patient Center, LLC

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

AGRICANN, LLC *et al.*,

Plaintiffs,

v.

NATURAL REMEDY PATIENT
CENTER, LLC *et al.*,

Defendants.

NATURAL REMEDY PATIENT
CENTER, LLC,

Counterclaimant,

v.

AGRICANN, LLC,

Counterdefendant.

Case No.: CV2016-001283

**DEFENDANT NATURAL REMEDY
PATIENT CENTER'S POST-TRIAL
CLOSING BRIEF**

**(Assigned to the Honorable
James D. Smith)**

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1 **I. The Parties Modified the Management Agreement by Course of Conduct**

2 Modification of a written agreement may be implied from the parties' course of conduct.
3 *O'Malley Inv. & Realty Co. v. Trimble*, 5 Ariz. App. 10, 18 (1967) ("While mutual assent of the
4 parties to a modification of their agreement is essential, such assent need not be express but may
5 be implied from a course of conduct in accordance with its existence.") "Indeed, a promise may
6 be inferred wholly or partly from conduct, and there is no distinction in the effect of the promise
7 whether it is expressed in writing, or orally, or in acts, or partly in one of these ways and partly
8 in others." *Cook v. Cook*, 142 Ariz. 573, 576 (1984). "Two parties may by their course of
9 conduct express their agreement, though no words are ever spoken. From their conduct alone
10 the finder of fact can determine the existence of an agreement." *Id.* The very existence of the
11 contract itself, the meeting of the minds, the intention to assume an obligation, and the
12 understanding are to be determined in case of doubt, not only from the words used, but also from
13 the situation, acts and conduct of the parties, and the attendant circumstances. *Malcoff v. Coyier*,
14 14 Ariz. App. 524, 526 (1971); *Carroll v. Lee*, 148 Ariz. 10, 13 (1986). Here, it is clear based
15 on the parties' emails, the split of 50% of net profits (and acceptance by Agricann of such split),
16 as well as the testimony of Brigham Burton and Shadi Zaki that Agricann and NRPC intended
17 to modify the "80/20" provision in Paragraph 7 of the Management Agreement ("the "Contract")
18 to a 50/50 split of net profits.

19 **A. The Parties Modified the "80/20" Provision in Paragraph 7**

20 The evidence at trial unequivocally established the parties' course of conduct with respect
21 to the division of profits on a 50/50, rather than 80/20, basis. Although Burton flatly denied that
22 the parties followed a course of conduct in which they split net profits 50/50 (11/20/19 Tr.
23 196:12-20), his testimony was false, as demonstrated by several emails exchanged throughout
24 the course of the parties' relationship, and Burton's concession during redirect examination that
25 he agreed to a 50/50 split in December 2014. (11/21/19 64:3-18.)

26 On January 3, 2015, Burton emailed Zaki, "Agricann's share of sales to date of \$96,525
27 are \$48,262..." (Ex. 134.) Burton admitted that in the email he claimed Agricann's share was
28 50%. (11/20/19 Tr. 198:2-5.) In another January 3 2015 email, Burton again told Zaki that
"[a]ll sales must be split and paid 50/50 between NRPC and Agricann . . ." (Ex. 135 at

1 AC002407.) On April 7, 2015, Burton emailed Dr. Kazem, “Shadi and I discussed it and we’re
2 on the same page, on both the minimum draw and the \$1k/sale for any sales made to NRPC
3 being payable in full to Agricann, ***rather than the normal 50/50 split.***” (Ex. 143) (emphasis
4 added). In a June 11, 2015 email, Carly Burton stated, “However, these amounts are not
5 conducive to our agreement ***to split the Net Profits.***” Ex. 78 at NRPC00029 (emphasis added).
6 Burton did not object to, or correct, his wife’s email. (11/20/19 Tr. 201:25-202:7.)

7 In a November 20, 2015 email, Burton falsely claimed Agricann never agreed to 50% of
8 profits. (Ex. 63 at AC006125.) Burton admitted that his statement was false:

9 Q. Now, if you go down to the sixth paragraph, you say, to add insult to
10 injury, as you may recall, we never agreed to be paid 50 percent of profits
11 ever. This is what you said on November 20, 2015, correct?

12 A. Correct.

13 Q. That’s not a true statement; is it?

14 A. There was – you’re right. I misstated.

15 (11/20/19 Tr. 203:9-15.) On redirect, Burton admitted that Agricann agreed to “do this 50/50
16 and let’s see how it plays out,” and that he agreed “we’ll just do a 50/50 from now on.” (11/21/19
17 Tr. 64:3-12.) According to Burton, as of December 2014, “we started on this understanding that
18 it was going to be kind of a 50/50 split...” (*Id.* 64:13-18.) Thus, although Agricann agreed to
19 a 50/50 split as early as December 2014, it nevertheless seeks damages consisting of 80% and
20 has never provided a calculation of alleged damages on a 50/50 basis.

21 Zaki testified the parties *always* shared “a 50/50 split on all of the net” throughout the
22 relationship. (11/21/19 Tr. 187:14-188:5.) For example, on December 15, 2014, Zaki emailed
23 to Burton his running spreadsheet of sales and deposits. (Ex. 83.) In the email, Zaki discussed
24 payment of expenses, stating, “Once the aforementioned is all figured out and we set aside some
25 funds for taxes and one month operating expenses, ***we can then take distributions.***” (*Id.* at
26 NRPC0074) (emphasis added). Thus, Burton was aware at all times that the parties split the net
27 50/50 and he ***never*** told Zaki such method was incorrect or improper. (11/21/19 Tr. 216:2-5.)
28 To the contrary, Burton testified that he agreed to the 50/50 split. (*Id.* 64:3-18.)

The running spreadsheet that Zaki regularly updated (11/22/19 Tr. 8:15-17), and provided
to Agricann on a regular basis (*Id.* 5:1-6:5), showed cash receipts, expense payments and *then*
disbursements based on available cash. (Ex. 80 at NRPC0054-61.) Disbursements were never

1 made 80/20 and Burton “knew how the deal was supposed to be conducted and it was a 50/50
2 split on the net.” (11/21/19 Tr. 215:24-25.) Burton admitted NRPC never paid Agricann 80%.
3 (11/20/19 Tr. 193:19-22.) Thus, the parties plainly intended to modify the Contract’s payment
4 terms, and did in fact modify the terms by their conduct.

5 **B. The Contract Does Not Preclude Oral or Implied Modifications**

6 The Contract does not contain an integration clause that would prohibit a modification or
7 that would require any modifications to be in writing. In fact, as part of his admission that the
8 parties modified their agreement and in explaining his decision to “acquiesce[]” to the 50/50
9 split, Burton testified, “I’m a man of my word, so if that’s what we agreed to—I told Imran,
10 okay, fine, we’ll do 50/50, then that’s what we’ll stick with.” (11/21/19 Tr. 65:1-3).

11 **II. Any Ambiguities in the Contract Should Be Construed Against Agricann**

12 “The controlling rule of contract interpretation requires that the ordinary meaning of
13 language be given to words where circumstances do not show a different meaning is applicable.”
14 *Chandler Med. Bldg. Partners v. Chandler Dental Grp.*, 175 Ariz. 273, 277 (Ct. App. 1993);
15 *Horizon Res. v. Cutco Indus.*, 180 Ariz. 72, 77 (1994).

16 The parties disagree about the definition of “Sales Income” as used in Paragraph 7 of the
17 Contract.¹ Agricann insists “Sales Income” means gross revenues; NRPC believes it refers to
18 the ordinary definition of income-gross revenues after the payment of expenses and taxes.
19 (11/22/19 Tr. 148:16-23.) Although Paragraph 6 purports to define “Sales Income,” it does *not*
20 clarify whether “income” refers to gross sales or gross income. Paragraph 6 merely defines
21 “sales income” as “all *income* . . .” without addressing this issue. (*Id.*) (emphasis added).

22 Nevertheless, the ordinary meaning of the term “income” is “remaining revenues after
23 paying all expenses and taxes.” <https://www.investopedia.com/terms/i/income.asp>;
24 <https://www.myaccountingcourse.com/accounting-dictionary/income> (“The generic term
25 income is most commonly used to refer to net income instead of revenues.”) This definition is

26 ¹ Per Paragraph 7, Agricann’s management expenses “shall be paid by NRPC to AC out of Sales
27 Income received by NRPC.” (Ex. 2, NRPC00141.) It provides, “All invoices submitted by AC
28 to NRPC shall not exceed eighty percent (80%) of the Sales Income received by NRPC. All
distributions of Sales Income shall be on a pro rata basis (i.e. 80% of all gross sales from both
the retail and wholesale operations shall be paid to AC, and 20% retained by NRPC).” (*Id.*)

1 consistent with the way in which the parties performed. NRPC never paid any percentage of
2 gross revenues to Agricann. At all times, NRPC paid Agricann a percentage of net profits, or
3 income. (*See e.g.* Ex. 78 at NRPC00029, C. Burton email (“However, these amounts are not
4 conducive to our agreement *to split the Net Profits.*”) (emphasis added). Burton admitted that
5 he did not object to or correct his wife’s email. (11/20/19 Tr. 201:25-202:7.) Burton never
6 refused to accept any payments, and he never complained that Agricann was paid after expenses.
7 NRPC always paid Agricann after the net, rather than off the gross, because to do otherwise
8 would have been a failing business model. The monthly expenses ran between \$40,000 and
9 \$50,000. (11/21/19 Tr. 196:22-23; 11/22/19 Tr. 19:14-21.)

10 If this Court believes “Sales Income” is ambiguous, then such ambiguity must be resolved
11 against Agricann, as it drafted the Contract, including Paragraph 7. (11/21/19 Tr. 193:12-23.)
12 “If the meaning remains uncertain after application of primary standards of construction,
13 including consideration of the surrounding circumstances, a secondary rule of construction
14 provides that ambiguity is to be strictly construed against the drafting party.” *Harris v. Harris*,
15 195 Ariz. 559, 562 (App. 1999). Jay Galt, a former member of Agricann, prepared the initial
16 draft. (11/20/19 Tr. 154:12-15.) Burton used that draft, or “template” to write the Contract. (*Id.*
17 153: 6-10.) Burton also claimed that he “helped write it with others, like Shadi and David
18 Sanchez, for example,” (*Id.* 153:12), but this claim was contradicted by Burton’s prior testimony
19 that “actually I prepared this document.” (*Id.* 153:14-154:1.) Burton testified that he sat down
20 with Sanchez and Zaki² and typed the document out together (*Id.* 154:4-6); however, Zaki
21 unequivocally denied having done so. (11/21/19 Tr. 185:7-12.)

22 Thus, to the extent any Contract provisions are ambiguous, particularly Paragraph 7, this
23 Court should construe such ambiguities against Agricann and in favor of NRPC.

24 **III. Agricann Did Not Prove NRPC Breached the Contract**

25 In its verified Complaint (Ex. 110), Agricann alleges NRPC breached the Contract by:
26 (1) failing to take out an insurance policy for the benefit of Agricann (*Id.* ¶ 14); (2) failing to

27 ² There were several times at trial when Burton attributed certain acts or statements to both
28 David Sanchez and Shadi Zaki collectively, without distinguishing between them or
clarifying specifically who said or did what. Then, when forced to clarify, Burton was
unable to do so. (*See, e.g.* 11/21/19 Tr. 46:5-47:7.)

1 pay “any of Agricann’s management expenses” (*Id.* ¶ 16); (3) failing to pay “any of the gross
2 sales from both the retail and wholesale operations” at an 80% rate (*Id.* ¶¶ 18-19); and (4) failing
3 to establish a new bank account after closure of NRPC’s account (*Id.* ¶¶ 21-22.) At trial, Plaintiff
4 only proffered evidence regarding the alleged failure to pay Agricann’s claimed management
5 expenses, seeking 80% of gross sales, which will be the focus of this Section.

6 As set forth above, throughout the parties’ relationship, NRPC paid—and Agricann
7 agreed to receive—50% of the sales income, not an 80/20 split of gross sales. In that regard,
8 NRPC paid Agricann \$124,117.00, as documented in Zaki’s running spreadsheet. (Ex. 89; *see*
9 Ex. 80 at NRPC0061; 11/22/19 Tr. 20:22-23:6.) Zaki also testified that at the end of 2015,
10 available cash generated by the joint operation totaled approximately \$168,687.43. (11/22/19
11 Tr. 11:11-18; Ex. 80 at NRPC0060.) According to Zaki, NRPC does not owe Agricann any
12 money under the Contract. (11/22/19 Tr. 54:3-6.) Zaki explained, “Exhibit 89, which again is
13 tab two of the count recon that was always sent and never disputed, shows that the total amount
14 paid to Brig was \$124,117.” (*Id.* 54:15-18.) According to Zaki, half of the available cash at the
15 end of 2016 (\$168,687.43) is approximately \$85,000.00. (*Id.* 54:23-55:4.) Then, Zaki added
16 amounts for sales included in Exhibit 60 and “once you account for expenses, just based on that
17 simple average, you would see that it gets pretty close to 124,000, as far as what was due.” (*Id.*
18 55:9-14; Ex. 60 at AC006968.) Agricann did not offer any evidence to refute Zaki’s testimony.

19 Also, although Burton claimed that Agricann paid most of the expenses, the documents
20 (e.g. Ex. 80) show otherwise. Burton could only “ballpark” his payment of expenses (11/21/19
21 Tr. 50:18-51:3), and Burton did not include all expenses on Exhibit 31. (*Id.* 49:25-50:21.)

22 **IV. Agricann Did Not Prove Damages to a Reasonable Certainty**

23 More than three years after this case was filed, after the close of discovery and upon
24 completion of trial, it is no exaggeration to state that NRPC still has no idea the amount of
25 damages requested by Agricann—either a precise amount or a reasonable estimate.

26 Plaintiff has the burden “to show the amount of [its] damages with reasonable certainty.”
27 *Gilmore v. Cohen*, 95 Ariz. 34, 36 (1963). Conjecture or speculation cannot provide the basis
28 for a damages award; rather “the evidence must make an approximately accurate estimate
possible.” *Id.* “The plaintiff in every case should supply some reasonable basis for computing

1 the amount of damage and must do so with such precision as, from the nature of his claim and
2 the available evidence, is possible.” *Walter v. F.J. Simmons & Others*, 169 Ariz. 229, 236 (Ct.
3 App. 1991) (citing *Gilmore*, 95 Ariz. at 36.)

4 Similar to the plaintiff in *Gilmore*, Burton’s testimony was ambiguous, confused and
5 uncertain. 95 Ariz. at 36-37 (plaintiff testified, “I don’t have that information with me” and
6 made several conflicting statements regarding amount of damages). The *Gilmore* court noted,
7 “we are not convinced that the evidence concerning damages was calculated to inspire
8 confidence in the trial judge.” *Id.* at 37. Likewise, Burton’s conflicting, confusing, ambiguous
9 and uncertain testimony regarding Agricann’s alleged damages is not sufficient to establish an
10 entitlement to damages or calculated to inspire confidence. Indeed, where damages “are capable
11 of proof approaching mathematical precision, ***the requirement of reasonable certainty must be***
12 ***applied with added force*** to such damages.” *Cty. of La Paz v. Yakima Compost Co.*, 224 Ariz.
13 590, 607 (Ct. App. 2010) (emphasis added).

14 As set forth below, Agricann’s presentation of damages, which relies nearly entirely on
15 Exhibit 31, is deeply flawed. Exhibit 31 contains mathematical errors, inconsistencies, mistakes
16 in transporting numbers from source material, double-counting, guesstimates and the failure to
17 apply any credits (despite Burton’s testimony that he did so (11/20/19 Tr. 238:1-4.) —all of
18 which Zaki described as “funny math.” (11/22/19 Tr. 18:17-18, 18:24-19:8.) Nevertheless, the
19 calculation of damages *should* have been capable of proof approaching mathematical precision.
20 Burton, however, chose to rely on Exhibit 31 instead of retaining a damages expert to calculate
21 Agricann’s damages. (*Id.* 181:23-182:5.) NRPC should not be forced to assume, or guess, the
22 amount of damages requested by Agricann.

23 **A. Agricann’s Claimed Damages Are a Moving Target**

24 Despite that Burton has had the same set of data available to him since the inception of
25 this case (and to its filing), he has changed his story over and over.

26 First, in a November 29, 2015 email, Burton told Sanchez that “without a settlement in
27 place and not counting sales since August 15th,” NRPC owed Agricann \$6,614,983.07, including
28 interest. (Ex. 162.) At trial, Burton admitted that amount was incorrect and that it included
compound interest. (11/21/19 Tr. 44:6-15.) Notably, that amount does not match the amount

1 claimed for November 20, 2015 on Burton's damages spreadsheet (Ex. 31, last pg), which was
2 \$9,976,844.75. (11/21/19 44:16-22.)

3 Second, Burton alleged, under oath, in two separate filings, that NRPC did not pay
4 anything to Agricann under the Contract. Specifically, in the February 2016 complaint verified
5 by Burton, Agricann claims that NRPC failed to pay *any* amounts allegedly due under the
6 Contract. (Ex. 110, ¶ 18.) And, in the declaration Burton submitted in support of Agricann's
7 application for appointment of a receiver, he declared that NRPC did not pay any of Agricann's
8 management expenses. (Ex. 120, ¶ 4(c).) Those statements were false. (11/20/19 204:9-21.)

9 Third, at the March 2016 hearing on Agricann's application for receiver, Burton testified
10 that Agricann's principal damages were approximately \$500,000. (*Id.* 232:5-10.)

11 Fourth, Burton testified in his deposition that Agricann's damages were \$855,889.55
12 (excluding interest). (11/21/19 Tr. 25:10-12.) Burton admitted the same data was available to
13 him at trial that was available to him at deposition. (*Id.* 25:18-21.) Burton claimed he did not
14 realize until cross-examination at trial that his calculations were incorrect. (*Id.* 25:22-26:8.)

15 Fifth, at trial Agricann started out seeking \$28,082,256.67 in damages under the Contract.
16 By the end of trial, it was nearly impossible to know to a reasonable certainty the amount of
17 damages claimed by Agricann, and Agricann did not prove its damages to a reasonable degree
18 of certainty. At no point during Agricann's presentation of evidence—either in its case-in-chief
19 or in rebuttal—did Burton testify, “this is the amount owed to Agricann.” To the contrary, the
20 damages continued to be a moving target, with Agricann and its counsel continuing to change
21 the claimed calculation of damages, even during trial.

22 **B. Exhibit 31 Does Not Include a Reliable Calculation of Damages**

23 Exhibit 31, constituting Agricann's alleged damages spreadsheet, does not present a
24 measure of damages upon which this Court properly can rely. There are several errors contained
25 in Exhibit 31, which renders it unreliable and untrustworthy. Zaki pointed out—and Burton
26 admitted to—several problems with Exhibit 31.

27 Burton claimed for the first time that Exhibit 31, not Exhibit 10, represented Agricann's
28 damages, testifying, “Well, I would probably want to say 31, just because it is more current...”
(11/20/19 Tr. 236:11-19.) Agricann thus asked for \$28,082,256.67, purportedly constituting the

1 balance owed under the Contract plus “simple interest.” Nevertheless, Burton’s testimony, as
2 well as Zaki’s testimony, demonstrates that Exhibit 31 does not include a reliable calculation of
3 damages, and therefore, does not contain evidence of damages to a reasonable certainty.

4 Additionally, Burton is not a reliable or credible witness. He testified at deposition that
5 “I believe my wife Carly prepared this with some help from me on getting the formatting and
6 things like that.” (11/21/19 Tr. 26:9-15.) When confronted with his lie (Carly did not recall
7 preparing the spreadsheet (*Id.* 93:8-94:23)), Burton amended his story to, “my wife and I are
8 one” and claimed that he refers to himself and his wife interchangeably. (*Id.* 26:17-27:2.)³

9 1. Exhibit 31 Did Not Apply Payments Made by NRPC to Agricann

10 Although Exhibit 31 includes a column for “Payments to Agricann,” the running total of
11 amounts allegedly owed to Agricann fails to deduct any of the payments contained in that
12 column. (11/22/19 Tr. 15:24-18:7.) Burton initially insisted that the spreadsheet *did* deduct
13 payments to Agricann (11/20/19 Tr. 237:21-238:3), until he finally admitted during Agricann’s
14 rebuttal case that it did not. (11/22/19 Tr. 182:18-183:7; 11/22/19 Tr. 17:10-13.) Also,
15 according to Exhibit 31, Agricann received \$63,560.00 in payments under the Contract;
16 however, Exhibit 89, which Burton did not dispute, reveals that \$124,117 was paid to Agricann.
17 Thus, although Burton did not dispute that Agricann received \$124,117, he failed to include or
18 account for all such amounts on Exhibit 31.

19 2. Exhibit 31 Included Dates That Should Not Have Been Included

20 On the second day of trial, Agricann’s counsel offered yet a new damages calculation,
21 apparently prepared during trial based upon counsel’s realization that the damages calculated in
22 Exhibit 31 included sales after October 5, 2015 that should not have been included in the
23 spreadsheet based on the alleged promissory note. (11/21/19 Tr. 9:18-12:23.) On that basis,

24 3 This is not the only instance at trial where Burton testified in a shifty, equivocating or
25 inconsistent manner. For example, he testified that “Dave and Shadi both” told him that
26 NRPC had been evicted from a Temple property. (11/21/19 Tr. 46:5-7.) When asked
27 whether Sanchez, specifically, made that statement, Burton prevaricated, “I don’t know if
28 he used those same words, but I’ll just say – I guess I’ll just say no, I don’t know.” (*Id.*
47:6-7.) Zaki testified that NRPC never had a facility in Tempe and had never been evicted
from any property. (11/22/19 23:16-22.)

1 Agricann purported to offer testimony regarding its damages through October 2, 2015; however,
2 at no point prior to or during trial did Agricann ever offer evidence of a damages calculation
3 consisting of sales through October 2, 2015, deducting credits for payments made by NRPC,
4 removing all erroneous entries and correcting (or backing out) interest calculations.

5 In fact, Burton admitted that he suddenly realized during cross-examination that he
6 included numbers in Exhibit 31 that he should not have been including. (*Id.* 25:22-26:1.)

7 3. Amounts in Exhibit 31 Do Not Match Amounts Claimed During
8 Performance of the Contract

9 Burton admitted there were several inconsistencies between claims made by Agricann
10 for payment and matching dates on Exhibit 31. (*See generally* 11/21/19 27:6-45:22.) For
11 example, in an April 13, 2015 email, Burton told Dr. Kazem that NRPC owed \$38,633 plus
12 interest and yet-to-be-reported sales. (Ex. 146.) On Exhibit 31, Agricann claims \$318,090.15
13 is owed as of April 13, 2015 (Ex. 31 at pg. 2.) As a particularly egregious example, in an October
14 21, 2015 email containing a link to the spreadsheet contained in Exhibit 31, Burton told Sanchez,
15 “80% of gross sales going to Agricann after accounting for our half of expenses and all draws
16 paid to date,” totaled **\$280,528.90**. (Ex. 104.) However, in the version of Exhibit 31 presented
17 at trial, Burton listed **\$628,076.29** as the principal amount due on October 13, 2015 (the closest
18 date to October 21 in the spreadsheet). (Ex. 31 at pg 3.) If the computations contained in Exhibit
19 31 are reliable, verifiable and based on static data, the amounts should match. They do not.
20 Burton did not provide any explanation for the discrepancies. Nor did Burton testify to the
21 methodology used to calculate Agricann’s supposed damages.

22 4. The Principal Amount Is Incorrect Due to Errors in the Spreadsheet

23 Zaki identified several errors in Exhibit 31 compared to the data contained in Exhibits
24 80, 60 and 78, including what Zaki described as “funny math.” (11/22/19 Tr. 11:22-19:8.) The
25 errors in Exhibit 31 are stated in the chart below.

Incorrect Data in Ex. 31	Correct Data
11/24/14: \$8700 for 3.5 lbs for Natural Remedy sales	Ex. 78 at NRPC0031: 11/24/2014: \$3,500 for 3.5 lbs for Natural Remedy sales
5/23/15: \$2,642.70 for 5.82 lbs	Ex. 78 at NRPC0033: 2642.7 grams, not dollars
“Balance Before Interest” column does not deduct any payments made to	Ex. 89: \$124,117 in payments to Agricann

1	Agricann, e.g. page 2, \$8,000 payment not credited in running balance	
2	“Agricann Contribution” column contains \$ figures not included in Exs. 78, 80 or 60	“Money was never physically contributed by Agricann. It was simply deducted from the spreadsheet in the running total and neither are the contributions in the column labeled payments to Agricann.” (11/22/19 Tr. 15:17-21.)
3		
4		
5	8/10/15: duplicate entries for \$2,700	Ex. 60 at AC06966: one entry for 8/10/15
6	\$28 million (including interest) (<i>see also</i> 11/20/19 Tr. 239:24-240:8.)	There is no mathematical way to reach this number. (11/22/19 Tr. 19:3-8.)
7	Does not include expenses for every month	Expenses averaged between \$40,000-\$50,000 per month (11/22/19 Tr. 19:14-25.)
8		

5. Exhibit 31 Contains an Incorrect Calculation of Prejudgment Interest

This is no minor error. Burton testified that Agricann is entitled to “close[] to 30 million” in simple interest. (11/20/19 Tr. 240:6-8.) Simple interest is calculated as the principal times the rate and the time: $I = PRT$. <https://www.reference.com/world-view/solve-prt-255451223f3329c5>. When performing this calculation at trial, \$855,889.55 (P) x .01 (R) x 1357 (T), the total amount of simple interest—while still substantively unconscionable—totaled \$11,614.00, not anywhere close to the \$28,082,256.67 of principal and interest claimed by Agricann. (11/21/19 Tr. 240:9-241:23.) When asked what calculation he used to reach \$15,517,050.00 (Exhibit 31, last pg) as the amount claimed under Exhibit 2, Burton testified, “I don’t know.” (11/21/19 Tr. 243:4-8.)

This is not a situation where there are only a few, minor errors in Agricann’s calculation of damages. Rather, the number of errors identified above, as well as the severity of such errors (e.g. many millions of dollars in claimed interest) demonstrates the unreliability of Exhibit 31 and, equally importantly, the unreliability of Burton as a witness.

C. Agricann Never Disclosed Its Calculation of Damages or Prejudgment Interest

Although Agricann has proffered Exhibit 31, it never disclosed how amounts actually were calculated on the spreadsheet. And, Burton never explained how he came up with \$28,082,256.67 in damages under the Contract or \$15,517,050 under the alleged Note (Ex. 2.)

Agricann cannot now “disclose” a measure and calculation of damages after trial. Agricann undoubtedly will submit a request in its closing brief that this Court accept a newly-

1 revised damages calculation never previously disclosed to NRPC and which NRPC has not had
2 the opportunity to evaluate. Agricann presumably will seek some measure of damages based
3 on Exhibit 31, perhaps deducting payments listed in Exhibit 89, removing incorrect entries and
4 revising its interest calculation. As this Court held, “if the closing includes a new damages
5 calculation, [the court’s] not considering it.” (11/22/19 Tr. 201:2-3.) Agricann’s problem,
6 however, is that it cannot merely deduct \$124,117 and the other, incorrect entries and then
7 perform a simple interest calculation. That is because the amount of interest will vary depending
8 on the number of days since each particular sale was made. Thus, it is not simply a matter of
9 eliminating the mistaken entries.

10 **D. Agricann Is Not Entitled to Any Damages**

11 Even if this Court were to rely on Exhibit 31 through sales made on October 2, 2015
12 (showing total sales at \$763,590.40), Agricann still would not be entitled to any recovery.

13 First, there are two mistaken entries included with the running sales amounts, the \$8700
14 duplicate entry on 11/24/14 and the \$2,642.70 entry on 5/23/15, that need to be deducted,
15 reducing total claimed sales to **\$752,247.70**. Next, in examining the eleven-month period for
16 which Agricann claims damages, Agricann only lists 5 months of expense payments under the
17 “JV Monthly Expenses” column, totaling \$228,141.18, even though Agricann was responsible
18 for its 50% share of expenses. (Ex. 1, ¶ 11.) As Zaki testified, the expenses ran between \$40,000-
19 \$50,000 per month. Using an average of \$45,000, Agricann would be responsible for an
20 additional 50% of \$270,000 (6 months x \$45,000) in expenses—for a total deduction, or setoff,
21 of **\$249,070.59** ($\$228,141.18 + \$270,000 \div 2$). Additionally, the **\$124,117** of payments (Ex. 89)
22 should be deducted as an additional setoff. Because the parties modified their agreement to a
23 50/50 split, Agricann’s share would be 50% of \$752,247.70, or \$376,123.85. After deducting
24 \$249,070.59 of expenses and \$124,117 of payments, the total would be roughly **\$2,936.26**,
25 assuming no other errors in Burton’s calculations or unexpected monthly expenses. This is why
26 Zaki testified Agricann is not entitled to any further payments based on his analysis of Exhibits
27 31, 78, 80 and 60.

28 In summary, because Burton admitted there were errors in the spreadsheet and in his
calculations, the Court cannot rely on Exhibit 31 to establish damages to a reasonable certainty.

1 **E. The Attempt to Assert Spoliation as a “Gotcha” Should Be Rejected**

2 Until trial, Agricann never raised spoliation or alleged failure to disclose as an issue.
3 Agricann’s counsel did not follow the procedures set forth in the Rules of Civil Procedure, never
4 filing a motion seeking relief under Rule 37(a), which is a prerequisite to compel compliance
5 and/or discovery sanctions. Nor did Agricann’s counsel ever seek to meet and confer to resolve
6 a discovery dispute. Although Agricann’s counsel argued that spoliation could lead to
7 evidentiary inferences, Rule 37 provides that such a sanction would be available only “on motion
8 and after giving an opportunity to be heard.” Ariz.R.Civ.P. 37(c). Agricann had ample
9 opportunity to confer informally, propound discovery and/or file motions (even more so because
10 the Scheduling Order was amended multiple times). Agricann’s assertions now are mere
11 gamesmanship, and should be disregarded. *Bryan v. Riddell*, 178 Ariz. 472, 477 (1994)
12 (discovery rules are not “intended to be used as swords by overzealous litigators”). To the extent
13 Agricann claims it did not have access to records necessary to prove its damages, that argument
14 fails in light of Agricann’s assertion that Exhibit 31 contains reliable damages information
15 provided by NRPC. (11/20/19 120:7-121:21.) Moreover, Carly Burton testified she had access
16 to Natural Agriculture (“NA”) bank records online, Zaki emailed her regarding expenses and
17 she kept NA’s books. (11/21/19 Tr. 85:24-87:11.)

18 **V. The 1% Interest Rate Is Unenforceable**

19 **A. The 1% Per Day Interest Rate Constitutes an Unenforceable Penalty**

20 Penalty clauses are not enforceable under Arizona law. *Pima Sav. and Loan Ass’n v.*
21 *Rampello*, 168 Ariz. 297, 298 (Ct. App. 1991) (“[T]he parties to a contract are not free to
22 provide a penalty for its breach. The central objective behind the system of contract remedies
23 is compensatory, not punitive.”) In *Dobson Bay Club II DD, LLC v. La Sonrisa de Siena, LLC*,
24 242 Ariz. 108 (2017), the court held that a nearly \$1.4 million late fee assessed on a final balloon
25 payment was an unreasonable and unenforceable penalty. The court noted that while parties
26 may agree to liquidated damages, they do not have free rein in doing so, and a term setting
27 unusually large liquidated damages will be an unenforceable penalty. *Id.* at 110. “Because the
28 central objective behind the system of contract remedies is compensatory, not punitive, parties
 cannot provide a penalty for a breach.” *Id.* Agricann confirmed the interest rate was intended

1 as a penalty, not as a reasonable approximation of damages:

2 Q. You put in the one percent interest rate?

3 A. That is correct.

4 Q. You wanted the one percent interest rate in the agreement as a penalty in
5 case you didn't receive payment within five days; is that correct?

6 A. That is correct.

7 (11/20/19 190:18-23; 11/21/19 122:17-123:17.) Similar to the late fee in *Dobson Bay*, the 1%
8 interest rate is an unenforceable penalty. In fact, the 1% per day interest rate is significantly
9 more punitive than the *Dobson Bay* liquidated damages provision. Under *Dobson Bay*, this
10 Court must determine whether the amount of interest sought is reasonable, i.e. "if it
11 approximates either the loss anticipated at the time of contract creation (despite any actual loss)
12 or the loss that actually resulted (despite what the parties might have anticipated in other
13 circumstances)." *Id.* at 111. Using Agricann's numbers, over \$27 million (or even \$11 million,
14 using the correct simple interest formula) in interest in no way approximates the loss anticipated
15 at the time of contract creation; nor does it approximate any actual loss (there was none). In
16 short, there is no question that the claimed interest is highly punitive.

17 **B. The Interest Rate Is Substantively Unconscionable**

18 "Courts will [] disregard the parties' intent and refuse to enforce contract terms that are
19 unconscionable, illegal, or otherwise against public policy." *Dobson Bay*, 242 Ariz. at 115.
20 Even when contract provisions are "consistent with the reasonable expectations of the party they
21 are unenforceable if they are oppressive or unconscionable." *Harrington v. Pulte Home Corp.*,
22 211 Ariz. 241, 252 (Ct. App. 2005). Here, the 1% interest rate is substantively unconscionable
23 because the terms are so one-sided as to oppress NRPC, and it creates a significant cost-price
24 disparity. *See Maxwell v. Fid. Fin. Servs., Inc.*, 184 Ariz. 82, 89 (1995).

25 **VI. NRPC Is Excused From Performance Due to Commercial Frustration**

26 When asked whether the parties waived any provisions in the Contract, Burton testified,
27 "I wouldn't call it a waiver. I just think that some of them we realized after we entered into
28 them were impossible, like, for example, the insurance." (11/20/19 Tr. 172:9-15.) This
testimony supports NRPC's position that it is excused from performance of certain contractual
obligations. "It is well settled that when, due to circumstances beyond the control of the parties

1 the performance of a contract is rendered impossible, the party failing to perform is exonerated.”
2 *Matheny v. Gila Cty.*, 147 Ariz. 359, 360 (Ct. App. 1985). NRPC’s obligations to maintain a
3 bank account, obtain insurance and maintain an escrow account are excused under this doctrine.
4 NRPC’s obligation to pay Agricann within 5 days also was excused because it was extremely
5 difficult to pay in that time period due to operating expenses, product returns, customers paying
6 via terms and working capital. (11/21/19 Tr. 199:2-17.)

7 **VII. The Contract Is Void for Illegality**

8 NRPC cannot legally appoint Agricann as a “dispensary agent.” The only persons that
9 could be dispensary agents and “handle all its growing cultivation and curing of medical
10 marijuana product” (Ex. 1, NRPC00139) were NRPC officers, board members, employees or
11 volunteers. <https://azdhs.gov/licensing/medical-marijuana/index.php#dispensary-agent>.

12 Paragraph 7 violates Arizona law because only licensees are permitted to grow, sell and
13 *receive revenue* in connection with the cultivation and sale of medical marijuana. A.R.S. §§
14 36-2803, 2806. Agricann cannot receive “payment” of 80% of gross sales, let alone
15 distributions, rendering the Contract void. *Ruelas v. Ruelas*, 7 Ariz. App. 98, 101 (1968) (“...
16 an agreement which cannot be performed without violating applicable law, is illegal and void.”)
17 Although Burton testified that he and his wife handled sales (11/20/19 Tr. 60:21-23), he
18 withdrew that testimony when asked about it on cross-exam, testifying, “I helped facilitate sales,
19 I should say. I’m not allowed to sell, obviously, you know, directly.” (11/21/19 51:18-52:3.)
20 Also, because Agricann could not legally grow marijuana, all employees were NRPC’s.
(11/20/19 Tr. 170:17-171:5; 11/21/19 Tr. 195:21-196:9.)

21 Further, Zaki testified that Paragraph 9 “isn’t legally possible” because Agricann is not a
22 board member of NRPC and cannot be on its bank account. (11/22/19 Tr. 86:16-87:2.)

23 **VIII. Agricann Waived Strict Performance of the Contract**

24 The parties did not enforce several provisions of the Contract. (11/20/19 Tr. 172:4-19;
25 11/21/19 Tr. 191:21-194:19.) Thus, the parties’ conduct was inconsistent with demanding strict
26 compliance, resulting in a waiver of such provisions, including the alleged 80/20 split, insurance
27 policies, bank account and escrow account, and the 1% interest provision, among others.
28 *Kammert Bros. Enter., Inc. v. Tanque Verde Plaza, Co.*, 102 Ariz. 301, 305 (1967).

1 **IX. Exhibit 2 Is Not an Enforceable Agreement**

2 Exhibit 2 does not provide consideration to NRPC. The lease rights already were
3 transferred to NA. Agricann could not and did not transfer them to NRPC. (Ex. 127.) Exhibit
4 2 was prepared by and should be strictly construed against Agricann. (11/20/19 209:20-211:15.)
5 *See Harris*, 195 Ariz. at 562. Exhibit 2 also does not contain all material terms, such as the 1%
6 interest rate claimed by Burton. (11/20/19 Tr. 215:19-216:10.) It does not state that a balloon
7 payment is due in the event of a sale or at the end of three years, whichever came first. (*Id.*
8 213:20-214:8.) It does not identify the payor or payee. Also, the parties continued to negotiate
9 after Exhibit 2 was created. (*Id.* 220:14-17; Ex. 107.) The parties continued to negotiate whether
10 there would be a personal guarantee, and if so, what amount. (11/20/19 Tr. 222:8-11, 228:6-9;
11 Ex. 167). The parties negotiated whether there would be a down payment, whether Burton and
12 Dr. Kazem would get a seat on NRPC's board in lieu of a personal guarantee ((11/20/19 Tr.
13 222:24-223:4, 222:2-6) and whether there would be collateral. The parties prepared, but never
14 signed, final documents. (*Id.* 223:10-226:25.)

15 Further, Exhibit 2 cannot be performed within one year; and because it does not contain
16 all terms and conditions constituting the alleged contract, it violates the statute of frauds. A.R.S.
17 § 44-101(5) "When it is clear from the duration of the contract, however, that performance will
18 not be completed within a year, the statute of frauds applies." *Rudinsky v. Harris*, 231 Ariz. 95,
19 99 (Ct. App. 2012); *Mullins v. S. Pac. Transp. Co.*, 174 Ariz. 540, 542 (Ct. App. 1992) ("a
20 contract for a definite term cannot be deemed performable within one year"). According to
21 Agricann, Exhibit 2 has a three-year term. (11/20/19 Tr. 214:3) ("It just has the term that is a
22 three-year term.") Thus, Exhibit 2 is within the statute of frauds and must contain all material
23 terms. Because it does not, Exhibit 2 is not an enforceable contract.

24 DATED: December 11, 2019.

25 **GREENSPOON MARDER LLP**

26 /s/ Sharon A. Urias

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1 **ORIGINAL** of the foregoing e-filed with the Clerk of the Court
2 through AZ Turbo Court on December 11, 2019.

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283

12/20/2019

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
P. Culp
Deputy

AGRICANN L L C, et al.

MARK DEATHERAGE

v.

NATURAL REMEDY PATIENT CENTER L L
C, et al.

SHARON A URIAS

DON C FLETCHER
JUDGE J. SMITH

MINUTE ENTRY

The Court held a bench trial on November 20-22, 2019. The Court carefully considered the evidence presented, including the witnesses' demeanor while testifying. The parties also provided written closing arguments. Neither side requested findings of fact or conclusions of law. *See* Ariz. R. Civ. P. 52(a).

It is worth commenting on the parties' written closings. All three parties attached greater than 50 pages of exhibits to those closings. The Court earlier instructed, "Consecutively paginate attachments to a submission that are 50 pages or greater." [Second Am. Scheduling Order (filed January 4, 2019) at 4:20.] That order then provided an example of how to cite to such attachments in the brief. None of the lawyers followed that protocol. The point of requiring consecutive pagination and citing to those pages is to facilitate the reader finding what the author is citing. Citing to "Exhibit D" in a mass of unpaginated, untabbed documents does not do so.

Natural Remedy Patient Center LLC (NRPC) holds a certificate to cultivate, deliver, and dispense medical marijuana. Brig Burton and his business partner, Imran Kazem, formed Agricann LLC (AC) to provide cultivation services to certificate holders like NRPC. Of course, an entity like AC cannot directly participate in medical marijuana operations because it does not

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hold a certificate. Instead, AC may provide business leads, its employees may obtain dispensary agent cards under the other entity's certificate, etc.

In May 2014, NRPC and AC entered into the Management for Grow and Dispensary Agent Contract (Management Contract) (Trial Ex. 1). The parties would use a cultivation facility on 26th Avenue for which AC had a lease. AC had used the 26th Avenue facility for another certificate holder, so the facility had many improvements one would need to grow marijuana legally. The Management Contract called for AC to cultivate marijuana that NRPC could then sell wholesale to other certificate holders or could sell to retail customers in NRPC's dispensary.

I. ISSUES REGARDING THE MANAGEMENT CONTRACT.

A. AC's Share: 80% Of Revenue vs. 50% Of Income.

The Management Contract often is difficult to interpret and included provisions that the parties apparently never followed. For example, it called (§ 7) for AC to receive up to 80% of NRPC's *revenue* ("gross sales") from any sales of marijuana grown at 26th Avenue. AC was supposed to submit invoices to NRPC for "all management services" and then NRPC would pay up to 80% of "gross sales" based on those invoices. But that same paragraph referred to NRPC paying based on "Sales Income." Traditionally, "income" is a post-expense figure. Thus, referring to "Sales Income" and "gross sales" for the same concept in the same paragraph is confusing and inconsistent.

NRPC presented only one witness: Shadi Zaki, an independent contractor consultant who advised NRPC. Zaki never was a member, manager, or employee of NRPC. He did not sign the Management Contract. The Court's role is to determine the parties' intent, but Zaki is not a party to the contract. The Court gave little weight to Zaki's testimony regarding the parties' intent underlying the Management Contract.

Zaki, however, was a competent witness regarding the parties' post-contract conduct. Put simply, the parties never followed paragraph 7 of the Management Contract. Emails from both sides regularly referred to splitting income or "profits" equally.¹ [*E.g.*, Trial Exs. 63, 78, 134, 135, 143.] That is, an equal split after expenses. Even AC's Brig Burton agreed that the parties did not adhere to paragraph 7. He suggested that AC accepted the post-expenses 50% share because he wanted to avoid dissention, but that is difficult to reconcile with the emails.

¹ The Court uses the terms "revenue" and "income" somewhat loosely. AC and NRPC did not define them and did not follow generally accepted accounting principles.

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Does a 50% share of income supersede the written agreement's contrary terms? Parties may modify an agreement. "[M]utual assent of the parties to a modification of their agreement is essential, [and] such assent need not be express but may be implied from a course of conduct in accordance with its existence." *O'Malley Inv. & Realty Co. v. Trimble*, 5 Ariz. App. 10, 18, 422 P.2d 740, 748 (1967) (modification of lease); *see also, e.g., Rose v. Spa Realty Assocs.*, 366 N.E.2d 1279, 1283 (N.Y. 1977) ("not only may past oral discussions be relied upon to test the alleged modification, but the actions taken may demonstrate, objectively, the nature and extent of the modification."). Also, a party to a contract may waive the other's duty to perform. Waiver is either the express, voluntary, and intentional relinquishment of a known right, or it is conduct that is inconsistent with an intent to assert the right. By accepting performance known to be deficient, a party has waived the right to reject the contract on the basis of that performance. RAJI (Civil) 6th, Contract 13.²

Whatever the parties' original intent under the Management Contract, they modified the agreement by a clear course of performance and contemporaneous communications. The modified agreement called for AC to receive 50% of income (*i.e.*, after expenses).

B. The 1% Daily Assessment.

NRPC was supposed to pay AC within five days of NRPC receiving payment for goods sold. Paragraph 8 of the Management Contract included a late payment assessment of 1% per day past that five-day window. Burton admitted that provision was a "penalty" to encourage timely payment. AC did not present any evidence that the 1% assessment somehow compensated it for the lost use of money, increased expenses, etc. AC did not suggest that its actual damages from non-payment would be difficult to calculate. NRPC challenged whether the Court may enforce this 1% assessment. It has the burden of showing that challenged provisions of any agreement are unenforceable penalties. *Dobson Bay Club II DD, LLC v. La Sonrisa de Siena, LLC*, 242 Ariz. 108, 112, ¶ 17, 393 P.3d 449, 453 (2017).

The 1% daily assessment is not interest for a loan; it is a form of liquidated damages. Arizona law gives parties wide latitude in negotiating agreements. "Parties, however, do not have free rein in setting liquidated damages. Because '[t]he central objective behind the system of contract remedies is compensatory, not punitive,' parties cannot provide a penalty for a breach." *Id.* at 110, ¶ 9, 393 P.3d at 451. Our Supreme Court explained how to evaluate whether a liquidated damages sum is an unenforceable penalty:

² The Revised Arizona Jury Instructions are not binding authority, of course. Nonetheless, these legal principles are not controversial or disputed. The cited instructions accurately describe the law on these issues.

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The amount is reasonable if it approximates either the loss anticipated at the time of contract creation (despite any actual loss) or the loss that actually resulted (despite what the parties might have anticipated in other circumstances). The non-breaching party is not required to prove actual damages to enforce a liquidated damages provision, and a court will respect the parties' agreement if it is "reasonable in relation to anticipated or actual loss. But if the difficulty of proof of loss is slight and either no loss occurs or the stipulated sum is grossly disproportionate to the loss, the parties' stipulation would be unreasonable and therefore unenforceable as a penalty.

Id. at 111, ¶ 14, 393 P.3d at 452 (citation omitted); *see also* RESTATEMENT (SECOND) OF CONTRACTS § 356 cmt. a (1981). Thus, the liquidated damages must reasonably approximate (a) loss contemplated at the time of contracting *or* (b) loss actually resulting. Additionally, it must be difficult to prove the loss. There is no evidence suggesting that the 1% assessment satisfied those requirements. Plus, Burton admitted it was a penalty for non-payment.³

The 1% daily assessment was an impermissible penalty rather than enforceable liquidated damages.

C. Proof Of Breach And Damages.

It is AC's burden to show that NRPC breached and AC's resulting damages. But AC built its case on being entitled to 80% of revenue. The modified agreement (through course of performance) entitled AC to 50% of income. Thus, AC's evidence largely did not show that NRPC breached the *modified* agreement. Also, Zaki's testimony was more believable in terms of calculating expenses, what AC earned under the modified agreement, and payments to AC.

Burton created AC's damages calculation (Trial Ex. 31) but could not explain his methodology persuasively. That exhibit also had several errors, which Burton conceded. It is difficult, if not impossible, to reconcile AC's current damages calculation with emails from 2015 in which Burton and his wife wrote that AC was entitled to much less than what Exhibit 31 reflected.

AC did not meet its burden of proving breach or resulting damages under the Management Contract.

II. ISSUES REGARDING THE SECOND AGREEMENT.

³ It is a substantial penalty, too. If it applied to a \$10,000.00 payment due on day 1, the 1% daily assessment would be \$36,000.00 at the end of that year (without compounding) after the grace period.

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The parties' relationship was acrimonious, and one of AC's principals (Kazem) did not want to continue investing. The players met at Kazem's house in late October 2015. They signed a purported agreement after several hours. **The document is sparse, to say the least.** [Trial Ex. 2.] Burton asserted that the agreement called for NRPC to pay AC \$20,000.00 monthly for 36 months with a \$400,000.00 balloon payment at the end. NRPC would receive from AC the rights to lease the 26th Avenue facility (essentially a lease assignment or sublease) as well as the equipment there. The handwritten phrase, "sub lease rate start Nov. 15th" also appears. Burton signed for AC and David Sanchez signed for NRPC. The letters "PG" also appear under Sanchez's signature; Burton contended that showed a personal guaranty by Sanchez. An unsigned line for Zaki exists, too.

An enforceable contract requires "an offer, an acceptance, consideration, and sufficient specification of terms so that obligations involved can be ascertained." *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 139 Ariz. 209, 212, 677 P.2d 1317, 1320 (App. 1983) (citing *Savoca Masonry Co., Inc. v. Homes & Son Constr. Co.*, 112 Ariz. 392, 542 P.2d 817 (1975)). Arizona follows the modern, realist approach to contract formation. *E.g.*, *AROK Constr. Co. v. Indian Constr. Servs.*, 174 Ariz. 291, 295, 848 P.2d 870, 874 (App. 1993). What of the fact that the parties exchanged drafts of more formal written agreements? We need to consider much more:

[W]here it was understood that the contract should be formally drawn up, and put in writing, the transaction is nevertheless complete and binding, absent a positive agreement that it should not be binding until so reduced to writing and formally executed. . . . [W]here both parties undertake to act pursuant to a preliminary agreement, they have been held bound despite the fact that a formal contract was never executed

1 WILLISTON ON CONTRACTS § 4:11 (4th ed. 2019). "Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof" RESTATEMENT (SECOND) OF CONTRACTS § 27; *see also, e.g.*, *Cleeves v. Everson*, 2015 WL 13122933, *5-6 (D. Ariz. Apr. 14, 2015) (MOU sufficient evidence of agreement to withstand motion to dismiss); *Mortensen v. Gust Rosenfeld, PLC*, 2015 WL 6472368, *5-6, ¶¶ 22-23 (Ariz. Ct. App. Oct. 27, 2015) (mem.) ("letter of intent" sufficient basis for contract claim to survive motion to dismiss).

Burton often referred to Exhibit 2 as a "promissory note," and NRPC argued that the document lacked essential terms for a promissory note. But the label is not important. **The agreement appears to be a novation—that is, replacing the Management Contract** with this second agreement.

To constitute a valid "novation" there must be an extinguishment of a previously valid obligation, and an agreement of all parties to a new valid contract. The

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essential elements of a valid novation are a previously valid obligation, the agreement of all parties to a new contract, the extinguishment of the old obligations, and the validity of the new one. It is not essential for a valid novation that assent and acceptance of the terms thereof be shown by express words, either spoken or written, but may be implied from the facts and circumstances surrounding the transaction and the conduct of the parties thereafter.

United Sec. Corp. v. Anderson Aviation Sales Co., 23 Ariz. App. 273, 275, 532 P.2d 545, 547 (1975) (citation omitted).

NRPC also argued that the statute of frauds barred the second agreement. That is, contracts that cannot be performed within one year from the making of the contract must be in writing. A.R.S. § 44-101. NRPC argued that the second contract lacked sufficient terms to satisfy the statute of frauds. The possibility of completing performance in one year—even if not contemplated by the parties—can remove the agreement from the statute of frauds. *Co-op Dairy, Inc. v. Dean*, 102 Ariz. 573, 575, 435 P.2d 470, 472 (1967); *Waugh v. Lennard*, 69 Ariz. 214, 226, 211 P.2d 806, 813–14 (1949) (oral employment contract not within the statute of frauds because employer could die within a year); *Healey v. Coury*, 162 Ariz. 349, 353, 783 P.2d 795, 799 (App. 1989) (statute requires impossibility of performance within a year). Burton testified that all payments were due to AC if NRPC sold itself, regardless of the timing. Likewise, there was no pre-payment penalty. NRPC did not present contrary evidence. The statute of frauds does not prevent enforcing this agreement.

NRPC disputed whether an agreement existed. It is noteworthy that Sanchez wrote to Burton on November 19, 2015: “Correct me if I’m wrong but didn’t we agree to start payments on November 15th for \$20,000, while you, me Shadi and Imran were present[?]” [Trial Ex. 63.] NRPC in fact paid \$20,000.00 in November and December 2015 and \$15,000.00 in January 2016. The parties anticipated and discussed signing more formal agreements after the meeting in Kazem’s house. But the fact that they did not do so does not vitiate the agreement reached.

NRPC noted that AC never delivered a lease assignment for the 26th Avenue facility to NRPC. AC’s failure to deliver a lease assignment must be an “uncured material failure” to perform in order to excuse NRPC’s obligations. RESTATEMENT (SECOND) OF CONTRACTS § 237. But Burton’s undisputed testimony was that NRPC took over that facility. NRPC did not present any evidence that the lack of an assignment affected using that property at all. There is no dispute that NRPC obtained the equipment in the facility, too. The Court cannot conclude that the lack of a lease assignment deprived NRPC of the benefit of the bargain when the only evidence is that NRPC occupied the facility after the second agreement.

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Another issue is whether Sanchez personally guaranteed NRPC's performance under the second agreement. The "PG" next to Sanchez's signature is nearly meaningless. Unlike communication in which Sanchez noted the agreement for \$20,000.00 payments, Sanchez always pushed back on the idea of a personal guaranty. There is not competent evidence that Sanchez personally guaranteed the second agreement.

The second agreement is an enforceable contract between AC and NRPC. NRPC paid \$20,000.00 in November and December 2015 and paid \$15,000.00 in January 2016. NRPC owes the unpaid \$5000.00 from January 2016 and the remaining 33 payments of \$20,000.00 from February 2016 forward plus the \$400,000.00 balloon payment. Before any interest, the amount due is \$1,065,000.00. These are liquidated amounts, though. Prejudgment interest is awarded as a matter of right on a liquidated claim. *John C. Lincoln Hosp. & Health Corp. v. Maricopa Cty.*, 208 Ariz. 532, 542, ¶ 39, 96 P.3d 530, 540 (App. 2004); *Alta Vista Plaza Ltd. v. Insulation Specialists Co.*, 186 Ariz. 81, 82, 919 P.2d 176, 177 (App. 1995). Ten percent simple annual interest accrues on such liquidated damages. A.R.S. § 44-1201(A). After entering judgment, interest will be the prime rate plus one percentage point. A.R.S. § 44-1201(B). The agreement does not include an enforceable personal guaranty or security interest.

III. ATTORNEYS' FEES UNDER A.R.S. § 12-341.01 AND TAXABLE COSTS.

Each side requested fees under this statute as the successful party. The Court has substantial discretion to determine the successful party. *Fulton Homes Corp. v. BBP Concrete*, 214 Ariz. 566, 155 P.3d 1090, 1096 (App. 2007). "The decision as to who is the successful party for purposes of awarding attorneys' fees is within the sole discretion of the trial court, and will not be disturbed on appeal if any reasonable basis exists for it." *Maleki v. Desert Palms Prof'l Props., L.L.C.*, 222 Ariz. 327, ¶ 35, 214 P.3d 415, 422 (App. 2009) (quotations omitted).

In cases involving varied success on multiple claims and the net judgment rule is inapplicable, it is appropriate for the trial court to use a percentage of success factor or a totality of the litigation test to determine who is the successful party. Likewise, when a party pursues several claims based on different facts or legal theories, the trial court may decline to award fees incurred in connection with the unsuccessful separate and distinct claims.

ARIZONA ATTORNEYS' FEE MANUAL § 2.7.1, at 2-23 (Bruce E. Meyerson & Patricia K. Norris eds., 6th ed. 2017) (citations and quotations omitted). The Court "must assess the overall outcome of the case" to determine the successful party. *Murphy Farrell Dev., LLLP v. Sourant*, 229 Ariz. 124, 134, ¶ 35, 272 P.3d 355, 365 (App. 2012) (addressing fees under A.R.S. § 12-341.01). "[W]hen a case involves multiple claims and varied success and the net judgment rule is

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inapplicable, the trial court may use a percentage of success factor or a totality of the litigation rubric to determine which party prevailed.” *Id.* ¶ 36 (cleaned up).

The Court finds that neither AC nor NRPC is the successful party entitled to fees. Each of them succeeded on one claim and lost on the other claim. Those parties will bear their own fees with respect to one another. But the Court finds that Sanchez is the successful party regarding the alleged personal guaranty. The Court will award Sanchez reasonable attorney’s fees. Considering Sanchez’s nearly total absence from the litigation, the Court anticipates a relatively modest fee application and award.

Taxable costs are another issue. “The successful party to a civil action *shall* recover from his adversary all costs expended or incurred therein unless otherwise provided by law.” A.R.S. § 12-341 (emphasis added). The Court has discretion in deciding the amount of costs to award. *E.g.*, *Lee v. ING Inv. Mgmt., LLC*, 240 Ariz. 158, 162, ¶ 13, 377 P.3d 355, 359 (App. 2016). “[T]rial courts must determine whether challenged expenditures, notwithstanding their status as taxable costs, were necessarily incurred and whether they are reasonable in amount.” *Reyes v. Frank’s Serv. & Trucking, LLC*, 235 Ariz. 605, 611, ¶ 20, 334 P.3d 1264, 1270 (App. 2014). The Court is mindful of the mandatory language in A.R.S. § 12-341 versus the permissive language in A.R.S. § 12-341.01(A). With that mandatory language in mind, the Court finds that AC is entitled to an award of taxable costs from NRPC. Likewise, Sanchez is entitled to an award of taxable costs from AC.

Proposed forms of judgment, statements of costs, and Sanchez’s fee application (assuming he properly pleaded a fee request) are due within 20 days of the Clerk filing this order.

IT IS SO ORDERED.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283

01/16/2020

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
P. Culp
Deputy

AGRICANN L L C, et al.

MARK DEATHERAGE

v.

NATURAL REMEDY PATIENT CENTER L L
C, et al.

SHARON A URIAS

DON C FLETCHER
JUDGE J. SMITH

MINUTE ENTRY

The Court received Defendant Natural Remedy Patient Center's Motion for Reconsideration filed January 13, 2019.

The Court would appreciate NRPC providing more information. Specifically, what information in the record, if any, explains why "NRPC only occupied the property through the end of May/early June 2016"? [NRPC Mot. at 1:28-2:1.] Likewise, what information in the record shows how the lack of a lease assignment materially affected NRPC's ability to use the facility? Please attach copies of transcript pages or admitted exhibits for ease of reference. The Court also would appreciate NRPC attaching to this supplement the transcript pages cited in its Motion. This supplement is due within five days of the Clerk filing this order.

Agricann may respond to NRPC's Motion and supplement within 10 days of service of the supplement. There will not be a reply.

IT IS SO ORDERED.

Mark Deatherage (010208)
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
Email: mark.deatherage@gknet.com
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AGRICANN LLC,

Plaintiff,

vs.

NATURAL REMEDY PATIENT
CENTER LLC; DAVID SANCHEZ,
Defendants.

Case No. CV2016-001283

JUDGMENT

(Assigned to the Hon. James D. Smith)

Following trial and post-trial briefing, this Court issued its findings and rulings by Minute Entry filed December 23, 2019.

IT IS ORDERED:

1. Agricann LLC has judgment against Natural Remedy Patient Center, LLC for:
 - a. the principal amount of \$1,065,000.00;
 - b. simple, prejudgment interest at 10% per year, in the amount of \$218,790.29 through January 13, 2020, and continuing to accrue at the rate of \$291.78 per day from January 14, 2020, until entry of judgment;
 - c. simple annual interest of 5.25% on \$1,065,000.00 until satisfied; and
 - d. the Court does not award taxable costs because it does not have a record of Agricann filing a timely statement of costs. *See* Ariz. R. Civ. P. 54(f)(2).
2. Defendant David Sanchez has judgment against Agricann for attorneys' fees of \$15,188.50 and for taxable costs of \$273.57. Simple annual interest of 5.25% will accrue until satisfied.

No matters remain pending. The Court enters this judgment under Arizona Rule of Civil Procedure 54(c).

eSignature Page 1 of 1

Filing ID: 11474272 Case Number: CV2016-001283
Original Filing ID: 11269103

Granted with Modifications



/S/ James Smith Date: 3/13/2020
Judicial Officer of Superior Court

APP133

ENDORSEMENT PAGE

CASE NUMBER: CV2016-001283

SIGNATURE DATE: 3/13/2020

E-FILING ID #: 11474272

FILED DATE: 3/16/2020 8:00:00 AM

DON C FLETCHER

MARK DEATHERAGE

SHARON A URIAS

MANAGEMENT FOR GROW & DISPENSARY AGENCY CONTRACT

This Management for Grow and Dispensary Agent Contract is entered into by and between:

**Agricann, LLC, an Arizona Limited Liability Company, or its assigns
(Hereinafter known as "AC" or the "Dispensary Agent" or "Cultivator")**

And

NATURAL REMEDY PATIENT CENTER, LLC

**An Arizona non-profit corporation, or its assigns
(Hereinafter known as "NRPC" or the "Dispensary")**

Regarding

THE LEGAL MEDICINAL MARIJUANA DISPENSARY & CULTIVATION OPERATION ("The Businesses")

WHEREAS, AC and NRPC each desire to enter into this **Dispensary Agent Contract** wherein NRPC grants permission and exclusive and unbreakable agency rights to AC to operate a medicinal marijuana cultivation and delivery facility in exchange for NRPC receiving a percentage of all sales procured by and from AC's grow and marketing efforts.

WHEREAS, NRPC represents that it holds a State of Arizona, Department of Health "bona fide" Dispensary Certificate (certificate number 00000064DCT500268592) FOR CHAA # 84 to dispense, deliver, and cultivate medicinal marijuana and has the legal authority to grant AC, as a Dispensary agent, the exclusive and unbreakable legal rights to cultivate and provide other services under its dispensary certificate, and AC represents that it has the facility and expertise to finance, grow, market, manage and operate a commercial growing facility; and,

WHEREAS, due to the capital and zoning requirements, and the limited ability of NRPC to market and sell to patients in the Phoenix area, NRPC desires to outsource this function to AC to diversify and extend its shared customer base into the Phoenix market, and to ensure economic viability and time-to-market; and,

WHEREAS, NRPC desires to grant AC exclusive agency to handle all its growing, cultivation, and curing of medical marijuana product; and,

WHEREAS, **AC has an expert team developed and ready to grow quality product** and has the capacity to build the inventories needed by NRPC; and,

WHEREAS, NRPC desires to control, govern and keep legally separate its not-for-profit retail dispensary business and, AC desires to control, govern and keep legally separate its for-profit wholesale commercial cultivation business; and,

WHEREAS, AC could be criminally liable for growing medical marijuana if NRPC decided to sever or discontinue the agency relationship with AC; and,

WHEREAS, NRPC and AC acknowledge that the principals are at risk financially and criminally if either party should not comply with any and all state laws, therefore the Dispensary agreement must not be broken so each covenants to the other that they shall strictly uphold and obey all state laws and regulations so as to not endanger the other criminally or legally; and

WHEREAS, NRPC and AC desire to communicate and operate on a "Best Efforts" and "Good Faith," basis and conduct themselves in a responsible, accountable, and transparent manner, to reach a fair agreement in a timely and expeditious way resulting in the benefit of each party's business goals and objectives; and

WHEREAS, NRPC has found that there is a limited supply available for medical marijuana grow facilities and has had difficulty locating and operating a medical marijuana grow facility in the Phoenix area in the hopes of expanding and diversifying its customer base to the Phoenix markets, and AC has a properly zoned facility space available that it has leased with approximately 7500 square feet; and

WHEREAS, the principals of NRPC and AC have both invested a considerable sum of money into their respective operations, both parties have a vested interest in seeing their businesses succeed, and both parties have much of their capital at stake and will be mutually dependent upon each other; and, both parties have a vested interest in seeing the businesses succeed; and,

WHEREAS, both parties will have spent a considerable amount of time and energy to establish and build a working relationship and mutually-dependent businesses together;

NOW THEREFORE,

1. The term of this agency agreement shall remain in force for two years.
2. NRPC agrees to take out and maintain an **insurance policy** that would pay the beneficiary, AC five-hundred thousand dollars (\$500,000) should NRPC withdraw, revoke, suspend, or sever the agency relationship with AC in such a way that would cause AC to be legally exposed to potential criminal liability. This agreement shall be made both ways, to ensure that AC would likewise pay NRPC the same sum should AC in any way break this contract prior to the terms set forth herein. To the extent such a policy is unable to be obtained, NRPC agrees to pay AC the same sum should NRPC withdraw, revoke, suspend, or sever the agency relationship with AC in such a way that would cause AC to be legally exposed to potential criminal liability. Under no circumstances shall NRPC or AC sever the agency relationship within the agreed upon contractual period.
3. AC and NRPC promise each other that they will not sever the relationship with the other anytime within the contractually agreed upon two-year period. In the event either party has been found to violate any of the various state, city, or county laws whatsoever, the parties will discuss the matter between themselves and shall provide a written list of corrective actions for whom the offending party must rectify within a 30-day period. If the

NRPC _____
AC _____

required actions needing to be compliant with the Arizona Department of Health Services or other governing bodies are not obtained after the 30-day period, a five-hundred-dollar (\$500) fine may be imposed upon the offending party, and the parties will from that point forward have at least 30-days, with proper legal notice, to find replacement options suitable for both parties prior to any abrupt severance that would make either party criminally, legally, or financially liable to the city, state, or to the other party.

4. NRPC warrants that it will act in **good faith** to **help AC become reattached to a new dispensary** should the parties wish to sever ties for whatever reason in the future. AC also warrants that it will **help NRPC find a new cultivation facility** should the parties wish to sever ties for whatever reason in the future.
5. AC will work with NRPC to create and grow the various cannabis and medical marijuana products it will be making in and from its facility for NRPC's retail operations.
6. NRPC shall pay AC for all rent and all management, security and agricultural services out of sales income received by NRPC, where Sales Income shall be defined as all income received from third-party ADHS-approved medical marijuana dispensaries by NRPC for medical marijuana grown at the Cultivation Facility, plus the value of and all medical marijuana grown at the Cultivation Facility that is acquired by NRPC for retail sale by its Dispensary, the value of which shall in no case be calculated at a price less than that paid by third-party ADHS-approved medical marijuana dispensaries for medical marijuana of equivalent quality.
7. AC shall submit to NRPC invoices for all management expenses, including but not limited to rent, security, management and agricultural services; which shall be paid by NRPC to AC out of Sales Income received by NRPC. All **invoices** submitted by AC to NRPC shall not exceed eighty percent (80%) of the Sales Income received by NRPC. All distributions of Sales Income shall be on a pro rata basis (i.e. **80% of all gross sales from both the retail and wholesale operations shall be paid to AC, and 20% shall be retained by NRPC**). NRPC agrees to pay AC within five (5) days of receipt of the Sales Income being received by NRPC.
8. NRPC will pay AC immediately for any and all product made by AC and sold to or through NRPC, and will pay an interest-rate of one-percent (**1% per day**) for each day AC has not received payment from NRPC **after five (5) days** of NRPC receiving payment.
9. NRPC and AC shall maintain a bank account in NRPC's name that AC shall be a co-signer on for the purpose of AC being able to manage cashflows, pay bills, and make timely disbursements in accordance with the terms above.
10. NRPC shall maintain a separate **escrow account** for accumulated reserves for tax purposes which is to be funded by both parties.

NRPC _____
AC _____

11. NRPC and AC agree to split all operating, employment, regulatory, security, rent, utilities, and any and all other costs associated with the cultivation facility on a fifty-fifty (50/50) basis.
12. NRPC and AC agree to each put in fifteen thousand dollars (\$15,000) initially to fund the first month of operating expenses.
13. AC is hereby granted full autonomy to hire, pay, promote and fire the personnel it so chooses to run the grow operation. NRPC shall be given veto power to not hire any of AC's chosen employees for just cause; which shall not be unreasonably withheld by NRPC. Furthermore, NRPC warrants that it will approve any and all personnel agency-cards submitted to them by AC within 72 hours of receiving the employee or contractor application to have approved by Arizona Department of Health Services.
14. NRPC shall pay for any and all application and transfer fees required by DHS including site application fees and employee agent cards for the existing team. AC and NRPC will split costs 50/50 for all future employee DHS cards after the transfer of the initial site and its employees is complete.
15. Both parties shall be allowed to audit one another's books and records to ensure both are compliant with state regulations.
16. AC is hereby authorized by NRPC to build, and maintain a delivery service for patients in the Phoenix area, and will deliver product directly from the Phoenix warehouse to those patients, in compliance with all laws and DHS rules and regulations.
17. If and when the parties to this agreement wish to sever the relationship, and AC is required to obtain a new DHS-approved dispensary license to attach itself to continue operating, NRPC agrees to allow half of all plants and inventory to transfer to AC's newly appointed dispensary without confiscation, charge or fee; half of all plants and inventory will move to AC's newly appointed dispensary when and if that time should come that AC and NRPC are to sever the agency relationship, regardless of the circumstances surrounding the reasons for AC's transfer to a new dispensary license. Further, NRPC promises to pay AC for any and all product made by AC, in accordance with the terms set forth above, regardless of if the agency relationship between the parties has been severed or not. Should NRPC remove, destroy, or cause to be destroyed any plants or curing or finished inventory from the facility without NRPC's and AC's mutual consent and approval, in any way which violates the terms set forth above, NRPC shall pay AC two-thousand dollars (\$2,000) per plant, and four-thousand dollars (\$4,000) per pound for any/all curing or finished inventory. NRPC warrants to AC that it will not remove plants or inventory from the facility without AC's authorization and due consideration for management services and fees associated with the facility, plants and inventory.

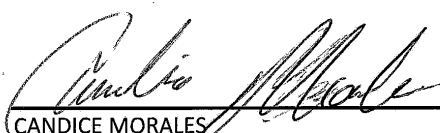
NRPC _____
AC _____

18. AC's performance quota shall be fifty-pounds (50/lbs) per month starting October, 2014. Should AC fail to meet its performance quota NRPC shall have rightful cause, and with due and proper notice given to AC to rectify, to cancel this contract with AC.
19. Should AC need to borrow money from NRPC to jump-start the operation, NRPC agrees to loan AC whatever money may be needed at twelve percent (12%) annually, simple interest, which shall be paid back to NRPC from the first sales from the first harvest.
20. The parties will transfer or hold the lease rights to the property in a newly created entity called "Nature's Agriculture, LLC" (NACL) and the members of the entity that shall own equal percentages shall be Brig Burton, Carly Burton, Imran Kazem, and Kathy Sanchez (25% each). Brig Burton shall be the appointed manager of the entity under the to-be-formed operating agreement. The entity will be solely responsible for collecting rent from AC and NRPC (under the 50/50 terms agreed to by the parties), and forwarding the rent payments to the owner. AC shall retain its exclusive optional rights to purchase the building in the future, and NRPC shall allow AC to buy the building. NRPC and each of its respective members shall in no way interfere with AC's or the newly formed NACL's contractual relations as it relates to the lease, the landlord, suppliers, customers, employees and/or subcontractors.
21. AC hereby grants to NRPC first right of refusal under the same terms as defined herein, to attach one of its group's other dispensary licenses to AC's other zoned medical marijuana facility.
22. NRPC shall not in any way seek to interfere with or intervene in the contractual or other relationships AC has with its landlord, customers, employees, or suppliers.
23. NRPC hereby grants AC authority to market and facilitate any and all sales efforts from the cultivation facility and NRPC shall not refuse to process any sale facilitated by AC's marketing efforts.
24. The parties herein covenant to communicate and operate on a "Best Efforts" and "Good Faith," basis and conduct themselves in a responsible, accountable, and transparent manner, to be fair and to seek for the benefit of the other party's business goals and objectives.
25. Any person signing this Release on behalf of any entity hereby warrants and represents that he has the full legal capacity and authority to execute this Release on behalf of that entity and that by executing this Release does hereby bind said entity to the terms hereof, and agrees to indemnify, defend, and hold harmless any liability suffered by another party hereto by reason of lack of such authority.
26. This contract serves to confirm the serious intent of the parties with respect to matters herein set forth. Further, that the parties do intend that the provisions of this Agreement be legally binding in a court of law.

NRPC _____
AC _____

27. If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the validity or enforceability in that jurisdiction of any other provision of this Agreement.

28. If the foregoing is acceptable, please so confirm by signing and returning to the other parties a signed copy of this letter no later than May 19, 2014 at 5 p.m. PT.



CANDICE MORALES
MANAGER, NATURAL REMEDY PATIENT CENTER, LLC
Dated: May 27, 2014



KATHY SANCHEZ
MANAGER, NATURAL REMEDY PATIENT CENTER, LLC
Dated: May 27, 2014




BRIGHAM BURTON
President, Agricann, LLC (AC)
Dated: May 28, 2014

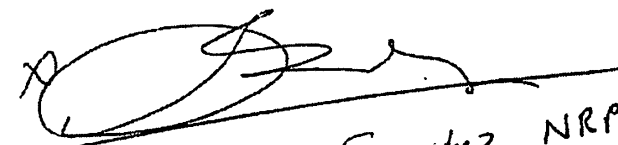
NRPC _____
AC _____

NOV.
~~2015~~ 2015- NOV.
2018

3 yrs.
\$ 20K / mo
A 400K balloon

sub
lease
rate
start
Nov. 15th


BRIG BURTON, AGRI-CANN, LLC


Dave Sanchez, NRPC + PCA

x

Shree

Date	Interest Begins	# Days Late	Customer	\$ Amount	Total Lbs.	Running Balance of Sales	Agricann's 80%	Balance Before Interest	Compound Daily 1%/Day	Simple Interest 1%/Day	JV Monthly Expenses^	Agricann Contribution**	Payments to Agricann
11/20/2014	11/25/2014	4	Urban GH	\$8,700.00	3.8	\$8,700.00	0.80 \$6,960.00	\$6,960.00	\$7,242.60	\$278.40			
11/24/2014	11/29/2014	8	Natural Remedy	\$8,700.00	3.5	\$17,400.00	\$6,960.00	\$13,920.00	\$15,379.38	\$1,113.60			
12/2/2014	12/7/2014	8	Natures AZ	\$25,200.00	9	\$42,600.00	\$20,160.00	\$34,080.00	\$38,484.06	\$2,726.40			
12/3/2014	12/8/2014	1	Urban GH	\$10,125.00	4.02	\$52,725.00	\$8,100.00	\$42,180.00	\$47,049.90	\$421.80			
12/3/2014	12/8/2014	0	Mohave Green	\$3,000.00	1	\$55,725.00	\$2,400.00	\$44,580.00	\$49,449.90	\$0.00			
12/5/2014	12/10/2014	2	Urban GH	\$18,000.00	7	\$73,725.00	\$14,400.00	\$58,980.00	\$65,133.28	\$1,179.60			
12/15/2014	12/20/2014	10	Natures AZ Medicine	\$10,700.00	3.88	\$84,425.00	\$8,560.00	\$67,540.00	\$81,403.23	\$6,754.00			
12/16/2014	12/21/2014	1	Urban GH	\$16,800.00	6	\$101,225.00	\$13,440.00	\$80,980.00	\$95,791.67	\$809.80			
12/24/2014	12/29/2014	8	Urban GH	\$4,000.00	2	\$105,225.00	\$3,200.00	\$84,180.00	\$107,193.79	\$6,734.40			
1/1/2015	1/6/2015	8	Natural Remedy	\$9,109.65	18.21	\$114,334.65	\$7,287.72	\$91,467.72	\$123,967.07	\$7,317.42			
1/3/2015	1/8/2015	2	Urban GH	\$13,882.00	4.526	\$128,216.65	\$11,105.60	\$102,573.32	\$137,787.63	\$2,051.47			
1/13/2015	1/18/2015	10	Urban GH	\$4,109.00	3	\$132,325.65	\$3,287.20	\$105,860.52	\$155,834.38	\$10,586.05			
1/14/2015	1/19/2015	1	Health for Life	\$6,000.00	2	\$138,325.65	\$4,800.00	\$110,660.52	\$162,240.72	\$1,106.61			
1/18/2015	1/23/2015	4	Natural Remedy	\$2,763.86	2.77	\$141,089.51	\$2,211.09	\$112,871.61	\$171,129.21	\$4,514.86			
1/27/2015	2/1/2015	9	Urban GH	\$8,400.00	3	\$149,489.51	\$6,720.00	\$119,591.61	\$194,511.07	\$10,763.24			
1/29/2015	2/3/2015	2	Urban GH	\$8,200.00	4.05	\$157,689.51	\$6,560.00	\$126,151.61	\$205,112.59	\$2,523.03			
1/29/2015	2/3/2015	0	Health for Life	\$5,700.00	2	\$163,389.51	\$4,560.00	\$130,711.61	\$209,672.59	\$0.00			
1/31/2015	2/5/2015	2	Natural Remedy	\$3,390.86	3.4	\$166,780.37	\$2,712.69	\$133,424.30	\$216,654.23	\$2,668.49			
2/9/2015	2/14/2015	9	Natural Remedy	\$3,173.50	3.18	\$169,953.87	\$2,538.80	\$135,963.10	\$239,728.18	\$12,236.68			
2/12/2015	2/17/2015	3	Natures AZ	\$27,000.00	10	\$196,953.87	\$21,600.00	\$157,563.10	\$269,246.69	\$4,726.89			
2/19/2015	2/24/2015	7	Valley Healing	\$5,600.00	2	\$202,553.87	\$4,480.00	\$162,043.10	\$293,472.06	\$11,343.02			
2/24/2015	3/1/2015	5	Natures AZ	\$19,213.81	7.04	\$221,767.68	\$15,371.05	\$177,414.14	\$324,597.21	\$8,870.71			
2/24/2015	3/1/2015	0	High Mountain	\$8,277.85	2.76	\$230,045.53	\$6,622.28	\$184,036.42	\$331,219.49	\$0.00			
2/27/2015	3/4/2015	3	Natural Remedy	\$4,790.72	4.8	\$234,836.25	\$3,832.58	\$187,869.00	\$345,204.48	\$5,636.07			

3/18/2015	3/23/2015	19	Natural Remedy	\$2,964.50	2.97	\$237,800.75	\$2,371.60	\$190,240.60	\$419,909.77	\$36,145.71			
3/30/2015	4/4/2015	12	Natures AZ	\$63,286.17	23.1	\$301,086.92	\$50,628.94	\$240,869.54	\$497,716.28	\$28,904.34	\$41,681.57	\$20,840.79	\$8,000.00
4/3/2015	4/8/2015	4	Health for Life	\$6,000.00	2	\$307,086.92	\$4,800.00	\$245,669.54	\$522,920.45	\$9,826.78			
4/5/2015	4/10/2015	2	Natural Remedy	\$7,420.00	7.42	\$314,506.92	\$5,936.00	\$251,605.54	\$539,486.47	\$5,032.11			
4/6/2015	4/11/2015	1	Health for Life	\$6,000.00		\$320,506.92	\$4,800.00	\$256,405.54	\$549,729.33	\$2,564.06			
4/9/2015	4/14/2015	4	Natures AZ	\$29,922.77	12.94	\$350,429.69	\$23,938.22	\$280,343.75	\$596,960.75	\$11,213.75			
4/10/2015	4/15/2015	1	Health For Life	\$6,000.00	2	\$356,429.69	\$4,800.00	\$285,143.75	\$607,778.36	\$2,851.44			
4/10/2015	4/15/2015	0	Natures	\$29,183.00		\$385,612.69	\$23,346.40	\$308,490.15	\$631,124.76	\$0.00			
4/13/2015	4/18/2015	3	Health For Life	\$12,000.00	4	\$397,612.69	\$9,600.00	\$318,090.15	\$660,139.36	\$9,542.70			
4/4/2015	4/9/2015	9	Natural Remedy	\$6,430.00	6.43	\$404,042.69	\$5,144.00	\$323,234.15	\$693,665.29	\$29,091.07	\$46,475.11	\$23,237.56	\$7,800.00
5/7/2015	5/12/2015	33	Natural Remedy	\$3,700.00	3.7	\$407,742.69	\$2,960.00	\$326,194.15	\$967,396.64	\$107,644.07			
5/19/2015	5/24/2015	12	Health For Life	\$9,000.00	3	\$416,742.69	\$7,200.00	\$333,394.15	\$1,098,199.89	\$40,007.30			
5/23/2015	5/28/2015	4	Natural Remedy	\$2,642.70	5.82	\$419,385.39	\$2,114.16	\$335,508.31	\$1,124,309.34	\$13,420.33	\$34,749.74	\$17,374.87	\$2,500.00
5/23/2015	5/28/2015	0	Natural Remedy	\$5,830.00	5.83	\$425,215.39	\$4,664.00	\$340,172.31	\$1,128,973.34	\$0.00			
6/2/2015	6/7/2015	10	Health For Life	\$5,800.00	2	\$431,015.39	\$4,640.00	\$344,812.31	\$1,252,214.38	\$34,481.23			
6/8/2015	6/13/2015	16	Natures Wonder	\$13,500.00		\$444,515.39	\$10,800.00	\$355,612.31	\$1,480,983.69	\$56,897.97			
6/12/2015	6/17/2015	10	ban Greenhouse	\$13,750.00	5	\$458,265.39	\$11,000.00	\$366,612.31	\$1,648,078.19	\$36,661.23			
6/12/2015	6/17/2015	0	Health For Life	\$5,800.00	2	\$464,065.39	\$4,640.00	\$371,252.31	\$1,652,718.19	\$0.00			
6/15/2015	6/20/2015	3	Natures Wonder	\$13,500.00		\$477,565.39	\$10,800.00	\$382,052.31	\$1,713,924.46	\$11,461.57			
6/17/2015	6/22/2015	5	e Holistic Center	\$11,829.81	4.08	\$489,395.20	\$9,463.85	\$391,516.16	\$1,811,298.43	\$19,575.81			
6/18/2015	6/23/2015	1	ban Greenhouse	\$17,500.00	7	\$506,895.20	\$14,000.00	\$405,516.16	\$1,843,551.41	\$4,055.16			
6/23/2015	6/28/2015	5	Phoenix Relief	\$8,100.00		\$514,995.20	\$6,480.00	\$411,996.16	\$1,944,401.61	\$20,599.81			
6/30/2015	7/5/2015	12	Natures Wonder	\$20,300.00	7.5	\$535,295.20	\$16,240.00	\$428,236.16	\$2,163,524.83	\$51,388.34	\$54,286.35	\$27,143.18	\$13,480.00
7/1/2015	7/6/2015	1	ban Greenhouse	\$17,500.00	7	\$552,795.20	\$14,000.00	\$442,236.16	\$2,167,202.28	\$4,422.36			\$31,780.00
7/1/2015	7/6/2015	0	arvest of Tempe	\$5,400.00	2	\$558,195.20	\$4,320.00	\$446,556.16	\$2,171,522.28	\$0.00			

7/8/2015	7/13/2015	7	harvest of Tempe	\$952.00	0.35	\$559,147.20	\$761.60	\$447,317.76	\$2,328,982.34	\$31,312.24			
7/10/2015	7/15/2015	2	ban Greenhouse	\$17,500.00		\$576,647.20	\$14,000.00	\$461,317.76	\$2,390,076.29	\$9,226.36			
7/14/2015	7/19/2015	6	Natures Wonder	\$16,200.00	6	\$592,847.20	\$12,960.00	\$474,277.76	\$2,550,871.44	\$28,456.67			
7/15/2015	7/20/2015	1	Phoenix Relief	\$5,400.00	2	\$598,247.20	\$4,320.00	\$478,597.76	\$2,580,743.35	\$4,785.98			
7/22/2015	7/27/2015	7	ban Greenhouse	\$20,000.00	8	\$618,247.20	\$16,000.00	\$494,597.76	\$2,784,060.35	\$34,621.84			
7/24/2015	7/29/2015	2	Natural Remedy	\$2,752.10	6	\$620,999.30	\$2,201.68	\$496,799.44	\$2,842,265.90	\$9,935.99			
7/28/2015	8/2/2015	4	ban Greenhouse	\$12,500.00	5	\$633,499.30	\$10,000.00	\$506,799.44	\$2,968,079.33	\$20,271.98			
7/28/2015	8/2/2015	0	ature's Wonder	\$2,700.00	1	\$636,199.30	\$2,160.00	\$508,959.44	\$2,970,239.33	\$0.00			
7/28/2015	8/2/2015	0	health for Life Inc.	\$2,233.00	0.79	\$638,432.30	\$1,786.40	\$510,745.84	\$2,946,551.53	\$0.00	\$50,948.41	\$25,474.21	
7/31/2015	8/5/2015	3	Health 4 Life	\$2,800.00		\$641,232.30	\$2,240.00	\$512,985.84	\$3,038,142.86	\$15,389.58			
8/10/2015	8/15/2015	13	Natures Wonder	\$2,700.00	1	\$643,932.30	\$2,160.00	\$515,145.84	\$3,460,148.25	\$66,968.96			
8/10/2015	8/15/2015	0	Natures Wonder	\$2,700.00		\$646,632.30	\$2,160.00	\$518,605.89	\$3,462,308.25	\$0.00			
8/14/2015	8/19/2015	4	Natural Remedy	\$2,600.10	5.73	\$649,232.40	\$1,300.05	\$516,445.89	\$3,604,244.69	\$20,657.84			
8/11/2015	8/16/2015	1	Health 4 Life	\$4,665.00		\$653,897.40	\$3,732.00	\$522,337.89	\$3,644,056.46	\$5,223.38			
8/27/2015	9/1/2015	13	harvest of Tempe	\$5,600.00		\$659,497.40	\$4,480.00	\$526,817.89	\$4,152,374.82	\$68,486.33			
8/30/2015	9/4/2015	3	harvest of Tempe	\$15,895.00		\$675,392.40	\$12,716.00	\$539,533.89	\$4,291,297.24	\$16,186.02			
8/31/2015	9/5/2015	1	Natures Wonder	\$18,600.00		\$693,992.40	\$14,880.00	\$554,413.89	\$4,349,239.01	\$5,544.14			
9/8/2015	9/13/2015	8	harvest of Tempe	\$13,487.00		\$707,479.40	\$10,789.60	\$565,203.49	\$4,721,286.22	\$45,216.28			
9/9/2015	9/14/2015	1	Health4Life	\$12,860.00		\$720,339.40	\$10,288.00	\$575,491.49	\$4,778,889.96	\$5,754.91			
9/22/2015	9/27/2015	13	Health4Life	\$13,500.00		\$733,839.40	\$10,800.00	\$586,291.49	\$5,451,113.96	\$76,217.89			
9/25/2015	9/30/2015	3	harvest of Tempe	\$16,251.00		\$750,090.40	\$13,000.80	\$599,292.29	\$5,629,682.90	\$17,978.77			
10/2/2015	10/7/2015	7	Health4Life	\$13,500.00		\$763,590.40	\$10,800.00	\$610,092.29	\$6,047,361.12	\$42,706.46			
10/7/2015	10/12/2015	5	harvest of Tempe	\$8,400.00		\$771,990.40	\$6,720.00	\$616,812.29	\$6,362,900.11	\$30,840.61			
10/13/2015	10/18/2015	6	Health4Life	\$14,080.00		\$786,070.40	\$11,264.00	\$628,076.29	\$6,766,303.64	\$37,684.58			
10/27/2015	11/1/2015	14	harvest of Tempe	\$10,737.00		\$796,807.40	\$8,589.60	\$636,665.89	\$7,787,565.08	\$89,133.22			
10/27/2015	11/1/2015	0	Health4Life	\$19,825.00		\$816,632.40	\$15,860.00	\$652,525.89	\$7,803,425.08	\$0.00			

10/27/2015	11/1/2015	0	Natures Wonder	\$13,912.00		\$830,544.40	\$11,129.60	\$663,655.49	\$7,814,554.68	\$0.00			
10/30/2015	11/4/2015	3	Sunflower	\$21,420.00		\$851,964.40	\$17,136.00	\$680,791.49	\$8,068,998.74	\$20,423.74			
11/5/2015	11/10/2015	6	Harvest of Tem	\$1,943.00		\$853,907.40	\$1,554.40	\$682,345.89	\$8,567,054.78	\$40,940.75			
11/5/2015	11/10/2015	0	Health4Life	\$15,115.00		\$869,022.40	\$12,092.00	\$694,437.89	\$8,579,146.78	\$0.00			
11/20/2015	11/25/2015	15	Harvest of Tem	\$18,004.00		\$887,026.40	\$14,403.20	\$708,841.09	\$9,976,844.75	\$106,326.16			
11/24/2015	11/29/2015	4	Natures Wonde	\$20,736.00		\$907,762.40	\$16,588.80	\$725,429.89	\$10,399,207.02	\$29,017.20			
12/4/2015	12/9/2015	10	Harvest of Tem	\$9,740.58		\$917,502.98	\$7,792.46	\$733,222.35	\$11,495,801.89	\$73,322.24			
12/4/2015	12/9/2015	0	Sunflower	\$21,224.00		\$938,726.98	\$16,979.20	\$750,201.55	\$11,512,781.09	\$0.00			
12/4/2015	12/9/2015	0	4.7lbs taken on 12/4	\$12,690.00	4.7	\$951,416.98	\$10,152.00	\$760,353.55	\$11,522,933.09	\$0.00			
12/14/2015	12/19/2015	10	5.1lbs taken on 12/14	\$13,770.00	5.1	\$965,186.98	\$11,016.00	\$771,369.55	\$12,740,655.36	\$77,136.96			
12/21/2015	12/26/2015	7	Harvest of Tem	\$6,646.00		\$971,832.98	\$5,316.80	\$776,686.35	\$13,665,407.35	\$54,368.04			
12/30/2015	1/4/2016	9	Sunflower	\$11,130.00		\$982,962.98	\$8,904.00	\$785,590.35	\$14,955,392.94	\$70,703.13			
12/30/2015	1/4/2016	0	Health4Life	\$18,900.00		\$1,001,862.98	\$15,120.00	\$800,710.35	\$14,970,512.94	\$0.00			
12/31/2015	1/5/2016	1	Harvest of Tem	\$6,986.00		\$1,008,848.98	\$5,588.80	\$806,299.15	\$15,125,862.75	\$8,062.99			
1/5/2016	1/10/2016	5	5.9 lbs taken	\$15,930.00	5.9	\$1,024,778.98	\$12,744.00	\$819,043.15	\$15,910,827.84	\$40,952.16			
1/13/2016	1/18/2016	8	Harvest of Tem	\$11,849.00		\$1,036,627.98	\$9,479.20	\$828,522.35	\$17,239,411.24	\$66,281.79			
1/15/2016	1/20/2016	2	nate took 12.67lbs	\$34,209.00	12.67	\$1,070,836.98	\$27,367.20	\$855,889.55	\$17,613,840.68	\$17,117.79			
Total				\$1,070,836.98			\$855,889.55	\$855,889.55	\$17,613,840.68	\$1,927,402.65	\$228,141.18	\$114,070.59	\$63,560.00

	Balance Before Interest	Balance W/ Simple Interest											
Accrued Since Jan 15, 2016 Total Owed AGC by NRPC per JV	\$855,889.55	\$28,082,256.67											
Total Owed AGC by NRPC & Sanchez Per Lease Buyout Note	1,065,000	\$15,517,050.00											
Total Owed to Agricann by NRPC and/or Sanchez	\$1,920,889.55	\$43,599,306.67											
Notes:													

From: Brig Burton <brigburton@gmail.com>
Sent: Friday, November 20, 2015 5:20 PM
To: D Sanchez <davidsanchez1229@gmail.com>
Cc: Shadi <shadizaky@gmail.com>; Carly Burton <carlykillmeier@gmail.com>; Imran Kazem <imran.kazem@gmail.com>; Kathy Sanchez <kathysanchez71@gmail.com>
Subject: Re: WTF?

Hi Dave,

Let's talk on Monday when we finalize the formal agreements. Please bring the other \$10K due + the amount you estimate to be due per your understanding of profit splits.

For the sake of making sure we're on the same page, and to address some of your questions, our understanding was that the \$10K we received last month was a prepayment against the estimated \$120K+ in profits that was due to be split (that number has since grown to be over \$200K in estimated profits due to be split). There's no point in dragging this out based upon your new CPA trying to still figure out what may or may not be due.

Further, we never agreed to share in anyone's tax liability. The retail operation has tax liability, which we're not a part of. The wholesale operation that we JV'd with you on, does not have any tax liability other than the taxes Imran and I owe on our respective share of Agricann. Other than some possible reconfiguration and amendments on Natural Agriculture, LLC to allow NRPC to enjoy more of a tax break, the tax issue is a NON issue, and would seem to be a means of further delaying what's rightfully due to be paid to Agricann.

If it's estimated that there's now over \$200K in profits, then you should be splitting that right away, not waiting for your new CPA to come up with some estimate based on a tax we never agreed to pay. Why wait to pay us what's estimated to be due? If you were to somehow accidentally overpay us, (not likely to ever happen) then wouldn't the next month's sales more than offset the amount due back? It's a no-brainer.

Have Imran and I ever not invested into the shared account that which was due by us in full? If there was ever a deficit where you had put more into the shared operating account, then we would always match it or exceed it.

To add insult to injury, as you may recall, **we never agreed to be paid 50% of profits - EVER. We were to be paid based on sales** within 5-days of each sale and then we would re-invest into the joint venture bank account to cover shared operating expenses. **This has been everyone's understanding and agreement from the beginning**, yet for whatever reason, you've not lived up to it.

This has become very very frustrating for us, because so much of what we agree to doesn't happen and we're left holding either an empty bag or a bag with a few leftover crumbs while you take and keep nearly all of the company's cashflows. It's just not what we agreed to, and I think you know in your heart that it's not right. We've been more than patient.

\$20K was to be paid on the 15th of the month. I confirmed this with you and Shadi when we met at Mike's office, and you said that you would pay it in full each month on the 15th, starting Nov 15th. We were counting on you to keep your word. Given the total amount that even you estimate to be due (which is not accurate and is very low compared to what is actually due) you would think that you would be anxious to pay your JV partners what is at least due in your estimation (\$60K-\$100K).

Hoping that on Monday you'll do what is right and bring the other \$10K that was due on the 15th, + your estimated \$60K-\$100K of what is due for the agreed upon split.

Talk then,

Brig

PS: Though I'm very upset about this situation you've put us in, my header, "WFT" stands for "what the freak" just so we're clear. By contrast, Shadi's text yesterday stated "Alan is f'cking crazy".

On Thu, Nov 19, 2015 at 5:31 PM, D Sanchez <davidsanchez1229@gmail.com> wrote:

WTF really Brig, pretty disappointing I thought you had more Christian values than that it seems like I get these once a month now from you when you just decide to go on a rant.

Do you really hear just what you want to hear or do you hear what we are all discussing as business partners. Correct me if I'm wrong but didn't we agree to start payments on November 15th for \$20,000, while you, me Shadi and Imran were present

Did I not tell you to your face I will go ahead and advance you \$10,000 before November 15th because I knew you needed money, you even agreed and told me yes that would be a big help for you, and again this was said in front of everybody present.

But because you decide to send me some type of personal guarantee and who knows whatever type of contracts you're trying to persuade us to sign which by the way are illegal on three different levels. You conveniently add that the 10,000 advance was not part of the payment, on your agreements, Cmon we never agreed to that.

Our CPA Mike whom you met with said he should have some final numbers for us by the beginning of the upcoming week, but by the way its looking we're going to be somewhere around the 27 to 30% tax liability for all income received through 26th Avenue.

Again per our discussion we were to finalize this and get this number before we settled on anybody's dividend splits.

In regards to the agreements that you sent us I told you we were meeting with Ryan Hurley and I told you his advice was not to create additional agreements **just to create an amendment to our agreement that was already in place**. Because as he stated a lot of the terminology that was used in your agreements put our license at risk. Ryan himself couldn't believe an attorney wrote these agreements because they were so poorly worded and jeopardized our license as a whole.

In regards to Alan and I still haven't gotten the full story from everybody involved, but from what I've heard he went in there pretty belligerent this morning. I told you because of the enforcement action because of the uncared trimmers we had in there they were not approving anybody. But Shadi can probably give you a better explanation of this I know we have somebody submitted that's been submitted for 2 months and his card is still not approved.

So I will follow up with everything that went on today at the grow and I will get back to you and again would be happy to meet with everybody again and reiterate everything we went over at our last meeting if you all feel it's necessary.

Let me know,
David

On Nov 19, 2015, at 10:35 AM, Brig Burton <brigburton@gmail.com> wrote:

Dave,

I thought you and Kathy agreed to re-hire Alan. You told me that his card was being processed and that he would be able to begin working again.

We were also supposed to receive \$20K on the 15th of each month, as well as the other profits owed to us that were to be split up and paid in full. It's now the 19th and neither of those has occurred.

You were also supposed to sign and return the formal agreements, which you've received, and still for whatever reason refuse to sign and return. Is this because you never really intended to live up to what we agreed?

These past few weeks, you've become completely non-responsive to my texts, emails and phone calls, yet again.

I'd like to remind you that our being willing to enter into a formal settlement and buyout agreement with you was an olive branch, and was our way of trying to keep the peace and help you with the balance you owe us.

Without a settlement in place, and not counting sales since August 15th, to date you and NRPC now owe Agricann \$6,614,983.07 when we calculate the interest that's contractually due and has been accruing by your repeated nonpayment offenses.

Even excluding the interest due, you now owe Agricann \$377,738.50 after accounting for the reported sales through Oct 27th and subtracting out all draws paid to date, and our portion of shared expenses paid.

And here we were trying to help you out by making for a reasonable and **very affordable settlement and payment plan** (\$20K/mo paid on the 15th of each month for 36 months) where we were willing to take a \$400K balloon on the backend, effectively holding off on this already-due and **significantly reduced payment** until you, Kathy, or Shadi sell out or within 3 year.

Agricann is owed and would continue to make a lot more money from you per our original JV agreement. The settlement and buyout agreements are a **great deal for you at our expense.**

Given the history, and the fact that you're now in breach (yet again) on the settlement/buyout agmt, and given the balance that is now due (\$6.6M+), what would you do if you were in my shoes and the roles were reversed? Would

you not be tempted to move forward with simply locking us out of the building and pressing your suit for the balance due plus punitive damages for this blatant and repeated misconduct?

If I were you, I would be anxious to pay what's due in full as per the settlement (\$20K + no less than \$150K at this point), and to wrap up formal settlements by signing and returning the prepared documents immediately just to put this to rest.

Seriously, what are you thinking?

--

Regards,

Brig Burton

www.linkedin.com/in/brigburton/

Cell: [480-862-4974](tel:480-862-4974)

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Conference: [712-432-0800](tel:712-432-0800)

Code 10233224#

Our firm is currently seeking investment opportunities in privately held Companies in or near Arizona with the following criteria:

Annual revenues of \$3 MM+, EBITDA of \$600K+, within the following target industries:

Manufacturing, Distribution/Wholesale, B2B Services, Niche Construction, Consumer Goods, Healthcare, Education & Training, Logistics/Transportation, and Software.

We pay the greater of \$5,000 or .5% of the total purchase price as a referral fee or to the referring agent upon the successful purchase of businesses meeting our criteria.

If you're an accredited investor and would be interested in learning more about how to put your money to work in quality privately-held Companies in or near Arizona, please contact us.

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--

Regards,

Brig Burton

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Code 10233224#

Our firm is currently seeking investment opportunities in privately held Companies in or near Arizona, Colorado, Texas, Utah, or Nevada with the following criteria:

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Redaction

From: **Carly Burton** <carly.killmeier@gmail.com>
Date: Thu, Jun 11, 2015 at 9:53 PM
Subject: Account Reconciliation
To: shadi zaki <shadizaky@gmail.com>, Brig Burton <brigburton@gmail.com>, Imran Kazem <imran.kazem@gmail.com>, Kathy Sanchez <kathysanchez71@gmail.com>, D Sanchez <davidsanchez1229@gmail.com>

Hello Team,

I would like to discuss with you the receipt that Kathy provided when she paid Agricann \$9,000 last Friday.

I have copied the receipt in it's entirety below. My comments are in red, and the original items from the receipt are in black.

Dave

Of the \$25,993: (I am not sure what this number represents. I was under the impression NRPC was paying for the NRPC transfers of product. According to the numbers we have all received from Shadi (spreadsheets & emails), this number should be \$50,443. Please clarify.):

\$ (2,250.00) License exp repay **Fine. I have updated the Excel sheet**

\$ (2,035) Nov Balance **Fine. This was already included on the Excel sheet**

I haven't accounted for the \$2500 that Brig took (I included this on the Excel sheet I had created as a Dividend from NRPC against the \$50,443. Since it was technically paid out of the NA account, I have moved it to the NA expenses section as a Dividend paid to Agricann.) or the extra \$817 taken (ie he withdrew 4k for salary but paid out 3183) (I have added this to the Excel sheet as a dividend to Agricann under NA expenses).

Brig also withdrew 2000.00 from operating acct (Is this line item 146 from Shadi's "Sales and Account Recon 5-30-15"? If so, this was not a Dividend or monies received on Agricann's behalf. It went towards the Chase balance NA owed the Burtons for operating expenses. It cannot be deducted from the amount due to Agricann (please see the remarks in my 5/31 email,

specifically the Blue and Green comments about half way through the email, which accounts for the \$2000)).

25,993.00 (Once again, please clarify what this number represents)

-2,250.00 (Got it)

-2,035.00 (Got it)

-2,000.00 (Needs to be removed)

- 817.00 (Needs to be adjusted to a NA expense)

\$18,891.00

Dave's Expenses:

Trimmer Pay 2,120.00 (The agreed upon price for product transferred to NRPC is \$1,000/lb. This price assumes the deduction of half of the NA operating expenses (including Trimmer pay). In the event that there is a shortage in NA funds, Agricann and NRPC are each responsible for half of the expense. Therefore, half of the Trimmer Pay had already been accounted for on line 23 of my Excel sheet.)

Rent 6,130.00 (Same argument as above. Half of the rent had already been accounted for on line 56 of my Excel sheet.)

Ruthie's Pay 1,200.00 (This was already included as a NA expense on my Excel sheet with line item 14. However, since Brig is still in possession of the funds, I will add this as a dividend to Agricann under the NA expenses, since it came out of the NA account.)

9,450.00

Balance Due Agricann 9,441.00 (Until we are in agreement on the amount NRPC owes Agricann, we do not know the balance due according to all the numbers above).

Previously I had been including the \$8,000 and \$7,800 Dividends as received from NRPC. Shadi clarified that those payments were made from the NA account and not NRPC, and should be included as a NA expense. To keep in line with this detail, I have included the \$2500, \$817, and \$1,200 Dividends as NA expenses. However, these amounts are not conducive to our agreement to split the Net Profits. These Dividends total \$20,317.

I propose that Agricann credits NRPC for the \$20,317 in Dividends, and that NRPC then reimburses NA for the Dividends paid to Agricann on NRPC's behalf.

I am attaching "Carly's Reconciliation 5-31-15" outlining the new expenses and balances taking this proposition into suggestion. I have NOT included the \$9,000 Dividend paid last week, as I am trying to just reconcile everything through 5/31. I will include it on the 6/15 report.

I am also including the Excel sheets Shadi has provided our group with. I believe it is from his most recent report. I have broken it down into 2 reports, one for NA Wholesales, and one for NRPC Transfers.

I have spent a lot of time going through so many emails and spreadsheets, and trying to update everything with as much detail as possible for your review. I would really appreciate it if everyone would look these over, and get back to me. If there is a discrepancy please acknowledge it at this time. We really need to be on the same page on these items.

Thanks!

Carly

--

Carly Rae Burton

Sales	Date	Vendor	Strain	Pounds	\$ Amount	
	11/24/2014	Natural Remedy	LA Conf.	0.5	\$500	
			GSC	0.5	\$500	
			Dog Biscuit	0.5	\$500	
			Kosher Kush	0.5	\$500	
			Bubblegum	0.5	\$500	
			Thin Mint	0.5	\$500	
			White Widow	0.25	\$250	
			Plush Berry	0.25	\$250	
			SALE TOTAL:		\$3,500	3.5
	1/1/2015	Natural Remedy	Wonkas	1.02	\$509.30	
			Purple Kush	1.15	\$577.50	
			Kosher Kush	1.36	\$681.45	
			Armed Girl Scout	0.74	\$371.80	
			Natural Scout	1.14	\$572.00	
			Bunker Buster	0.87	\$438.90	
			King TUT	2	\$996.60	
			Bubblegum	1.69	\$843.70	
			Banana Kush	1.23	\$615.45	
			Girl Scout Cookie	2	\$996.60	
			Blue Cheese	1.3	\$653.40	
			ACDC	0.82	\$410.30	
			Jack Herer	2.89	\$1,442.65	
			Sale Total:		\$9,109.65	18.21
	1/18/2014	Natural Remedy	Bubblegum	130.700	\$287.54	
			Super Widow	131.600	\$289.52	
			Royal Haze	120.000	\$264.00	
			ACDC	108.500	\$238.70	
			Bubbalicious	79.000	\$173.80	
			Dog Biscuit	129.000	\$283.80	
			Jedi Kush	41	\$90.20	
			Bunker Buster	14	\$30.80	
			Kosher Kush	200	\$440.00	
			Medi Bud	178	\$391.60	
			Girl Scout Cookies	82	\$180.40	
			Super Skunk	42.5	\$93.50	
			Sale Total:		\$2,763.86	2.770
	1/31/2015	Natural Remedy	LSD	56	\$123.20	
			Jamaican Lion	30.5	\$67.10	
			White Widow	95	\$209.00	
			Space Helmet	244	\$536.80	
			Plush Berry	151	\$332.20	
			Royal Haze	70	\$154.00	
			King Tut	63	\$138.60	
			Mama Mia	172	\$378.40	
			Banana Kush	90	\$198.00	
			Kosher Kush	41	\$90.20	
			Jack Hereer	155	\$341.00	
			Darkside Kush	50	\$110.00	
			ACDC	15	\$33.00	
			GSC	15.8	\$34.76	
			Bunker Buster	45	\$99.00	
			Purple Kush	70	\$154.00	
			Medi Bud	178	\$391.60	
			Sale Total		\$3,390.86	3.4
	2/9/2015	Natural Remedy	Thin Mint	320	\$704.00	
			Bubalicious	222.5	\$489.50	
			LA Conf.	163	\$358.60	
			818 OG	160	\$352.00	
			Mama Mia	280	\$616.00	
			Holy Grail	129	\$283.80	
			Blue Cheese	112	\$246.40	
			Bubblegum	56	\$123.20	
			Sale Total		\$3,173.50	3.18

2/27/2015	Natural Remedy	White Widow	301	\$662.20	4.8
		Albino Skunk	452.8	\$996.16	
		Trainwreck	156.1	\$343.42	
		Flower Bomb Kush	102	\$224.40	
		Super Widow	111.5	\$245.30	
		Bubbalicious	354	\$778.80	
		King Tut OG	75.8	\$166.76	
		Royal Haze	324.5	\$713.90	
		Medi Bud	108.2	\$238.04	
		Darkside Kush	20.1	\$44.22	
		Grape Ape	36.4	\$80.08	
		Armed Cookies	34	\$74.80	
		Purple Kush	34.6	\$76.12	
		JamaicanLion	15	\$33.00	
		Blue Cheese	23.6	\$51.92	
		King Tut OG	28	\$61.60	
		Sale Total:		\$4,790.72	
3/18/2015	Natural Remedy	Trainwreck	224.8	\$494.56	2.97
		White Widow	224.7	\$494.34	
		LSD	65.3	\$143.66	
		Armed Cookies	75.2	\$165.44	
		Bubbalicious	80	\$176.00	
		Banana Kush	206.6	\$454.52	
		Albino Skunk	470.9	\$1,035.98	
		Sale Total:		\$2,964.50	
4/5/2015	Natural Remedy	Jamaican Lime	451.6		7.42
		818 OG	394.4		
		Blue Frost	433.1		
		Thin Mint	295.8		
		Super Skunk	312		
		Omrita	378.6		
		Jack Herer	221.9		
		Trainwreck	237.5		
		Green Crack	205.4		
		Girl Scout Cookies	173		
		Medibud	110.3		
		Purple Kush	84.7		
		Kosher Kush	68		
		Sale Total:		\$7,420.00	
4/4/2015	Natural Remedy	Trainwreck	269.5		6.43
		Omarita	384.1		
		Girl Scout Cookies	176		
		Thin Mint	344.2		
		Medi-Bud	110.5		
		Kosher Kush	68.2		
		Purple Kush	94		
		Super Skunk	334.4		
		Green Crack	251		
		Jamaican Lion	453.6		
		818 OG	431.2		
		Sale Total		\$ 6,430.00	
5/7/2015	Natural Remedy	Super Widow	55.5		3.7
		Green Crack	83.5		
		Plush Berry	112		
		Wild Zombie	116		
		LSD	53.8		
		Mama Mia	28		
		Albino Skunk	252.5		
		Wonkas Bubblicious	74.9		
		Bubblegum	64.1		
		White Widow	141.8		
		Albino Skunk	437		
		AK-47	161.2		
		Mama Mia	33.8		
		Super Skunk	66		
		Sale Total		\$ 3,700.00	

5/23/2015	Natural Remedy	Diesel	363		
		Blue Dream	142.5		
		Jedi Kush	187.2		
		Dinachem	349.7		
		Royal Haze	117		
		Albino Skunk	142.7		
		Early Miss	48		
		Armed Girl Scout	32		
		Kosher Kush	424.1		
		Space Helmet	278.8		
		Mama Mia	58.3		
		Bubba Funk	103.8		
		Plush Berry	233.4		
		Super Widow	162.2		
			2642.7		
		Sale Total		\$ 5,830.00	5.83
Unknown Date	Natural Remedy	Unknown	Unknown	\$6,480	7.21

			LBS
NATURAL REMEDY ONLY	\$50,443.44		44.000
GRAND TOTALS	\$50,443.44		44.00

*** Please note that the grand totals do not account for the 18.21 lbs of moldy meds destroyed***

Sales	Date	Vendor	Strain	Pounds	\$ Amount	
	11/20/2014	Urban GH	LA Conf	0.5	\$1,500	
			GSC	0.5	\$1,500	
			Plush Berry	0.5	\$1,500	
			Purple Kush	0.5	\$1,500	
			GSC SEEDED	1.8	\$2,700	
			SALE TOTAL:		\$8,700	3.8
	12/2/2014	Natures AZ	Dog Biscuit	3	\$8,400	
			GSC	3	\$8,400	
			Banana Kush	1.5	\$4,200	
			Bubblegum	1.5	\$4,200	
			SALE TOTAL:		\$25,200	9
	12/3/2014	Urban GH	818 OG	1	\$2,800	
			Super Skunk	0.5	\$1,400	
			ACDC	0.5	\$1,400	
			GSC SEEDED	1.75	\$3,500	
			Plush Berry	0.27	\$1,025	
			SALE TOTAL:		\$10,125	4.02
	12/3/2014	Mohave Green	AGS	0.25	\$750	
			Bunker Buster	0.25	\$750	
			Super Skunk	0.25	\$750	
			Kosher Kush	0.25	\$750	
			SALE TOTAL:		\$3,000	1
	12/5/2014	Urban GH	Super Skunk	1	\$2,800	
			Bubalicious	1	\$2,800	
			AGS	1	\$2,800	
			Bunker Buster	1.5	\$4,200	
			Kosher Kush	0.5	\$1,400	
			GSC SEEDED	2	\$4,000	
			SALE TOTAL:		\$18,000	7
	12/15/2014	atures AZ Medicir	Dog Biscuit	1.940	\$5,600	
			GSC	1.940	\$5,600	
			Discount		\$500 (For Seeded)	
			Sale Total:		\$10,700	3.880
	12/16/2014	Urban GH	AGS	0.5	\$1,400	
			Super Skink	1	\$2,800	
			Bunker Buster	1	\$2,800	
			Banana Kush	0.5	\$1,400	
			Mama Mia	0.5	\$1,400	
			Jamaican Lime	0.25	\$700	
			White Widow	0.25	\$700	
			Purple Kush	1	\$2,800	
			818 OG	0.5	\$1,400	
			Jack Herer	0.5	\$1,400	
			Sale Total:		\$16,800	6
	12/24/2014	Urban GH	PK Seeded	0.50	\$1,000	
			JH Seeded	0.50	\$1,000	
			BB Seeded	0.50	\$1,000	
			BK Seeded	0.50	\$1,000	
			Sale Total:		\$4,000	2.00
	1/3/2014	Urban GH	Armed Girl Scout	0.745	2,099.10	
			Bunker Buster	1.034	\$2,898.78	
			Kosher Kush	1.391	\$3,900.06	
			Purple Kush	0.833	\$2,336.33	
			Holy Grail	0.293	\$822.04	
			Banana Kush	0.229	\$642.80	

			Cash Deposit for next Order	\$3,000.00	
			TOTAL PAID	\$16,882.00	
			Will be put towards next Sale	(\$3,000.00)	
			Sale Total:	\$13,882.00	4.526
1/13/2015	Urban GH	Girl Scout Cookie	1	\$2,800.00	
		ACDC	1	\$1,509.00	
		Bunker Buster	1	\$2,800.00	
		Cash Deposit Used		(\$3,000.00)	
		Sale Total:		\$4,109.00	3
1/14/2015	Health for Life	Kosher Ksuh	1	\$3,000.00	
		Kosher Kush	1	\$3,000.00	
		Sale Total:		\$6,000.00	2
1/27/2015	Urban GH	Plush Berry	454	\$2,800.00	
		818 OG	454	\$2,800.00	
		Jack Herer	227	\$1,400.00	
		White Widow	227	\$1,400.00	
		Cash Deposit for next Order		\$3,000.00	
		TOTAL PAID		\$11,400.00	
		Will be put towards next Sale		(\$3,000.00)	
		Sale Total:		\$8,400.00	3
1/29/2015	Urban GH	LSD	238.5	\$1,400.00	
		Bubblegum	317.5	\$2,100.00	
		White Widow	227.5	\$1,400.00	
		Kosher Kush	227.5	\$1,400.00	
		Royal Haze	123	\$700.00	
		Purple Kush	151.5	\$700.00	
		Girl Scout Cookie	103	\$700.00	
		818 OG	105	\$700.00	
		Darkside Kush	114	\$700.00	
		Dog Biscuit	114	\$700.00	
		Kosher Kush	114	\$700.00	
		Sale Total		\$11,200.00	
		Cash Deposit Used		(\$3,000.00)	
		Total Paid		\$8,200.00	4.05
1/29/2015	Health for Life	Plush Berry	454	\$2,900.00	
		Jamaican Lion	227	\$1,400.00	
		King Tut	227	\$1,400.00	
		Sale Total		\$5,700.00	2

2/12/2015	Natures AZ	Blue Cheese	1339.3	\$8,260	10
		LA Conf	894.38	\$5,516	
		Super Skunk	681	\$4,200	
		Mama Mia	208.84	\$1,288	
		King Tut OG	454	\$2,800	
		Dog Biscuit	227	\$1,400	
		Kosher Kush	227	\$1,400	
		Armed Cookies	508.48	\$3,136	
		Discount		(\$1,000)	
		Sale Total:		\$27,000	
2/19/2015	Valley Healing	Jamaican Lion	227	\$1,400	2
		Wild Zombie	227	\$1,400	
		Albino Skunk	113.5	\$700	
		Purple Kush	113.5	\$700	
		Super Skunk	113.5	\$700	
		Darkside Kush	113.5	\$700	
		Sale Total:		\$5,600	
2/24/2015	Natures AZ	Kosher Kush	1287.3	\$7,941.46	7.04
		Bubblegum	244	\$1,505.48	
		Girl Scout Cookie	266.6	\$1,644.92	
		Super Skunk	501	\$3,091.17	
		Dog Biscuit	451	\$2,782.67	
		Armed Cookies	145	\$894.65	
		Purple Kush	173	\$1,067.41	
		Jedi Kush	127.4	\$786.05	
		Discount		(\$500)	
		Sale Total:		\$19,213.81	
2/24/2015	High Mountain	OmRita	99.88	\$665.56	2.76
		Blue Cheese	730.94	\$4,815.37	
			422.22	\$2,796.92	
		Sale Total:		\$8,277.85	
3/30/2015	Natures AZ	Dog Biscuit	288	\$1,776.21	23.1
		Green Crack	202.9	\$1,251.37	
		Super Skunk	84.1	\$518.68	
		818 OG	1352.1	\$8,338.94	
		Bubblegum	750.3	\$4,627.40	
		Jamaican Lion	1365.7	\$8,422.82	
		Plush Berry	616.9	\$3,804.67	
		King Tut OG	418.9	\$2,583.52	
		Blue Cheese	449	\$2,769.16	
		LSD	414.4	\$2,555.77	
		Kosher Kush	289.1	\$1,783.00	
		Space Helmet	464.1	\$2,862.29	
		Super Widow	90.2	\$556.30	
		Girl Scout Cookies	247.4	\$1,525.81	
		Holy Grail	113.2	\$698.15	
		Jedi Kush	203	\$1,251.98	
		Fire OG	235.9	\$1,454.89	
		Royal Haze	219.3	\$1,352.51	
		AK 47	199.5	\$1,230.40	
		Medi Bud	621.4	\$3,832.42	
		Bubbalicious	123.8	\$763.52	
		Armed Cookies	337.9	\$2,083.96	
		Grape Ape	539.8	\$3,329.18	
		Purple Kush	357.1	\$2,202.38	
		Kosher Kush	504.4	\$3,110.84	
		Discount		-\$1,400.00	
		Sale Total:		\$63,286.17	
4/3/2015	Health for Life	818 OG	454	\$3,000.00	2
		Thin Mint	454	\$3,000.00	
		Sale Total		\$6,000.00	
4/9/2015	Natures AZ	Jedi Kush	200	\$ 1,211.45	

		Jamaican Lion	1504.8	\$	9,119.08	
		Green Crack	453.6	\$	2,747.58	
		Diesel	1255.2	\$	7,603.08	
		GDP	1366.7	\$	8,278.47	
		818 OG	159	\$	963.11	
		Sale Total		\$	29,922.77	12.94
4/10/2015	Health For Life	Plush Berry	454	\$	3,002.65	
		Wonkas Bub	247.2	\$	1,634.92	
		L.A. Confidential	208.6	\$	1,379.63	
		Sale Total		\$	6,000.00	2
4/13/2015	Health For Life	Albino Skunk	454	\$	3,000.00	
		Mama Mia	227	\$	1,500.00	
		Blue Cheese	227	\$	1,500.00	
		Holy Grail	227	\$	1,500.00	
		Kosher Kush	227	\$	1,500.00	
		818 OG	227	\$	1,500.00	
		Space Helmet	227	\$	1,500.00	
		Sale Total		\$	12,000.00	4
5/19/2015	Health For Life	Blue Dream	454			
		Kosher Kush	464			
		Mama Mia	226			
		NY99	216.9			
		Sale Total		\$	9,000.00	3

SUBTOTAL	\$332,116.60	LBS
GRAND TOTALS	\$332,116.60	0.00

Item	Amount
Total Wholesale Sales 5/31/15	\$332,117
Other Income	
NRPC reimbursement of Dividends to Agricann	\$20,317
NRPC contribution	\$4,125
Agricann contribution (deducted from Dividend)	\$4,125
Total Income as of 5/31/15	\$360,684
Expenses as of 5/31/15	
C3-23	\$23,519
D43-53	\$20,044
D61-78	\$11,572
D107-124	\$27,140
D140-146	\$3,009
D154-163	\$8,500
D164-165	\$6,830
D167-168	\$6,830
D175-179	\$10,287
D197-219	\$17,510
D223-344	\$119,934
D364-373	\$60,692
Dividend	\$8,000
Dividend	\$7,800
Dividend	\$2,500
Dividend	\$817
Dividend	\$1,200
Back Rent	\$9,058
January Rent	\$6,130
February Rent	\$6,130
Trimmer Pay	\$2,120
June Rent	\$6,130
Pending Expenses	
6/5 Payroll (Shadi)	\$6,500
Amex (WF)	\$141
Water (WF)	\$171
Total Expenses	\$372,564
Natural Agriculture Net	(\$11,880)
NRPC Sales as of 5/31/15	
24-Nov	\$3,500
1-Jan	
18-Jan	\$2,763.86

31-Jan	\$3,390.86
9-Feb	\$3,173.50
27-Feb	\$4,790.72
18-Mar	\$2,964.50
4-Apr	\$6,430.00
5-Apr	\$7,420.00
7-May	\$3,700.00
23-May	\$5,830.00
7.21 Lbs to NRPC (date unknown)	\$6,480.00
Total NRPC Sales	\$50,443
Deductions	
Initial License Paperwork Match	\$2,250
Initial Contribution Match	\$2,035
Trimmer Pay Match	\$1,060
June Rent Match	\$3,065
NRPC credit to NA for Dividends	\$20,317
Total Deductions	\$28,727.00
Balance due to Agricann for NRPC Sales	\$21,716
Total Due to Agricann from Natural Agriculture	
Total Due to Agricann from NRPC & NA	

Redaction

From: **Brig Burton** <brigburton@gmail.com>
Date: Mon, Dec 15, 2014 at 9:35 PM
Subject: Re: Sales and Account update
To: shadi zaki <shadizaky@gmail.com>
Cc: D Sanchez <davidsanchez1229@gmail.com>, Kathy Sanchez <kathysanchez71@gmail.com>, Imran Kazem <imran.kazem@gmail.com>, Carly Burton <carlykillmeier@gmail.com>

Shadi,

Thank you for preparing this and giving us a breakdown.

I was hoping we could run all our bills and payroll through billpay, which would help us forecast cashflows better, and to have funds deposited into the operating account to cover expenses going forward rather than doing cash payments and receipts (which has made accounting very difficult).

More important to the accounting challenges of making cash disbursements the norm, is that we don't like the idea of anyone sitting on \$60K in un-deposited cash. That's just too risky to run business that way. The more vendors and people we pay with cash, the more we expose ourselves as a cash-rich-target and we set ourselves up for a burglary.

Understood the concern for having too much money in the operating account, and I agree it's a minor concern, but one that's easy to resolve.

As it stands, NRPC is either sitting on un-deposited cash or it has had the funds deposited into a bank account, both of which offer the same, if not greater risks to having ours or NRPC's account shut down (which isn't nearly as big a risk as having cash sitting around un-deposited).

The best way to handle this is to make the **agreed-upon splits** as we agreed to previously: namely, with each sale, have the agreed upon split put into Agricann's bank account (Agricann's WellsFargo; bank account # is [561-420-1357](tel:561-420-1357)), and **NRPC retain the other half**, within 5 days of receipt of any and all sales; (as was agreed to).

To the extent deductions need to be made for our \$2K draw and the \$1K bounced check, that makes perfect sense; feel free to simply deduct that \$3K from the total due.

In talking with David and Kathy earlier today, I believe we're all in agreement, and that nobody has a problem plowing the upcoming operating expenses back into the business like we always have when the business needs to cover its bills via the operating account.

I think we all feel comfortable with each other at this point to know that we're going to do what we say we're going to do, and that we're going to match whatever contributions are made by each other dollar for dollar so we're always within \$5K or so of being "matched up"

For now though, and due to some personal expenses and debts Agricann, Imran and my family owe personally, I would ask that we go ahead and pay Agricann the amounts that are due in full. We'll re-invest and put in whatever we need to to cover our portion of expenses in the coming days, weeks, and months ahead, just like we always have.

On Mon, Dec 15, 2014 at 6:52 PM, shadi zaki <shadizaky@gmail.com> wrote:
All,

Attached is the updated spreadsheet of sales and deposits. This does not include today's sale to Natures Medicine. We also have a 7 lb. sale lined up for tomorrow at 11 am to Urban.

We can discuss further at the planned meeting this week. Alternatively, feel free to email/call me.

The NET number is what still needs to be deposited into the Nat AG account. Remember, this NET number does not include today's sale.

Now, upcoming expenses:

Payroll

AC motor was replaced, we still need to pay (\$1200)

Need a wood chipper (est cost \$200)

Phx Hydro bal of approx 3k (going to pay \$2k)

Electricity approx \$9k

Backpay (alan – 1728, matt – TBD, shadi – TBD)

Once the aforementioned is all figured out and we set aside some funds for taxes and one month operating expenses, we can then take distributions. I'm waiting on Ruthie to provide what today's sale was so I can give you guys the complete picture.

Shadi

PS Don't forget you guys need to reimburse half of the upfront license expenses (\$2250) in addition to the remainder of the Nov contribution (\$2k)

--

Regards,

Brig Burton

- www.linkedin.com/in/brigburton/

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Office: [480-359-6983](tel:480-359-6983)

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Fax: [1-815-550-2437](tel:1-815-550-2437)

Conference: [712-432-0800](tel:712-432-0800)

Code 10233224#

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\$	(8,000)	Payment made to Brig
\$	(7,800)	Payment made to Brig
\$	(2,500)	Payment made to Brig
\$	(2,000)	Payment made to Brig
\$	(3,000)	Payment made to Brig
\$	(3,000)	Payment made to Brig
\$	(9,000)	Payment made to Brig
\$	(2,017)	Brig has (see notes previous sheet)
\$	(3,000)	Payment made to Brig
\$	(3,000)	Payment made to Brig
\$	(3,000)	Payment made to Brig
\$	(3,000)	Payment made to Brig
\$	(20,000)	Payment made to Brig
\$	(4,000)	Payment made to Brig - ruthie deposited
\$	(1,800)	Payment made to Brig - ruthie deposited
\$	(4,000)	Payment made to Brig - ruthie deposited
\$	(10,000)	Payment made to Brig - dave did - I did not deduct from net deposits
\$	(3,400)	Payment made to Brig
\$	(16,600)	Payment made to Brig - dave did - I did not deduct from net deposits
\$	(15,000)	Payment made to Brig - dave did - I did not deduct from net deposits

TOTAL PAID TO BRIG \$ (124,117)

From: Brig Burton <brigburton@gmail.com>
Sent: Wednesday, October 21, 2015 6:00 PM
To: D Sanchez <davidsanchez1229@gmail.com>
Cc: Kathy Sanchez <kathysanchez71@gmail.com>; Imran Kazem <imran.kazem@gmail.com>; shadi zaki <shadizaky@gmail.com>; Patrick J. Van Zanen <pvanzanen@schneiderwallace.com>; Jeffrey R. Finley <jfinley@schneiderwallace.com>; Carly Burton <carlykillmeier@gmail.com>
Subject: Re:

Hi Dave,

As promised, the figures we show due and outstanding as per our contract of 80% of gross sales going to Agricann, after accounting for our half of expenses and all draws paid to date, comes to \$280,528.90 without the 1% interest per day that is also contractually due.

Once we apply the agreed-upon 1% per day after the 5-day grace period for each sale, the balance you owe us comes to \$4,956,885.62.

Please see and refer to the spreadsheet showing the balances due here and how these figures were calculated, which is based on the sales reports you've sent us back in August.

If there are any mistakes on the math, feel free to correct me by commenting directly onto the spreadsheet itself or emailing me.

<https://docs.google.com/spreadsheets/d/1aTPa-rm0eUL-rHswNf4b2nah32cXa2yJCepEyNDTZso/edit?usp=sharing>

On Wed, Oct 21, 2015 at 5:17 PM, Brig Burton <brigburton@gmail.com> wrote:
Hi Dave,

It's my understanding that you just had a conversation with one of our attorneys, Jeff Finley.

According to him, you've alleged that you and NRPC don't owe us anything, because of taxes.

Per our contract, Agricann never agreed to pay taxes - those are to be borne by the retail dispensary. Our contract stipulated that we were to split 50/50 all expenses directly associated ONLY with the grow/wholesale operation only.

Furthermore, I've been mistaken in my calculations of what is due all this time.

Per our contract, Agricann was to receive 80% of all gross sales within 5 days of sale, NOT 50%. Only expenses tied directly to the grow operation (and personnel approved by Agricann) were to be split 50/50.

Accordingly, I will update the spreadsheet to accurately reflect what is actually due after accounting for the accrued interest and let you know what the actual figure of what you and NRPC owe Agricann is (it's well over \$2.7M assuming no sales since Aug 19th and assuming the mis-calculated 50/50 splits in revenues).

I'm still stumped as to why you haven't sent over the formal agreements that reflected exactly what we agreed to last week. This would **end the need for litigation and procure a fair and equitable settlement for all**. That being said, I had no idea how much was really due to us when we met last week...

We may need to revisit what was originally proposed and agreed to to come up with something more equitable and fair for all, due to these newly recognized facts of what NRPC *actually* owes Agricann.

--
Regards,

From: Brig Burton <brigburton@gmail.com>
Sent: Friday, October 16, 2015 2:32 PM
To: Imran Kazem <imran.kazem@gmail.com>
Cc: Carly Burton <carlykillmeier@gmail.com>
Subject: Re:
Attach: PERSONALGUARANTY.pdf; Promissorynoterevjrf100815.pdf; Purchaseandsettlementagreementrev100815.pdf; NRPCSecurityAgreement.pdf

Imran,

This is the email I was preparing to send to Dave earlier today (feel free to edit if you think the language / approach is too strong):

Dave,

Imran, Carly and myself have been very very patient in trying to work with you, Kathy and Shadi to come up with a reasonable (and agreed-to) settlement that would help you avoid litigation.

I've been promised each day this week that the agreements would be signed and returned, but have yet to receive them.

It's becoming more apparent that you may not intend to honor any of our agreements, including our agreement to settle this without litigation.

If we're unable to get these formal agreements signed as we agreed to earlier this week by the end of day Monday, then the full balance of what is due as of today (not counting any sales since Aug 19th, and not sparing the full interest that is due of 1% per day) of \$2,641,841.25 will be handed over to our attorney's for collection.

On Thu, Oct 15, 2015 at 10:38 AM, Brig Burton <brigburton@gmail.com> wrote:

Dave,

This is where we're at:

We were assured, again yesterday that the formal documents would be signed and returned by end of the day yesterday. This did not happen.

We were also assured that we would be able to meet up and receive a partial payment on 2 separate occasions this week (including yesterday and this morning at 9am). This did not happen.

Dave, I've texted you 2x this morning without a reply in the hopes that we could meet up as we had agreed upon this morning. You again pulled a no-show, no call/text. I'm disappointed, but not surprised, as this seems to be the re-occurring pattern.

At this point, I'm not sure how we could trust going forward that we'll be paid on time. So many promises have and continue to be made, and then the promises are immediately broken. We simply cannot do business this way. We would need a personal guarantee and to be on the board of the non-profit in order to know that our interests are fully secured in the buyout. Both the PG and the board seats will be relinquished once we're paid off in full according to our agreement.

Dave -

I will be in a meeting at the Wildhorse pass casino off of I-10 in the front lobby between 11am-12:30pm today if you'd like to meet up to drop off the signed agreements and the payment we discussed and you agreed to pay me yesterday.

Please advise.

On Wed, Oct 14, 2015 at 1:24 PM, Brig Burton <brigburton@gmail.com> wrote:

Hi Dave,

Thank you for touching base earlier.

To confirm the contents of our conversation and what we agreed to:

a. All formal agreements will be executed by you and Kathy and entered into by today (except the personal guarantee agmt).

b. We will adjust the \$75K downpayment to reflect that \$10K will be paid later today, and that the balance of what is owed to Agricann up to the date the payment is made (not counting accrued interest) will be paid once we have a more firm number from the CPA, no later than the middle of next month. In the meantime, the \$20K/month will begun to be paid on the 15th of each month, starting in November 15th, as agreed upon.

Let's plan on meeting at 3:30 at the (near Baseline and McQueen/Mesa):

Genos Pizza and Cheesesteaks

734 N McQueen Rd #103, Gilbert, AZ 85233

On Wed, Oct 14, 2015 at 12:41 PM, Brig Burton <brigburton@gmail.com> wrote:

Hi Dave and Shadi,

Left another message for Dave earlier this morning.

Per our conversation 2 days ago, we were to have the agreements signed and returned yesterday...

We've not yet received the executed formal agreements.

Please advise.

PS: If the personal guarantee is still an item of concern, one solution would be to put Imran and myself on the board until the note is paid off in full.

On Mon, Oct 12, 2015 at 2:57 PM, Brig Burton <brigburton@gmail.com> wrote:

Hi Dave and Shadi,

4pm works.

We'll plan accordingly. Talk then.

On Mon, Oct 12, 2015 at 1:25 PM, D Sanchez <davidsanchez1229@gmail.com> wrote:

I can do a 4 o'clock just had our attorney review the agreement I'll be getting feedback from him shortly

On Oct 12, 2015, at 9:43 AM, Brig Burton <brigburton@gmail.com> wrote:

Hi Dave, Kathy, Shadi, and Imran:

Let's plan on using the below conference # to call in at 3pm to discuss and finalize any points that need to be clarified in the buyout agreement for 26th ave.

Please confirm that you will be on the call at 3pm.

Conference: [712-432-0800](tel:712-432-0800)

Code 10233224#

--

Regards,

Brig Burton

www.linkedin.com/in/brigburton/

Cell: [480-862-4974](tel:480-862-4974)

Office: [480-359-6983](tel:480-359-6983)

www.363peg.com

brigburton@363peg.com

Fax: [1-815-550-2437](tel:1-815-550-2437)

Conference: [712-432-0800](tel:712-432-0800)

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Our firm is currently seeking investment opportunities in privately held Companies in or near Arizona with the following criteria:

Annual revenues of \$3 MM+, EBITDA of \$600K+, within the following target industries:

Manufacturing, Distribution/Wholesale, B2B Services, Niche Construction, Consumer Goods, Healthcare, Education & Training, Logistics/Transportation, and Software.

We pay the greater of \$10,000 or 1% of the total purchase price as a referral fee or to the referring agent upon the successful purchase of businesses meeting our criteria.

If you're an accredited investor and would be interested in learning more about how to put your money to work in quality privately-held Companies in or near Arizona, please contact us.

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Regards,

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Regards,
Brig Burton

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PERSONAL GUARANTEE

We, David Sanchez (aka Thomas Sanchez) and Kathy Sanchez, husband and wife, ("Guarantors"), do hereby personally, jointly and severally, unconditionally, absolutely and irrevocably guarantee the payment and performance of all obligations owed by Natural Remedy Patient Center, LLC ("NRPC") to Agricann, LLC ("Agricann") pursuant to the Purchase and Settlement Agreement and Release and Promissory Note (collectively referred to as the "Agreement") by and between NRPC and Agricann (a copy of Agreement attached hereto as Exhibit "A"), pursuant to the terms set forth below.

1. In the event that NRPC fails to timely make any payment to Agricann, or fails to perform in any manner with regard to said Agreement between NRPC and Agricann, the Guarantors do hereby promise to perform and make all payments to Agricann in the same manner as if they were the principals of the Agreement.

2. Guarantors agree that Agricann may seek recourse against Guarantors without first executing on any collateral given to secure any of the obligations of NRPC or to enforce any rights under any other security held by Agricann.

3. The liability of the Guarantors is direct, immediate, absolute, continuing, unconditional, and unlimited. This is a guaranty of payment and performance and not a guaranty of collection. The Guarantors agree that Agricann may proceed against NRPC (the performance of which is assured by this Guaranty), separately or collectively, without prejudicing or waiving any of Agricann's rights under any other obligations or under this Guaranty.

4. This Guaranty is binding upon the Guarantors and their successors and assigns and shall inure to the benefit of Agricann and its successors and assigns. However, Guarantors may not assign this Guaranty. This is a continuing guarantee and notice of its acceptance is waived.

5. This Guaranty shall remain in full force and effect, and the Guarantors fully responsible, without regard to any security deposit, other collateral, or guaranty, for the performance of the terms and conditions of the above Agreement, or the receipts, disposition, application, or release of any other collateral or guaranty, now or hereafter held by or for Agricann.

6. And furthermore, the Guarantors do hereby authorize and empower any attorney of any court of record of the state of Arizona or elsewhere to appear for and to enter judgment against us, or any of us, in favor of Agricann for any sums due under the Agreement plus interest with costs of suit, release of errors, without stay of execution, and with attorneys' fees.

7. Further, Guarantors hereby waive demand and notice and waive and release all benefit and relief from any and all appraisal, stay or exemption laws of any state now in force or hereafter to be passed.

8. Guarantors agree that any disputes hereunder shall be decided according to Arizona law, and that should any part of this Guaranty be deemed invalid, the remainder of the Guaranty shall remain valid and enforceable.

9. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure here from will be effective unless made in a writing signed by the Guarantors and Agricann, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

AGREED TO AND ACCEPTED as of the last date set forth below.

David Sanchez

Date

Kathy Sanchez

Date

EXHIBIT

A

PROMISSORY NOTE

Date: October ____, 2015

Maricopa County, Arizona

MAKERS: Natural Remedy Patient Center, LLC

PAYEE: Agricann, LLC

Principal Amount: \$1,120,000.00

Interest Rate: 0 % annual

Amount of Monthly Payments:
\$20,000.00 starting November 15, 2015

Date of Monthly Payment
Fifteenth day of each month

Balloon Payment of \$400,000.00 due on November 15, 2018

CONSIDERATION: For value received the Makers jointly and severally promise to pay to the order of Payee the principal amount at the rate of interest and according to the terms stated herein.

MONTHLY PAYMENTS: Principal shall be payable in lawful money of the United States. Payment shall be made at Agricann, LLC, P.O. Box 11031, Chandler, AZ 85248, on or before the due date. Any interest due shall be deducted before applying any payment to interest. Checks shall be made payable to Agricann, LLC.

INTEREST: There shall be no interest charged except as stated elsewhere hereinbelow.

PREPAYMENT: Payment in advance may be made in any amounts. There shall be no prepayment penalty assessed against Makers.

NON-PAYMENT: Should any payment of principal and any interest due hereunder not be paid as it matures, the amount of such installment which has matured shall, at the option of the holder of this note, bear interest at the rate of thirty percent (30%) per annum, until paid.

ACCELERATION: Should default be made in payment of any installment when

Promissory Note: p. 1 of 2

due, Payee shall provide a written notice of delinquency to Maker at Maker's address by hand delivery or certified mail, return receipt requested to cure such default. If Maker fails to cure the default within ten (10) days after deposit of such written notice in the U.S. Mail by Payee, or delivery by Payee, then the total sum remaining unpaid hereunder shall become immediately due and payable at the option of the Payee or holder of this note and bear interest at the rate of thirty percent (30%) per annum.

BALLOON PAYMENT: The balloon payment, as described above, is due on November 15, 2018. However, in the event that Natural Remedy Patient Center, LLC is sold or any interest therein is sold, then in such event the balloon payment of \$400,000.00 shall be payable immediately. All other amounts that are due hereunder shall continue to remain due in accordance with the other provisions of this promissory note.

WAIVERS: Makers, sureties, endorsers, guarantors hereof severally waive demand for payment, notice of non-payment, protest and notice of protest of this note and consent to extensions of time of payment without notice. The construction, validity and effect hereof shall be governed by the laws of the State of Arizona, and the Maker consents that suit or other collection proceedings to enforce this note may be brought against him by the Payee or holder of this note in the courts of Maricopa County, Arizona.

ATTORNEYS' FEES: In the event of litigation arising under this Promissory Note, the successful party shall be entitled to recover attorneys' fees and costs.

COLLATERAL SECURITY: This Note is secured by certain assets as described in that Asset Purchase Agreement dated even date herewith, and the UCC1 Financing Statements also executed this same date, all of which are incorporated herein by reference.

MAKER:

By _____

Promissory Note: p. 2 of 2

Center, LLC

Natural Remedy Patient

SUBSCRIBED AND SWORN to before me this ____ day of _____,
2015.

Notary Public

My commission expires: _____

Promissory Note: p. 3 of 2

**PURCHASE AND SETTLEMENT AGREEMENT
AND RELEASE**

This Purchase and Settlement Agreement and Release ("Agreement") is entered this ____ day of October, 2015, by and between Natural Remedy Patient Center, LLC ("NRPC"), an Arizona limited liability company, with an address at 1307 East Southern Avenue, Mesa, Arizona 85204, and Agricann, LLC, ("Agricann") an Arizona limited liability company, with an address at 1434 North 26th Avenue, Phoenix, Arizona 85009.

RECITALS

WHEREAS, NRPC holds a State of Arizona, Department of Health Dispensary Certificate No. 00000064DCTS00268592 pursuant to the Arizona Medical Marijuana Act, A.R.S. § 36-2801 *et seq.* (the "License").

WHEREAS, Agricann contracted with NRPC to establish and operate a facility to grow the product for NRPC to be operated as a joint venture between NRPC and Agricann (the "JV Agreement"). The JV Agreement is dated May 27, 2014.

WHEREAS, NRPC is obligated under the JV Agreement to make certain payments to Agricann.

WHEREAS, NRPC is delinquent in making such payments to Agricann.

WHEREAS, NRPC and Agricann desire to resolve the delinquency without litigation,

WHEREAS, NRPC desires to purchase substantial all of the assets of the Agricann grow operation established and operated by Agricann in carrying the terms of the JV Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, NRPC and Agricann agrees as follows:

TERMS

A. THE SUBLEASE

1. Agricann is currently a leaseholder of the premises where the grow operation exists located at 1434 North 26th Avenue, Phoenix, Arizona 85009 (the "Facility"). A copy of the "Lease" is attached as Exhibit "A" hereto.

2. Agricann hereby sublets to NRPC as subtenant the Facility for a term of three years beginning on November 15, 2015 and ending on November 15, 2018 (the "Sublease").

3. NRPC agrees to abide by the terms of the Lease that currently exists between Agricann and 26th Ave, LLC (the "Landlord").

4. NRPC shall have all rights and obligations under the Sublease as if it were the lessee of the Premises under the Lease. Agricann shall retain its rights in the Lease during the term of the Lease and until such time as all payments described herein have been made in full.

5. Agricann shall be provided a key to the Facility at all times, as well as all necessary security codes, and shall have the right to enter the Facility at any time upon its discretion for purposes of verification of NRPC's compliance with the terms of the Lease, and to inspect the premises to verify that the all operations within the Facility comply with the Arizona Department of Health requirements and that the assets described elsewhere herein are being maintained and present in the Facility.

6. NRPC, in addition to any other obligations set forth herein, agrees to make all lease payments as outlined in the Lease directly to the Landlord. In the event that NRPC fails to make such payments, or otherwise causes a breach of the Lease, then and in such an event, it shall be considered to be a breach of this Agreement.

B. SALE OF EQUIPMENT AND IMPROVEMENTS

7. Agricann agrees to sell and NRPC agrees to purchase all equipment and improvements contained within the facility and which are not deemed fixtures or are otherwise the property of the landlord under the Lease. A description of the purchase equipment and fixtures is attached as Exhibit "B" hereto.

8. Agricann shall retain a security interest in all such equipment and improvements as further set forth in the Security Agreement and a UCC-1 financing statement.

C. SETTLEMENT AND RELEASE

9. Agricann and NRPC hereby agree that the JV Agreement is superseded by the terms of this agreement. However, in the event of a breach by NRPC, in addition to any other remedies set forth hereunder, Agricann shall be returned to its position as the Manager of the facility, which shall allow Agricann to make such changes to the property as may be necessary to protect the Facility and the contents, as well as any inventory. Such changes may include

changing of locks and security codes, as well as the termination of individuals that may have been hired to work within the Facility.

10. NRPC hereby acknowledges that it had certain obligations under the JV Agreement that it failed to fulfill, and that **NRPC enters into this Agreement in part to resolve its failure to fulfill those obligations under the JV Agreement.** NRPC agrees that in the event that it breaches this Agreement, that in addition to any and all other remedies contained herein, as well as those remedies contained within the Promissory note, NRPC shall be obligated to pay to Agricann the additional amount of \$1,500,000.00 immediately. Said figure represents the amounts being foregone by Agricann's acceptance of the promises contained herein.

11. Agricann hereby settles and releases NRPC from its obligations, delinquent or otherwise, arising under the JV Agreement, and from any claims that Agricann may have arising from any such obligations, known or unknown, in exchange for NRPC's promises set forth herein.

12. NRPC hereby agrees to pay to Agricann the total sum of \$1,195,000 as follows:

- a. NRPC shall immediately pay to Agricann \$75,000 upon execution of this Agreement;
- b. Upon execution of this Agreement, NRPC shall make a promissory note in favor of Agricann for the balance of \$1,120,000 in accordance with the terms of the promissory note executed as of this same date;
- c. Upon execution of this Agreement, David and Kathy Sanchez shall jointly execute a personal guaranty of the debt hereby incurred by NRPC and memorialized in the promissory note.
- d. NRPC shall contemporaneously herewith execute the Security Agreement and all necessary documents to perfect in Agricann a security interest in all of NRPC's personal property, equipment, investments accounts, bank and financial accounts, accounts receivable and the proceeds of the sale of any inventory (the "Collateral"). Attached as Exhibit "C" hereto.
- e. Upon default as defined in the promissory note, NRPC agrees that Agricann shall have the immediate right to the Collateral and further, is entitled to the immediate appointment of a receiver over the entirety of NRPC's business operations.

13. Furthermore, in the event of any default as defined in the promissory note that exists for more than ten days, NRPC and Agricann agree that Agricann shall have the full right to the License as described above. The License is hereby pledged by NRPC as additional security for the promissory note and NRPC's obligations herein, as well as a guaranty for the performance of this contract. NRPC agrees to take all steps as may be necessary in the event of a breach hereunder to transfer the License to Agricann.

In the event that it is not possible as a matter of law to transfer the license as contemplated herein, then NRPC agrees, as do all of its members, that they transfer all of their interests NRPC to Agricann. Additionally, it is hereby agreed, that in the event of a breach by NRPC, that Agricann shall have the unfettered right to replace each and every member of the Board of Directors with individuals of its selection. Furthermore, to the extent necessary, NRPC and its members hereby agree to provide assistance as required by the Arizona Department of Health Services to effectuate the transfer and the selection of new Board members.

D. GENERAL PROVISIONS

14. The recitals set forth above are incorporated herein and deemed part of this Agreement.

15. Each party represents that it has the authority to enter into this Agreement, and doing so does not violate any provision of any by-laws, operating agreement or any other organizational documents.

16. Each party represents that entering into this Agreement does not violate any order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against, or binding upon, or any agreement with, or condition imposed by, any governmental or regulatory body, foreign or domestic, binding upon the party or upon the assets or business of the party.

17. Each party represents that entering into this Agreement does not result in the breach of any of the terms or conditions of, constitute a default under, or otherwise cause an impairment of, any permit or license held by the party.

18. Each party shall execute all documents necessary to accomplish the purpose of this Agreement.

19. **WAIVER OF JURY TRIAL. EACH OF THE DEBTOR AND THE SECURED PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE DEBTOR AND THE**

SECURED PARTY ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

In this regard, the parties agree that any disputes hereunder shall be submitted to binding arbitration before a three person panel. The panel shall consist of a person chosen by each of the parties hereto, and the third arbitrator shall then be selected by the arbitrators selected by the parties hereto. The arbitration shall be conducted in Maricopa County, Arizona in accordance with the rules of procedure for arbitration as set forth by the Arizona Rules of Civil Procedure.

20. The parties agree that any disputes hereunder shall be decided according to Arizona law.

21. The parties agree that should any part of this Agreement be deemed invalid, the remainder of the Agreement shall remain valid and enforceable.

22. This Agreement is binding upon the parties' successors and assigns.

23. No modification, amendment or waiver of any provision of this Agreement nor consent to any departure here from will be effective unless made in a writing signed by both parties, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

24. This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

25. This Agreement is effective as of the date below.

26. Additionally, NRPC agrees to re-hire Alan McCarter to resume work at the Facility. The re-hire of Mr. McCarter shall be upon terms agreed upon between NRPC and McCarter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date above and set forth below.

AGREED TO:

NATURAL REMEDY PATIENT CENTER, LLC

By:

Date

Its:

FARANSIS GOPRIL

Personally and as a Manager/Member of Natural Remedy Pain Center, LLC

THOMAS D. SANCHEZ AKA DAVID SANCHEZ

Personally and as a Manager/Member of Natural Remedy Pain Center, LLC

KATHY SANCHEZ

Personally and as a Manager/Member of Natural Remedy Pain Center, LLC

CANDICE MORALES

Personally and as a Manager/Member of Natural Remedy Pain Center, LLC

AGRICANN, LLC

By:

Date

Its:

EXHIBIT

A

EXHIBIT

B

EXHIBIT

C

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "**Agreement**"), dated as of this 12th day of October, 2015, is made by and between Natural Remedy Patient Center, LLC, an Arizona limited liability company (the "**Debtor**"), with an address at 1307 East Southern Avenue, Mesa, Arizona 85204, and Agricann, LLC, an Arizona limited liability company (the "**Secured Party**"), with an address at 1434 North 26th Avenue, Phoenix, Arizona 85009.

Under the terms hereof, the Secured Party desires to obtain and the Debtor desires to grant the Secured Party security for all of the Obligations (as hereinafter defined).

NOW, THEREFORE, the Debtor and the Secured Party, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) "**Collateral**" shall include the Debtor's tangible personal property, fixtures, leasehold improvements, trade fixtures, equipment and other personal property described on Exhibit "A" attached hereto and made a part hereof (the "**Personal Property**"); all general intangibles relating to or arising from the Personal Property, all cash and non-cash proceeds (including insurance proceeds and accounts receivable) of the Personal Property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof.

(b) "**Loan Documents**" means the Note (as hereafter defined), this Agreement, the Purchase and Settlement Agreement, Personal Guarantees and all other documents and instruments evidencing, securing or executed in connection therewith.

(c) "**Note**" means that certain Promissory Note, dated as of the date hereof, made by Debtor, for the benefit of Secured Party, in the original principal amount of \$1,120,000.

(d) "**Obligations**" shall include all debts, liabilities, obligations, covenants and duties owing from the Debtor to the Secured Party of any kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Debtor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), whether evidenced by or arising under the Note or this Agreement or, whether absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, and all costs and expenses of the Secured Party incurred in the enforcement, collection or otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses.

(e) "**UCC**" means the Uniform Commercial Code, as adopted and enacted and as in effect from time to time in the State of Arizona. Terms used herein which are defined in the

UCC and not otherwise defined herein shall have the respective meanings ascribed to such terms in the UCC.

2. **Grant of Security Interest.** To secure the Obligations, the Debtor, as debtor, hereby assigns and grants to the Secured Party, as secured party, a continuing lien on and security interest in the Collateral.

3. **Change in Name or Locations.** The Debtor hereby agrees that if the location of the Collateral changes from the locations listed on Exhibit "A" hereto and made part hereof, or if the Debtor changes its name or form or jurisdiction of organization, or establishes a name in which it may do business, the Debtor will immediately notify the Secured Party in writing of the additions or changes. The Debtor's chief executive office is listed in the Notice section below.

4. **Representations and Warranties.** The Debtor represents, warrants and covenants to the Secured Party that: (a) the Debtor has good, marketable and indefeasible title to the Collateral, has not made any prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral, and the Collateral is free from all encumbrances and rights of setoff of any kind except the lien in favor of the Secured Party created by this Agreement; (b) except as herein provided, the Debtor will not hereafter without the Secured Party's prior written consent sell, pledge, encumber, assign or otherwise dispose of any of the Collateral or permit any right of setoff, lien or security interest to exist thereon except to the Secured Party; and (c) the Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

5. **Debtor's Covenants.** The Debtor covenants that it shall:

(a) from time to time and at all reasonable times allow the Secured Party, by or through any of its officers, agents, attorneys, or accountants, to examine or inspect the Collateral, and obtain valuations and audits of the Collateral, at the Debtor's expense, wherever located. The Debtor shall do, obtain, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as the Secured Party may require to vest in and assure to the Secured Party its rights hereunder and in or to the Collateral, and the proceeds thereof, including waivers from landlords, warehousemen and mortgagees;

(b) keep the Collateral in good order and repair at all times and immediately notify the Secured Party of any event causing a material loss or decline in value of the Collateral, whether or not covered by insurance, and the amount of such loss or depreciation;

(c) only use or permit the Collateral to be used in accordance with all applicable federal, state, county and municipal laws and regulations; and

(d) have and maintain insurance at all times with respect to all Collateral against risks of fire (including so-called extended coverage), theft, sprinkler leakage, and other risks (including risk of flood if any Collateral is maintained at a location in a flood hazard zone) as the Secured Party may reasonably require, in such form, in the minimum amount of the outstanding principal

of the Note and written by such companies as may be reasonably satisfactory to the Secured Party. Each such casualty insurance policy shall contain a standard Lender's Loss Payable Clause issued in favor of the Secured Party under which all losses thereunder shall be paid to the Secured Party as the Secured Party's interest may appear. Such policies shall expressly provide that the requisite insurance cannot be altered or canceled without at least thirty (30) days prior written notice to the Secured Party and shall insure the Secured Party notwithstanding the act or neglect of the Debtor. Upon the Secured Party's demand, the Debtor shall furnish the Secured Party with evidence of insurance as the Secured Party may require. In the event of failure to provide insurance as herein provided, the Secured Party may, at its option, obtain such insurance and the Debtor shall pay to the Secured Party, on demand, the cost thereof. Proceeds of insurance may be applied by the Secured Party to reduce the Obligations or to repair or replace Collateral, all in the Secured Party's sole discretion.

(e) If any of the Collateral is, at any time, in the possession of a bailee, Debtor shall promptly notify Secured Party thereof and, if requested by Secured Party, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to Secured Party, that the bailee holds such Collateral for the benefit of Secured Party and shall act upon the instructions of Secured Party, without the further consent of Debtor.

6. **Negative Pledge; No Transfer.** The Debtor will not sell or offer to sell or otherwise transfer or grant or allow the imposition of a lien or security interest upon the Collateral or use any portion thereof in any manner inconsistent with this Agreement or with the terms and conditions of any policy of insurance thereon.

7. **Further Assurances.** Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Title 47, Chapter 9 Arizona Revised Statutes (Uniform Commercial Code), or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by the Arizona Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including, but not limited to (i) whether Debtor is an organization, the type of organization and (ii) any organization identification number issued to Debtor. Debtor agrees to furnish any such information to Secured Party promptly upon request. Debtor also ratifies its authorization for Secured Party to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

8. **Events of Default.** The Debtor shall, at the Secured Party's option, be in default under this Agreement upon the happening of any of the following events or conditions (each, an "**Event of Default**"): (a) a failure to pay any amount due under the Note or this Agreement within ten (10) days of the date the same is due; (b) the failure by the Debtor to perform any of its other obligations under this Agreement within thirty (30) days of notice from Secured Party of the same; (c) falsity, inaccuracy or material breach by the Debtor of any written warranty, representation or statement made or furnished to the Secured Party by or on behalf of the Debtor;

(d) an uninsured material loss, theft, damage, or destruction to any of the Collateral, or the entry of any judgment against the Debtor or any lien against or the making of any levy, seizure or attachment of or on the Collateral; (e) the failure of the Secured Party to have a perfected first priority security interest in the Collateral; or (f) any indication or evidence received by the Secured Party that the Debtor may have directly or indirectly been engaged in any type of activity which, in the Secured Party's discretion, might result in the forfeiture of any property of the Debtor to any governmental entity, federal, state or local.

9. **Remedies.** Upon the occurrence of any such Event of Default and at any time thereafter, the Secured Party may declare all Obligations secured hereby immediately due and payable and shall have, in addition to any remedies provided herein or by any applicable law or in equity, all the remedies of a secured party under the UCC. The Secured Party's remedies include, but are not limited to, to the extent permitted by law, the right to (a) peaceably by its own means or with judicial assistance enter the Debtor's premises and take possession of the Collateral without prior notice to the Debtor or the opportunity for a hearing, (b) render the Collateral unusable, (c) dispose of the Collateral on the Debtor's premises, and (d) require the Debtor to assemble the Collateral and make it available to the Secured Party at a place designated by the Secured Party. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party will give the Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of commercially reasonable notice shall be met if such notice is sent to the Debtor at least five (5) days before the time of the intended sale or disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall include the Secured Party's reasonable attorney's fees and legal expenses, incurred or expended by the Secured Party to enforce any payment due it under this Agreement either as against the Debtor, or in the prosecution or defense of any action, or concerning any matter growing out of or connection with the subject matter of this Agreement and the Collateral pledged hereunder. The Debtor waives all relief from all appraisal or exemption laws now in force or hereafter enacted.

10. **Payment of Expenses.** At its option, the Secured Party may, but is not required to: discharge taxes, liens, security interests or such other encumbrances as may attach to the Collateral; pay for required insurance on the Collateral; and pay for the maintenance, appraisal or reappraisal, and preservation of the Collateral, as determined by the Secured Party to be necessary. The Debtor will reimburse the Secured Party on demand for any payment so made or any expense incurred by the Secured Party pursuant to the foregoing authorization, and the Collateral also will secure any advances or payments so made or expenses so incurred by the Secured Party.

11. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to a party's address set forth above or to such other address as any party may give to the other in writing for such purpose.

12. **Preservation of Rights.** No delay or omission on the Secured Party's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Secured Party's action or inaction impair any such right or power. The Secured Party's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Secured Party may have under other agreements, at law or in equity.

13. **Illegality.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

14. **Changes in Writing.** No modification, amendment or waiver of any provision of this Agreement nor consent to any departure by the Debtor therefrom will be effective unless made in a writing signed by the Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Debtor in any case will entitle the Debtor to any other or further notice or demand in the same, similar or other circumstance.

15. **Entire Agreement.** This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

16. **Counterparts.** This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

17. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective heirs, executors, administrators, successors and assigns; provided, however, that the Debtor may not assign this Agreement in whole or in part without the Secured Party's prior written consent and the Secured Party at any time may assign this Agreement in whole or in part.

18. **Interpretation.** In this Agreement, unless the Secured Party and the Debtor otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections

(or subdivisions of sections) or exhibits are to those of this Agreement unless otherwise indicated. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. If this Agreement is executed by more than one Debtor, the obligations of such persons or entities will be joint and several.

19. **Governing Law and Jurisdiction.** This Agreement has been delivered to and accepted by the Secured Party and will be deemed to be made in the State of Arizona. **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, EXCEPT THAT THE LAWS OF THE STATE WHERE ANY COLLATERAL IS LOCATED, IF DIFFERENT, SHALL GOVERN THE CREATION, PERFECTION AND FORECLOSURE OF THE LIENS CREATED HEREUNDER ON SUCH PROPERTY OR ANY INTEREST THEREIN.** The Debtor hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in Arizona; provided that nothing contained in this Agreement will prevent the Secured Party from bringing any action, enforcing any award or judgment or exercising any rights against the Debtor individually, against any security or against any property of the Debtor within any other county, state or other foreign or domestic jurisdiction. The Secured Party and the Debtor agree that the venue provided above is the most convenient forum for both the Secured Party and the Debtor. The Debtor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

20. **WAIVER OF JURY TRIAL.** EACH OF THE DEBTOR AND THE SECURED PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE DEBTOR AND THE SECURED PARTY ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

(EXECUTION PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

DEBTOR:

NATURAL REMEDY PATIENT CENTER, LLC

By:

Date

Its:

SECURED PARTY:

AGRICANN, LLC

By:

Date

Its:

EXHIBIT A

----- Forwarded message -----

From: **Brig Burton** <brigburton@gmail.com>

Date: Wed, Jun 18, 2014 at 12:04 PM

Subject:

To: shadi zaki <shadizaky@gmail.com>

Hi Shadi,

Attached are the supporting documents from the landlord and from Agricann transferring the lease to Natural Agriculture, LLC.

I'll plan on seeing you later this afternoon.

--

Regards,

Brig Burton

Phone: 480-862-4974

Fax: 1-815-550-2437

Conference: 712-432-0800

Code 10233224#

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.



AGRICANN

Applied Plant Science to Alleviate Human Suffering

1434 N. 26th Avenue Phoenix, AZ 85009

May 30, 2014

Natural Remedy Patient Center
1307 E. Southern Avenue
Mesa, AZ 85204

RE: 1434 N 26th Avenue Lease Transfer

To Whom it May Concern:

Agricann LLC hereby agree to transfer the lease interests for the building at 1434 N. 26th Avenue Phoenix, AZ 85009 to the entity known as Natural Agriculture, LLC.

Sincerely,

5/30/14

Brigham Burton, as Managing Member, Agricann, LLC

FIRST AMENDMENT TO LEASE

This First Amendment to Lease, dated June 2, 2014, is entered into by and between J & J AJAX I, LLC, an Arizona Limited Liability Company, hereinafter called Lessor, and AGRICANN, LLC, an Arizona Limited Liability Company, hereinafter called Lessee, for the leased premises located at 1434 N. 26th Avenue, Phoenix, AZ 85009, containing approximately 7,734 square feet.

RECITALS

WHEREAS, Lessor and Lessee entered into a Lease Agreement dated August 19, 2013, for the leased premises located at 1434 N. 26th Avenue, Phoenix, AZ 85009, at the rental rates and upon the terms and conditions therein set forth, and

WHEREAS, Lessor and Lessee are desirous of further amending said Lease in the manner set forth below:

Paragraph 54 of the Addendum "1" shall be deleted in its entirety and replaced with:

Condition Precedent.

The Lessee intends to use the property for the purposes of growing medical marijuana for sale as a state licensed cultivator wholesaler. The Lessee and/or its assigns is a licensed agent of a medical marijuana facility and therefore has the legal rights to operate such a facility. The Lessee's offer and the subsequent lease is fully contingent upon the Lessee being able to legally operate a medical marijuana cultivation business by the city, county, and state. Should the city, county or state or other entity decide for whatever reason to dismiss, withdraw, deny, change, cancel or substitute a law or ordinance that would cause the Lessee's intended business (to operate a medical marijuana cultivation center) to be deemed illegal or out of compliance with any city, county, or state law then Lessee, at Lessee's option, may terminate the lease and the lease shall then immediately become null and void and the Lessee shall have full claim on its refundable security deposit and any unused rent paid to Lessor.

Lessee shall pay Lessor a Lease Cancellation fee calculated on the unused amortization of abated rent and leasing commission. Lessor and Lessee will determine what the penalization will be on an annual basis of this lease term. All funds shall be due and payable upon cancellation of lease.

Assignment & Subletting

If Lessee is not, (nor has been) in default or breach under the Lease Agreement, Lessee may, without Lessor's consent, assign or sublet Lessee's interest in said Lease to Nature's Agriculture, LLC, provided that Nature's Agriculture, LLC is in good standing with the Arizona Corporate Commission. *going forward from this point - Nature's*

Option to Purchase

The Option to Purchase dated August 19, 2013, by and between Lessor and Lessee, shall be terminated. A new Option to Purchase dated June 2, 2014 is attached hereto and made a part of that Lease Agreement dated August 19, 2013. In the event said lease is assigned or sublet to Nature's Agriculture, LLC, the Option to Purchase dated June 2, 2014 shall transfer with said lease. *Nature's*

Guaranty of Lease

A personal financial guaranty by Imran Kazem, an Unmarried Man, is attached hereto and made a part of that Lease Agreement dated August 19, 2013.

All other terms and conditions of the Lease Agreement dated August 19, 2013, remain the same and are confirmed and approved.

Should any discrepancy exist between this agreement and the original lease or any prior agreement, the terms and conditions of this agreement shall prevail.

LESSOR:

J & J AJAX I, LLC,
an Arizona Limited Liability Company
2323 W. University Drive
Tempe, AZ 85281
(602) 432-9851

By: [Signature]
John Masciandaro, Jr., Manager

Date: 6-3-14

LESSEE:

AGRICANN, LLC,
an Arizona Limited Liability Company
1023 E. Barlett Way
Chandler, AZ 85249
(480) 862-4974

By: [Signature]
Brigham A. Burton, Managing Member

Date: JUNE 3, 14

From: D Sanchez <davidsanchez1229@gmail.com>
Sent: Friday, January 2, 2015 9:07 PM
To: Brig Burton <brigburton@gmail.com>
Cc: Shadi <shadizaky@gmail.com>; Imran Kazem <imran.kazem@gmail.com>; Carly Burton <carly.killmeier@gmail.com>; Kathy Sanchez <kathysanchez71@gmail.com>
Subject: Re: <Empty Subject>

Just so everybody knows the check for 20k DID NOT BOUNCE, they flagged both accounts and did not let check clear, they have subsequently closed natural agriculture's account but I will repeat the check did not bounce

On Jan 2, 2015, at 10:23 AM, Brig Burton <brigburton@gmail.com> wrote:

Hi Shadi,

I've called, texted, and left messages for you and Kathy these last few days. I've also tried calling, texting and emailing Dave.

As you know, the \$20K check you and Dave put into the shared operating account last week bounced and now we have a NEGATIVE \$18K balance, which I'm personally responsible for.

In addition, money from sales aren't even supposed to flow directly into the shared operating account anyway; they're to flow to Agicann's account for its respective share first, and then our respective companies are to share operating expenses 50/50.

Agricann's share of the sales to date of \$96,525 are \$48,262 plus accrued interest of 1% per day after each of the exceeded 5-day grace periods.

Even if you include the \$2K draw and our half of the shared overhead expenses (shared overhead has been budgeted to be \$30-35K/month, we can deduct half of the estimated \$30K in total overhead that has been for December (\$15K) from the total of what's due, which would bring the total that we need to get paid to at least \$31,262.

I'm getting concerned.

We need to get paid right away.

Please deposit \$30K into the wells fargo Agricann bank account # [561-420-1357](tel:561-420-1357) today.

As we agreed, Agricann needs to be paid within 5 days of the sale. We talked about this again at breakfast a couple of weeks ago, and it was agreed to by everyone. Further, it's what the parties agreed to when we first signed our joint-venture agreement.

We need to do what we agreed to do here.

If there's any questions, discrepancies, concerns, or suggestions, please email or call me.

--

Regards,

Brig Burton

www.linkedin.com/in/brigburton/

Cell: [480-862-4974](tel:480-862-4974)

Office: [480-359-6983](tel:480-359-6983)

www.363peg.com

brigburton@363peg.com

Fax: [1-815-550-2437](tel:1-815-550-2437)

Conference: [712-432-0800](tel:712-432-0800)

Code [10233224#](#)

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From: D Sanchez <davidsanchez1229@gmail.com>
Sent: Friday, January 2, 2015 9:15 PM
To: Brig Burton <brigburton@gmail.com>
Cc: Shadi <shadizaky@gmail.com>; Imran Kazem <imran.kazem@gmail.com>; Carly Burton <carly.killmeier@gmail.com>; Kathy Sanchez <kathysanchez71@gmail.com>
Subject: Re: <Empty Subject>

See below from previous email

"In addition, money from sales aren't even supposed to flow directly into the shared operating account anyway: they're to flow to Agicann's account for its respective share first, and then our respective companies are to share operating expenses 50/50."

All monies will 1st be flowed thru Natural Remedy to keep us complaint we will never jeopardize the license,

On Jan 2, 2015, at 10:23 AM, Brig Burton <brigburton@gmail.com> wrote:

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As you know, the \$20K check you and Dave put into the shared operating account last week bounced and now we have a NEGATIVE \$18K balance, which I'm personally responsible for.

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We need to do what we agreed to do here.

If there's any questions, discrepancies, concerns, or suggestions, please email or call me.

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Regards,

Brig Burton

www.linkedin.com/in/brigburton/

Cell: [480-862-4974](tel:480-862-4974)

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From: Brig Burton <brigburton@gmail.com>
Sent: Saturday, January 3, 2015 9:17 AM
To: D Sanchez <davidsanchez1229@gmail.com>
Cc: Shadi <shadizaky@gmail.com>; Imran Kazem <imran.kazem@gmail.com>; Carly Burton <carly.killmeier@gmail.com>; Kathy Sanchez <kathysanchez71@gmail.com>
Subject: Re: <Empty Subject>

Hi David,

You are correct, yes.

All money from sales must legally go through NRPC first.

What I meant to say is that once the sale is made, and recorded/posted to NRPC's bank account, that 50% of the proceeds should pass to Agricann, not Natural Agriculture (NA), within 5 days from the time the sale is made.

Agricann can then plow back in its respective share (\$10K every 2 weeks) back into the shared joint operating account (NA, LLC), or pay bills directly from its own account.

On Fri, Jan 2, 2015 at 9:14 PM, D Sanchez <davidsanchez1229@gmail.com> wrote:

See below from previous email

"In addition, money from sales aren't even supposed to flow directly into the shared operating account anyway: they're to flow to Agricann's account for its respective share first, and then our respective companies are to share operating expenses 50/50."

All monies will 1st be flowed thru Natural Remedy to keep us compliant we will never jeopardize the license,

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We need to do what we agreed to do here.

If there's any questions, discrepancies, concerns, or suggestions, please email or call me.

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Regards,

Brig Burton

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Regards,

Brig Burton

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From: Brig Burton <brigburton@gmail.com>
Sent: Saturday, January 3, 2015 9:58 PM
To: shadi zaki <shadizaky@gmail.com>
Cc: D Sanchez <david.sanchez1229@gmail.com>; Kathy Sanchez <kathysanchez71@gmail.com>; Imran Kazem <imran.kazem@gmail.com>; Carly Burton <carly.kilhneier@gmail.com>
Subject: Re: Sales and Account UPDATED

Hi Shadi,

I just saw this email this evening, I think it was sent prior to our meeting.

I appreciate your concerns.

I think we covered and addressed each of these in today's meeting, but if there's anything still needing to be resolved, please let me know.

To address the concerns not discussed at the meeting:

The cameras and time audits - I didn't do these myself because Alan and Jarrett did them for me before. Frankly, I'm not sure how to work the cameras. Me asking Alan to do the time audits on the cameras was a common request prior to my salary cut and I didn't know it bothered you so much to have me ask Alan to do it.

● On Sat, Jan 3, 2015 at 10:29 AM, shadi zaki <shadizaky@gmail.com> wrote:

From: Brig Burton
Sent: Saturday, January 03, 2015 9:42 AM
To: Shadi
Cc: D Sanchez ; Kathy Sanchez ; Imran Kazem ; Carly Burton
Subject: Re: Sales and Account UPDATED

Hi Shadi,

This report looks good for the most part I think. I've not had a chance to compare it with our own inputted P&L's yet but hope to later today.

Here are a few of the discrepancies I've found on here:

1) We agreed to split \$4K /mo up until late Aug. between ourselves; that's \$2K/mo for you and me for July and Aug (so that's \$4K that I'm due). Starting in Sept you were to get \$2500 and I was only getting \$1500, so that's 4 months at \$1500 (Sept-Dec) = \$6000. Total due just for my salary would be \$8000. That's what we agreed to. If we as a group decide to change it in the future, that's fine, but what we agreed to pay needs to be paid. Keep in mind that Carly and I both work to earn that \$1500/mo and I don't believe it's fair to suddenly decide to not pay it. Let's be men of our word.

Brig, I'm always a man of my word. Part of our agreement for a salary is to actually do work. I mean you wanted me or Alan to review cameras to check on employee hours IN ADDITION to the great amount of responsibilities we already have. Which not only included running a massive grow but also building out rooms while maintaining the plants and facility. I mean come on man!

I want you to answer why you couldn't drive down to the facility and take care of a simple matter like this? Don't give me the BS about not having a card. This is why you don't deserve 1500. The team that you brought on, the genetics, and the pounds represented that you previously harvested have all been a waste of time. The 9 customers you supposedly had before....well, only one came to the table.

And I didn't even take that first split. ...I took only aug, sept, oct, nov....I didn't even take pay for DEC! I look out for the company before I just look out for myself....I don't mind leaving that extra \$2k in the

2) You've counted my \$2K draw/loan/backpay as employee expense AND a draw in 2 places, creating a double penalty. Let's count the \$2K as a draw and mark off the \$2K that shows I took \$2K as an employee.

I showed it as a loan payment to you from the account balance of the company. We can deduct it from the distribution.

3) Nate was supposed to be paid any backpay due from NRPC, and as per our meeting 3 weeks ago wasn't supposed to get any backpay at all (but we agreed that if NRPC wanted to pay him backpay, then that would be out of NRPC's pocket (please refer to notes from last meeting), so that \$1500 needs to be added back or taken from NRPC's draws.

Didn't realize this.....my mistake

4) Our agreement was that NRPC would front ALL DHS costs to get setup (including the building, agent cards for our transferring-in team, etc.); We did agree to split FUTURE DHS costs once the transfer was complete, but as per item 14 of our agreement, all DHS setup fees were to be paid by NRPC, so that's another \$2250 that needs

to be added back to what is due Agricann since you've deducted that amount here. In addition, can you send us a bread down of who has actually had agent cards paid for? I think we still have several workers that aren't properly licenced and this could get us in trouble with the state...

Never. We fronted you this because you didn't have the money. This was always to be paid back...with interest. But you can keep the interest, we are not petty. Cards: Alan, Matt, Me, Nate.

I can see why BC screwed you guys over.....

5) In the future, if we're to count any CASH expense we need actual receipts (and signed by the recipient in the event of trimmer pay for cash). Our overhead is way off track and we've been too lax about counting cash expenses when you send us an email saying what was spent for what; we need actual receipts from now on if we're going to account for this as an NRPC contribution or for any type of reimbursement (from an employee or an officer of the company, we need to be consistent in our policies here; when I had an agent card and could be more involved in the management, I never reimbursed employees expenses if they couldn't show me a receipt and the corresponding product or service it was attached to).

I only reimburse when a receipt is provided. If someone was reimbursed, I saw the receipt. Receipts are in office. I'll bring the ones I have at home today.

I like the signing off by trimmers. I never had an issue with one of them saying they weren't paid, so I never thought to have them sign off. But that's good practice. We switched from wet to dry trim to try to reduce expenses...will explain at meeting.

6) All sales must be split and paid 50/50 between NRPC and Agricann within 5 days of sale.

That's fine...but we cant just transfer money in and out... We have to start paying expenses out of NRPC...talk more at meeting

7) We need to get our negative \$18K account taken care of or they will start taking money out of my family's checking account to pay for the overdraft/negative account.

That's where the \$20k check will go.

8) None of Agricann's interest expense due is account for in the report here.

If you want to pick things out of the agreement, then we have every right to cancel based on the lack of production (ie 50 lbs a month)

On Fri, Jan 2, 2015 at 6:11 PM, Shadi <shadizaky@gmail.com> wrote:

What I had this afternoon was what was sent below on 12-19 - which was up to date as of the morning of 12-19. Again, it represents from November up until 12-19.

Tonight, I will send the updated. That will include sales and expenses from 12-20 up to 1-2.

Sent from my iPhone

Begin forwarded message:

From: "shadi zaki" <shadizaky@gmail.com>
Date: December 19, 2014 at 7:48:57 AM MST
To: "Brig Burton" <brigburton@gmail.com>, "Kathy Sanchez" <kathysanchez71@gmail.com>, "DSanchez" <d.sanchez@inbox.com>, "Imran Kazem" <imran.kazem@gmail.com>
Subject: Sales and Account UPDATED

attached...see you guys shortly

From: Brig Burton
Sent: Wednesday, December 17, 2014 3:42 PM
To: Kathy Sanchez
Cc: Shadi ; DSanchez ; Imran Kazem
Subject: Re: Changes to Wells Fargo Direct Pay Payee(s)

That works.

See you guys 8:30am Friday at:

TC Eggington's
1660 South Alma School Road

On Wed, Dec 17, 2014 at 1:59 PM, Kathy Sanchez <kathysanchez71@gmail.com> wrote:

How about the Eggington on Alma School and the 60?

On Dec 17, 2014, at 10:43 AM, Brig Burton <brigburton@gmail.com> wrote:
Kathy,

Where would you prefer we meet for breakfast this Friday morning at 8am?

On Tue, Dec 16, 2014 at 10:07 AM, shadi zaki <shadizaky@gmail.com> wrote:

Doesn't matter to me...I think Kathy has an appt at 10 or 11 – so I'll leave it up to her.

From: Brig Burton

Sent: Tuesday, December 16, 2014 9:57 AM

To: shadi zaki

Cc: DSanchez ; Kathy Sanchez ; Imran Kazem

Subject: Re: Changes to Wells Fargo Direct Pay Payee(s)

Sounds good. 8am should work.

Would you guys like to meet at Imran's or Dave and Kathy's home?

On Tue, Dec 16, 2014 at 9:53 AM, shadi zaki <shadizaky@gmail.com> wrote:

Early breakfast 8 am works for David, Kathy, and I.

Email said 2-4 days...we have cash from sale that went to Natures yesterday. Going to deposit this morning, then cut a check until this direct pay is active...which should be 2-4 days according to the email.

From: Brig Burton

Sent: Tuesday, December 16, 2014 9:44 AM

To: Shadi ; DSanchez ; Kathy Sanchez

Cc: Imran Kazem

Subject: Re: Changes to Wells Fargo Direct Pay Payee(s)

Sounds good Shadi.

Thank you for getting this setup and making the disbursement. Do you know if it will go out today or tomorrow?

Also, what time Friday works best for meeting up?

Imran was able to trade shifts, so he's now available to meet Friday anytime before 1pm. Could we plan on meeting at either Imran's or Dave and Kathy's home at 11am Friday?

On Tue, Dec 16, 2014 at 9:08 AM, Shadi <shadizaky@gmail.com> wrote:

Direct pay is almost ready. This makes it a hundred times easier now that agricann is setup as a vendor.

Once deposits hit the nrpc account we can simply login online and do the payment.

Begin forwarded message:

From: Wells Fargo Online <alerts@notify.wellsfargo.com>

Date: December 16, 2014 at 1:06:48 AM MST

To: shadizaky@gmail.com

Subject: Changes to Wells Fargo Direct Pay Payee(s)



wellsfargo.com

Direct Pay payees have been added or changed

Payee(s) have been added to your Direct Pay service and will be payable within 2 to 4 business days if the information provided is accurate.

To view additional details regarding this message in your secure inbox, [sign on](#) and select **Messages & Alerts**.

If you did not make this request, please call us immediately at [1-888-245-8454](tel:1-888-245-8454), Monday through Friday, 6 am to 6 pm Pacific Time.

wellsfargo.com | [Fraud Information Center](#)

Please do not reply to this email directly.

8557b201-02f6-4c47-b88b-1e11f4c86191

Regards,

Brig Burton

www.linkedin.com/in/brigburton/

Cell: [480-862-4974](tel:480-862-4974)

Office: [480-359-6983](tel:480-359-6983)

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From: Brig Burton <brigburton@gmail.com>
Sent: Tuesday, April 7, 2015 9:51 AM
To: Imran Kazem <imran.kazem@gmail.com>
Subject: Re:

Hi Imran,

Minimum draw = the least amount NRPC owes Agricann. I show they owe us more than that though, but I'd like to go over the figures with you when you get back to make sure we're on the same page before we approach Shadi and Dave on the matter. Having said that, I did meet with Shadi and he agreed that we're to get \$1K per pound for anything NRPC takes; the only problem is that the report shows them paying \$500 per pound and this is going into the shared amount that gets split, so we need to be able to account for it.

On Tue, Apr 7, 2015 at 8:44 AM, Imran Kazem <imran.kazem@gmail.com> wrote:

Hi Brig,

I'm here in San Diego for a radiology review course until Sunday. You can pick up the \$4800 for me if you want. Not sure what you mean by minimum draw but we can figure that stuff out when I get back. Hopefully we can stay in the black from here on out.

Thanks, Imran

On Monday, April 6, 2015, Brig Burton <brigburton@gmail.com> wrote:

Hey Imran,

Hope you enjoyed your Easter weekend.

Just wanted to make sure we're all on the same page and that you're kept in the loop.

I was paid \$7481 today to help cover the APS bill that went on our personal credit card; with the interest attached to the card, it's \$332 that is still due and payable to pay off the interest, assuming it's paid off right away.

I haven't had a chance to go over the needed revised report which would account for the needed adjustment for the sales made directly for NRPC's retail dispensary, but from the figures sent over from Shadi it looks like at least \$7250 would be due to Agricann, assuming no adjustment.

Shadi and I discussed it and we're on the same page, on both the minimum draw and the \$1K/sale for any sales made to NRPC being payable in full to Agricann, rather than the **normal 50/50 split**.

The Agricann draw figure does NOT include the amounts still owed to you for making payroll out of your own pocket, which as I understand it was a loan you made directly yourself. Please advise if you'd like me to pick this up on on your behalf.

Shadi and I have agreed to meet up Wednesday to get Agricann's draw amount paid.

--

Regards,

Brig Burton

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Regards,

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From: D Sanchez <davidsanchez1229@gmail.com>
Sent: Thursday, November 19, 2015 5:32 PM
To: Brig Burton <brigburton@gmail.com>
Cc: Shadi <shadizaky@gmail.com>; Carly Burton <carlykillmeier@gmail.com>; Imran Kazem <imran.kazem@gmail.com>; Kathy Sanchez <kathysanchez71@gmail.com>
Subject: Re: WTF?

WTF really Brig, pretty disappointing I thought you had more Christian values than that it seems like I get these once a month now from you when you just decide to go on a rant.

Do you really hear just what you want to hear or do you hear what we are all discussing as business partners. Correct me if I'm wrong but didn't we agree to start payments on November 15th for \$20,000, while you, me Shadi and Imran were present

Did I not tell you to your face I will go ahead and advance you \$10,000 before November 15th because I knew you needed money, you even agreed and told me yes that would be a big help for you, and again this was said in front of everybody present.

But because you decide to send me some type of personal guarantee and who knows whatever type of contracts you're trying to persuade us to sign which by the way are illegal on three different levels. You conveniently add that the 10,000 advance was not part of the payment, on your agreements, Cmon we never agreed to that.

Our CPA Mike whom you met with said he should have some final numbers for us by the beginning of the upcoming week, but by the way its looking we're going to be somewhere around the 27 to 30% tax liability for all income received through 26th Avenue.

Again per our discussion we were to finalize this and get this number before we settled on anybody's dividend splits.

In regards to the agreements that you sent us I told you we were meeting with Ryan Hurley and I told you his advice was not to create additional agreements just to create an amendment to our agreement that was already in place. Because as he stated a lot of the terminology that was used in your agreements put our license at risk. Ryan himself couldn't believe an attorney wrote these agreements because they were so poorly worded and jeopardized our license as a whole.

In regards to Alan and I still haven't gotten the full story from everybody involved, but from what I've heard he went in there pretty belligerent this morning. I told you because of the enforcement action because of the uncarded trimmers we had in there they were not approving anybody. But Shadi can probably give you a better explanation of this I know we have somebody submitted that's been submitted for 2 months and his card is still not approved.

So I will follow up with everything that went on today at the grow and I will get back to you and again would be happy to meet with everybody again and reiterate everything we went over at our last meeting if you all feel it's necessary.

Let me know.
David

On Nov 19, 2015, at 10:35 AM, Brig Burton <brigburton@gmail.com> wrote:
Dave,

I thought you and Kathy agreed to re-hire Alan. You told me that his card was being processed and that he would be able to begin working again.

We were also supposed to receive \$20K on the 15th of each month, as well as the other profits owed to us that were to be split up and paid in full. It's now the 19th and neither of those has occurred.

You were also supposed to sign and return the formal agreements, which you've received, and still for whatever reason refuse to sign and return. Is this because you never really intended to live up to what we agreed?

These past few weeks, you've become completely non-responsive to my texts, emails and phone calls, yet again.

I'd like to remind you that our being willing to enter into a formal settlement and buyout agreement with you was an olive branch, and was our way of trying to keep the peace and help you with the balance you owe us.

Without a settlement in place, and not counting sales since August 15th, to date you and NRPC now owe Agricann \$6,614,983.07 when we calculate the interest that's contractually due and has been accruing by your repeated nonpayment offenses.

From: Brig Burton <brigburton@gmail.com>
Sent: Monday, October 19, 2015 2:15 PM
To: D Sanchez <davidsanchez1229@gmail.com>; shadi zaki <shadizaky@gmail.com>; Kathy Sanchez <kathysanchez71@gmail.com>
Cc: Jeffrey R. Finley <jfinley@schneiderwallace.com>; Imran Kazem <imran.kazem@gmail.com>; Patrick J. Van Zanen <pvanzanen@schneiderwallace.com>; Carly Burton <carlykillmeier@gmail.com>
Subject:

Hi Dave,

I've tried calling you again; left another message...

You've had the formal paperwork with the terms we agreed to for some time.

You agreed on multiple occasions last week to have these documents signed and returned.

You also agreed to pay at least \$10K to me last week in an effort to get caught up on some of my backpay that is still due and outstanding.

Neither one of these has occurred as agreed.

Our agreements were created to resolve the now \$2,721,891.68* that NRPC owes Agricann (not counting any and all sales since August 19th), and to create a path for NRPC to buy out Agricann's JV interest in 26th Ave out over time under very favorable, affordable terms for NRPC.

We need to have the signed documents by the end of day tomorrow.

Otherwise, we have decisions to make with regard to the debts owed to us.

* (see link: <https://docs.google.com/spreadsheets/d/1aTPa-rm0eUL-rHswNf4b2nah32cXa2yJCepEyNDTZso/edit?usp=sharing>)

--
Regards,

Brig Burton

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Fax: 1-815-550-2437

Conference: 712-432-0800

Code 10233224#

Our firm is currently seeking investment opportunities in privately held Companies in or near Arizona with the following criteria:

Annual revenues of \$3 MM+, EBITDA of \$600K+, within the following target industries:

Manufacturing, Distribution/Wholesale, B2B Services, Niche Construction, Consumer Goods, Healthcare, Education & Training, Logistics/Transportation, and Software.

We pay the greater of \$10,000 or 1% of the total purchase price as a referral fee or to the referring agent upon the successful purchase of businesses meeting our criteria.

If you're an accredited investor and would be interested in learning more about how to put your money to work in quality privately-held Companies in or near Arizona, please contact us.

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From: Brig Burton <brigburton@gmail.com>
Sent: Wednesday, December 9, 2015 12:45 PM
To: D Sanchez <davidsanchez1229@gmail.com>; Shadi <shadizaky@gmail.com>; Imran Kazem <imran.kazem@gmail.com>
Cc: Kathy Sanchez <kathysanchez71@gmail.com>; Carly Burton <carly.killmeier@gmail.com>
Subject: Re: Purchase Agmt Terms of Buyout

Team,

The following items were discussed and agreed to today via phone conference with Dave, Shadi and myself:

- All items in the Extension/Buyout Agmt are acceptable, with the following agreed-to changes:
 - **the personal guarantee from NRPC's owners will not be for the entire buyout amount, but rather, just the equipment and TI's**
- Full access to inspect the facility at any time shall be made available to Agricann and its members; acknowledged that we must have a licenced individual present to escort any unlicensed personnel from Agricann.
- Rather than 90 days for first right of refusal, we agreed to make it 20 days, with an additional 10-day extension (total of 30 days) after showing proof of funds for the purchase price, for the possible purchase of the NRPC licence.
- With these changes, Dave and Shadi and myself agreed to have the formal, simplified document edited and signed no later than tomorrow (12/10).

Items discussed but not yet agreed to (Dave and Shadi to meet with Andy and Imran Mirza tonight to discuss possible solutions):

- \$500K buyout, (\$400K in cash), for assigning all rights to the 24th St. property over to HPWC and Mirza's group.

I will go ahead and work on the discussed and agreed-to edits and should have those to everyone shortly to sign and return by tomorrow.

On Tue, Dec 8, 2015 at 8:22 PM, Brig Burton <brigburton@gmail.com> wrote:
Talk then: 11am tomorrow.

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Code 10233224#

On Tue, Dec 8, 2015 at 6:32 PM, D Sanchez <davidsanchez1229@gmail.com> wrote:

11am

On Dec 8, 2015, at 5:59 PM, Brig Burton <brigburton@gmail.com> wrote:
Hi Dave,

Please advise as to what time works best for you to talk tomorrow afternoon, anytime before 5:30pm.

On Tue, Dec 8, 2015 at 2:50 PM, Brig Burton <brigburton@gmail.com> wrote:
5pm works for me.

Talk then.

On Tue, Dec 8, 2015 at 2:15 PM, Kathy Sanchez <kathysanchez71@gmail.com> wrote:

Brig I did not hear back from you so I scheduled another appointment I should be done with that about 4 or 4:30 so I can do it at 5 if you like

On Dec 8, 2015, at 2:12 PM, Brig Burton <brigburton@gmail.com> wrote:
Yes - let's plan on 3pm then.

Let's use the following line:

Conference: [712-432-0800](tel:712-432-0800)

Code 10233224#

On Tue, Dec 8, 2015 at 12:06 PM, D Sanchez <davidsanchez1229@gmail.com> wrote:

Brig

I will be available around 3pm if you want to conference

Dave

On Dec 8, 2015, at 11:21 AM, Brig Burton <brigburton@gmail.com> wrote:
Dave and Shadi,

I never heard back about meeting up yesterday...

Email is fine.

Shadi - thank you for bringing your concerns to light.

Here are my thoughts:

1) 90-120 days is pretty standard for first right of refusals between partners in a buyout.

Shadi, what did you have in mind? Is 75 days acceptable?

2) We need to have access to the facility until the buyout is complete, as we've always had access to the building as one of the partners and the designated managing partner of the shared operating company. We need this to ensure that nothing is being done that violates state law, which would compromise Imran Carly and I criminally. If we need to issue an agent card to me to make this happen, then let's do it. Otherwise, if you're agreed and it's legally viable, I can be escorted by a licensed agent cardholder if you'd prefer. I checked with DHS and they confirmed that there's nothing derogatory against me that would prevent me from getting an agent card.

In addition, the state may give 24 hour notice for medical marijuana, but that's not the case with most government organizations, and certainly not between partners. To be fair to all of us, this basic inspection clause needs to stand as stated.

Dave - are you and Shadi on the same page on these items, or were there any other items we needed to discuss and resolve?

We were hoping to have everything buttoned up weeks ago. We need to have this wrapped up no later than this week.

Please advise.

On Mon, Dec 7, 2015 at 9:33 AM, Brig Burton <brigburton@gmail.com> wrote:
Hi Shadi,

Can you and/or Dave meet me at the warehouse or somewhere in the east valley today to discuss these items?

Also, I was planning on stopping by 26th Ave and picking up my vault/safe today since it's not being used and I need it back.

On Sat, Dec 5, 2015 at 10:45 AM, Shadi <shadizaky@gmail.com> wrote:
Brig

Sorry for the delay...My comments are related to sections "j" "k" and "l". No one without an agent card is suppose to be in the facility let alone have a key. I would suggest that language maybe read to allow entry within 24 hour notice. As for the other two sections, 90 days is too long.

Regarding 24th street, we would like to get an agreement executed at the same time this one gets signed. I know a few terms have been tossed around but nothing definitive. Can we get it on paper?

On Nov 30, 2015, at 1:39 PM, Brig Burton <brigburton@gmail.com> wrote:

Team,

Attached in the link below is the "simplified" purchase agreement for the agreed-upon buyout of Agricann's lease rights at 26th Ave.

Please review, sign and return.

If there are any items that we need to clarify, feel free to comment directly onto the worksheet (google-doc) on or before this Thursday, Dec 3rd, at 5pm.

https://docs.google.com/document/d/1IGrkgM5irmxEBIRoV9jvPdgt_3MEgxeTIQx_97F6bsQ/edit?usp=sharing

--

Regards,

Brig Burton

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--

Regards,

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www.363peg.com

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AGRICANN, LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	CV2016-001283
NATURAL REMEDY PATIENT)	
CENTER, LLC; and DAVID)	
SANCHEZ,)	
)	
Defendant.)	
)	

Phoenix, Arizona
November 20, 2019

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL DAY 1

PREPARED FOR:
COPY

KRISTINE M. MAYO, RPR, CRR, CRC
Certified Court Reporter #50958
kristine.mayo@jbazmc.maricopa.gov

A P P E A R A N C E S

FOR THE PLAINTIFF:

BY: Mark M. Deatherage
Attorney at Law

FOR THE DEFENDANT
NATURAL REMEDY PATIENT CENTER:

BY: Sharon Urias
Stuart Knight
Attorneys at Law

FOR THE DEFENDANT DAVID SANCHEZ:

BY: Don Fletcher
Attorney at Law

ALSO PRESENT:

Brig Burton
Chad Pipkin
Rachel Chuirazzi

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1 Q. What else did you do to learn about the medical
2 marijuana business before you actually got involved in it?

3 A. Well, I did a lot of research by convening with
4 an attorney who was a specialist in the industry and also
5 a CPA who knew about the tax code and the requirements
6 that constituted what was valid and what wasn't and what
7 could and couldn't be done.

8 We even got some drafts of different
9 dispensary contracts so we could make sure that we were
10 consistent with or basing our contract on a template that
11 was valid.

12 Q. Okay. How about research into the business
13 aspects of medical marijuana?

14 A. Yes. So we did a lot of market research. There
15 was probably at least six months of both research, as well
16 as meeting with professionals in the industry, going to
17 trade shows, meeting with different people who were
18 already in the business before we made the decision to
19 invest heavily and begin growing or begin finding a place
20 that we could -- that we could get a grow.

21 Q. Okay. And you say "we", who besides you is
22 involved in the we?

23 A. So there's obviously Jay Galt, who is one of the
24 original founders. And then another investor partner of
25 mine named Imran Kazem, who was primary investor who put

1 most of the money. And his name is spelled I-M-R-A-N
2 K-A-Z-E-M.

3 Q. And how did meet -- and what's doctor -- I gave
4 it away, what's Dr. Kazem's profession?

5 A. He's a radiologist, so he's a doctor.

6 Q. Okay. How did you meet him?

7 A. We played basketball together for several years,
8 we were good friends.

9 Q. How did -- was there a point in time when you and
10 he started talking about possibly doing some business
11 together?

12 A. Yes. I believe it was around 2013 as well. We
13 started -- after one of the games, he asked what were
14 some of the opportunities that I was currently looking at.
15 Because I look at a lot of different real estate and
16 business ventures and things like that. And I told him
17 about this one and about Jay Galt, and he expressed
18 interest in being a part of it, and that's when the
19 discussions began.

20 Q. What did he -- what did he describe as his
21 interest in combining with you? In other words, what did
22 you and he discuss about what your respective roles would
23 be?

24 MS. URIAS: Objection. Hearsay.

25 THE COURT: Overruled.

1 THE WITNESS: His primary role was to --
2 that he would be the investor, he would put up most of the
3 money. I also was going to put up most -- or a good
4 portion of the money, and then Jay Galt was going to put
5 up most of the sweat equity or he was going to be the
6 manager that was going to be running it, since he was more
7 experienced than I was in it.

8 BY MR. DEATHERAGE:

9 Q. Okay. Besides money, were you going to have
10 other involvement?

11 A. Yes. My primary duties, initially when we first
12 started, I was going to be overseeing the financials and
13 making sure we are compliant and basically keeping the
14 business venture, you know, as much as possible compliant
15 with state regulations and accounting and things like
16 that, so --

17 Q. Did you and Mr. Galt and Dr. Kazem form a
18 business entity?

19 A. Yes, we did.

20 Q. What was that?

21 A. It was called Agricann, LLC.

22 Q. Who were the members of Agricann, LLC, when it
23 was formed?

24 A. There were three members; myself, Jay Galt and
25 Imran Kazem.

1 Q. And did that change at some point?

2 A. Yes.

3 Q. How so?

4 A. Jay Galt had an opportunity up in Canada that
5 took him away from the business. And as such, he wasn't
6 able to in effect do what we'll call the sweat equity
7 component that was required for him. We relied on his
8 expertise in both growing, as well as the building side of
9 things, and so he did help us find some facilities that
10 worked, but as far as the management component, his -- he
11 ultimately decided to relinquish his equity and go back to
12 Canada where he's from so that he could pursue this other
13 venture of his.

14 Q. What is the property that gets referred to as the
15 26th Avenue facility?

16 A. That one is, and I think the address is, let me
17 just -- I believe it is 1426 North 26th Avenue in Phoenix.

18 Q. Okay.

19 A. 85009, I believe is the address.

20 Q. Describe the process that you guys went through
21 to locate a facility to serve as a grow or cultivation
22 facility for medical marijuana?

23 A. Well, we looked at a lot of different properties.
24 We went all the way up to Flagstaff, all the way down past
25 south of Tucson. We must have looked at several dozens of

1 properties that, for one reason or another, they wouldn't
2 work. Either the landlord wouldn't allow the grow, or the
3 building wasn't quite right, or it was going to require
4 too much tenant improvements. There was a lot of things
5 that went into finding the right location.

6 Q. How did you discover the 26th Avenue property?

7 A. We were at -- we were at a hearing for another
8 property that we were trying to get zoned for medical
9 marijuana use and it came on the market while we were in
10 the hearing, ironically enough. So we actually went there
11 immediately, and when we saw the place, we found that it
12 was very much accommodating to everything that we were
13 looking for, so we immediately signed the lease that day
14 or that next day or shortly thereafter for the 26th Ave.
15 facility.

16 Q. What do you mean when you say that it was already
17 accommodating to what you were looking for?

18 A. So there had been -- according to the landlord,
19 there was over a million dollars' worth of tenant
20 improvements that had gone into the building. And so
21 those tenant improvements, which were conducive to a
22 medical marijuana grow, and also having a certificate of
23 occupancy specific for the medical marijuana use as
24 required by Phoenix zoning was all conducive, it had
25 everything that we needed to basically begin and start.

1 Q. And did it have the zoning that was necessary?

2 A. It had the zoning. It had the build -- it had
3 most of the build-out. It had much of the equipment. It
4 had a lot of the stuff we already needed. So we were --
5 it was like finding -- you know, we got very lucky, I
6 guess you could say, finding that place.

7 Q. And through Agricann, did you buy that property
8 or lease the property?

9 A. We leased it with an option to buy, yes.

10 Q. When -- approximately when did you enter --
11 through Agricann, enter into a lease for the 26th Avenue
12 property?

13 A. We entered into it I believe -- it was somewhere
14 in 2013, I believe, but I don't recall the exact month.

15 Q. Okay. Were there addition -- other than the
16 tenant improvements that had already been made by the
17 previous tenant, were there things that you and Dr. Kazem
18 through Agricann did to further build-out the property for
19 medical marijuana cultivation?

20 A. Yes, yes. We had to build tables. We had to get
21 lights in there, which was a significant investment. So
22 even though the building had the AC and the ventilation
23 and the zoning that we needed, there was still a lot of
24 tenant improvements and work that needed to be put in. So
25 that was a considerable investment on our part.

1 Q. How much did the lighting cost that you added?

2 A. I believe the lights were about 150,000 or so.
3 Maybe 200,000.

4 Q. Okay. And how much in total do you believe that
5 Agricann invested in the property before it began
6 operating as a grow facility?

7 MS. URIAS: Objection, speculation.

8 THE COURT: Lay some foundation.

9 BY MR. DEATHERAGE:

10 Q. Were you and Dr. Kazem the ones who were
11 overseeing and causing the additional work that was done
12 to finish the build-out of the 26th Avenue facility for
13 cultivation?

14 A. Yes.

15 Q. And where was the money coming from?

16 A. It was coming primarily from Dr. Kazem and
17 myself.

18 Q. And how much did you and Dr. Kazem through
19 Agricann spend to finish building out the facility prior
20 to having it ready for cultivation?

21 A. I believe it was between 150 to 200,000 or so.

22 MS. URIAS: Objection, speculation.

23 THE COURT: Overruled.

24 BY MR. DEATHERAGE:

25 Q. Was there anything else that had to be done for

1 the property to be allowed to be used as a medical
2 marijuana cultivation facility?

3 A. Yes. We had to get it approved through DHS. So
4 even though it was approved from a COO standpoint, through
5 the Phoenix -- you know, the zoning requirements, we still
6 had to put in cameras, have a recording system that would
7 record a month's worth of activity on those cameras, and
8 we had to get it approved from the Arizona Department of
9 Health Services or DHS for short.

10 Q. Did that happen?

11 A. Yes, it did. We got it approved for zoning and
12 of course you had to be attached to a license of course,
13 and initially that was attached through a company called
14 Total Accountability Systems.

15 Q. Well, and we'll get to that. But I guess what
16 I'm asking is, in terms of just the facility itself, was
17 it approved as a medical marijuana cultivation facility by
18 DHS?

19 A. Not until we had a dispensary license connected
20 to it, because they won't approve that unless you're
21 connected to the license.

22 Q. Okay. What was involved in -- is the term grow
23 term -- grow team a term that gets used in the facility?

24 A. Sure.

25 Q. What does that mean?

1 Q. Is the version of the contract, the draft of the
2 contract in Exhibit 90, what you and Dave Sanchez and
3 Shadi Zaki then took and physically took turns making
4 revisions to during the course of the negotiations?

5 A. That is correct, yes.

6 Q. From the time -- and if we look, Exhibit 90 is on
7 May 14th, correct?

8 A. That is correct.

9 Q. And on Exhibit 1, we see that it is signed -- is
10 it May 27th and May 28th of 2014?

11 A. Yes.

12 Q. Roughly a two-week period from the time of the
13 first draft until the time of execution?

14 A. That is correct.

15 Q. Okay. What were the key terms being discussed
16 and negotiated during that couple of weeks between the
17 parties?

18 A. There were several things that were being
19 negotiated, one of which was the 80/20 split and the 50/50
20 breakdown of expenses. Such that 80 percent of whatever
21 the prevailing wholesale rate that was sold for product
22 that came out of Agricann's facility, whatever that amount
23 was, that would -- 80 percent of that would be
24 attributable to or be paid to Agricann as a cost of NRPC.

25 Likewise, the -- we decided that we would

1 set up a joint company or a company that would be co-owned
2 by both parties, so to speak. That was called Natural
3 Agriculture, LLC, and that was to be the -- if you want to
4 call it the shared account, where we shared expenses, both
5 parties contributing 50/50 to any and all operating
6 expenses, and then from there, that account would pay
7 things like rent and utilities and so forth.

8 And so that -- that account, the Natural
9 Agriculture account, was intended to be a -- what do you
10 call it, like a flush account, if you will. The money
11 goes in, you know, before expenses to be paid, and then
12 NRPC was obligated, of course, per the revised contract,
13 to pay 80 percent of sales revenues that it had received
14 to Agricann.

15 Q. So let's break that down and talk about some of
16 those. In the initial draft of the contract, in the
17 initial discussions, you had indicated that the parties at
18 least had contemplated that product -- that what NRPC
19 would pay Agricann would be a flat \$2,200 per pound for
20 product?

21 A. Correct. That was the initial discussion of what
22 we are contemplating.

23 Q. Under that initial discussion, which party or who
24 would be responsible for the expenses of the operation?

25 A. I'd have to review it in detail, but I'm just

1 going off the top of my head. I believe, as I'm sitting
2 here today, that I believe that Agricann was solely
3 responsible for the operating expenses under the -- under
4 the original contemplated agreement that was not entered
5 into, yes.

6 Q. So from the time of the discussions and the first
7 draft, until the time of execution, the compensation
8 aspect changed from \$2,200 a pound to an 80/20 split with
9 80 percent of revenue to Agricann and 20 percent to NRPC?

10 A. Correct.

11 MS. URIAS: Objection, leading.

12 THE COURT: Sustained.

13 BY MR. DEATHERAGE:

14 Q. How did the revenue allocation or what Agricann
15 would get paid change from the original discussion and
16 original draft to the execution draft, the execution
17 version?

18 A. Well, as it relates to the 2,200 a pound --

19 Q. As it relates to what NRPC would be paid -- what
20 NRPC would pay Agricann for product.

21 A. So in the final agreement, as opposed to the
22 2,200 a pound contemplated, it was simply that whatever
23 revenues came in, whether it was retail or wholesale, or
24 however you want to define it, whatever revenues NRPC was
25 entitled to, 80 percent of those revenues were to come to

1 Agricann in a form of cost of goods sold.

2 Q. And how did allocation or responsibility for
3 expenses of the operation change from the original
4 discussions and draft, until about two weeks later, the
5 executed version that was signed?

6 A. I'm sorry. Could you restate your question,
7 Mark, please?

8 Q. Sure. Sure. From the time of the original draft
9 and the original discussions, until as compared to what
10 was ultimately signed in Exhibit 1, how did responsibility
11 for expenses of the operation change?

12 A. The responsibility shifted to us jointly being
13 responsible for expenses. So originally Agricann was
14 going to be solely responsible for its operating expenses,
15 and in the actual contract that was entered into,
16 stipulated that, again, NRPC and Agricann would both split
17 the operating expenses 50/50 for the grow, not the retail.

18 Q. Okay. What were the discussions between NRPC and
19 Agricann as to why those changes were made in terms of
20 \$2,200 a pound to 80/20 and in terms of Agricann pays all
21 of the expenses to a 50/50 split? What were the
22 discussions that led to those changes?

23 A. I don't know all of what led it. I don't know if
24 NRPC between Shadi and Dave, I would be -- you know --

25 Q. Just describe what you know. Just describe the

1 discussions you were told --

2 A. I think they mentioned something about maybe
3 getting a tax break or something like that, it would help
4 reduce taxes if they were able to participate in
5 the -- you know, the shared expenses on the operation
6 side.

7 I think they wanted a little bit more
8 control over the facility, they wanted to be able to, you
9 know, have more input, so to speak, than what we were
10 originally discussing or what was originally done in and
11 through TASI, for example. So they just wanted a little
12 bit more hands-on in the grow and in the management of it.

13 Q. Did they -- what were the discussions as to why
14 the compensation to Agricann changed from \$2,200 a pound
15 to an 80/20 split?

16 A. I don't recall all of what happened there, Mark,
17 I apologize.

18 Q. That's fine.

19 A. I just know that those changes eventually, for
20 whatever reason, there was a lot of back and forth, and
21 that's ultimately what we agreed upon.

22 Q. You mentioned that the contract calls for
23 creating a shared entity, what was the name of that shared
24 entity?

25 A. It was called Natural Agriculture, LLC.

1 Q. Who were the members to be under the contract of
2 Natural Agriculture, LLC?

3 A. According to the contract, line 20, and this was
4 how it ultimately --

5 Q. I'm sorry, what paragraph?

6 A. Paragraph 20 of the contract.

7 Q. Okay.

8 A. The parties were to be myself, and as manager
9 myself, my wife Carly, Imran, my partner, and then 25
10 percent would go to Kathy Sanchez. So it was going to be
11 75 percent parties of Agricann and then 25 percent party
12 to NRPC or Kathy Sanchez.

13 Q. And describe, again, a little more how -- well,
14 what was the purpose of Natural Agriculture? Was it to --
15 was it to fund the expenses?

16 A. It was to fund the expenses, to create a shared
17 operating account, where we could account for any and all
18 -- where we could account for expenses that had to be paid
19 by the joint grow or this grow operation that we were
20 jointly funding and paying for together.

21 Q. How was Natural Agriculture, LLC, supposed to be
22 funded?

23 A. It was supposed to be funded initially by putting
24 in \$15,000 from Agricann's side and 15,000 from NRPC's
25 side. And so -- and then each month replenishing that

1 continually, so that each party isn't at a disadvantage,
2 so to speak. So that each party is putting in their fair
3 share of the 50 percent of expenses.

4 Q. So each party would theoretically put in the same
5 50 percent of anticipated expenses on a regular basis?

6 A. That is correct, yes.

7 Q. And then out of that fund of Natural Agriculture,
8 the operation's joint expenses would be paid from that
9 entity's bank account?

10 A. Correct.

11 Q. Okay. Were there any lawyers involved in the
12 drafting -- in the actual drafting and revision of this
13 contract for Agricann?

14 A. Dave had mentioned getting an attorney to review
15 it a couple of times.

16 Q. Well, let me -- let me break it down. I'm asking
17 first about Agricann.

18 A. Sure.

19 Q. Did Agricann have a lawyer involved in the
20 preparation of this contract and the revision of it
21 through the final execution?

22 A. No. I believe that we had a template that was
23 procured from another attorney, and I don't remember where
24 Jay got it from, but we used a template that was
25 acceptable or from another -- and I don't remember the

1 showed was owed?

2 A. No, never.

3 Q. I want to take you to roughly --

4 A. If I could just say, not on the joint venture
5 contract at least. They never made a payment on that.

6 Q. I understand. I take you to kind of into
7 September and early October of 2015. And you had
8 indicated earlier that you and Dr. Kazem were running out
9 of financial ability to keep funding the operation and to
10 live without getting the revenues. What was Dr. -- what
11 was Dr. Kazem's position at that point, say in September
12 and early October of 2015?

13 A. Imran was very frustrated. He was discouraged.
14 He wanted to basically sell the facility to Dave, and
15 Kathy, and Shadi, to NRPC, because -- there was a lot of
16 reasons why.

17 Number one, there was a butane oven there
18 and they were making extract products, and we did --
19 apparently, it is a very risky thing, it could blow up and
20 start a fire or something like that. So there was risk
21 there, we just didn't want that kind of risk, that was one
22 thing.

23 We weren't getting paid for the extract
24 product anyway, they weren't reporting it anywhere. Dave
25 and Shadi were playing the I don't have the money game.

1 Dave was gone for months during that summer and would not
2 return any calls or texts or e-mails for several weeks and
3 months at a time, and that was very discouraging, because
4 we weren't getting paid, we weren't getting any
5 information, it was just like we were being completely
6 shut out.

7 And I think at one point, I don't remember
8 the exact day, but I locked the building, I decided to
9 lock them out, because they just weren't being compliant.
10 So I locked the building. It is, after all, our grow
11 operation, it still belonged to -- the lease rights
12 belonged to Agricann as the primary tenant and Natural
13 Agriculture, which I also managed and controlled, as the
14 subtenant. We were just discouraged and Imran was like,
15 you know what, I would just prefer to sell to them. Sell
16 them the building and let them run the operation the way
17 they want.

18 Q. At that point in time were you contemplating a
19 lawsuit against NRPC?

20 A. Yes.

21 Q. And what was Dr. Kazem's position on that?

22 A. He didn't want to sue, he didn't want litigation,
23 he just doesn't like lawsuits, and he just really
24 preferred to make something work. And so I -- because
25 he's my primary investor, I wanted to be as accommodating

1 to him as I could.

2 Q. At that point did some discussions begin between
3 the parties about the concept of NRPC buying Agricann out
4 of the contract going forward and out of the facility?

5 A. Yes. And most of those discussions were between
6 Imran and Dave, and Imran would fill me in about what was
7 discussed. And I would -- I would object, I told him
8 that's not really what I want. I still want to have a
9 grow facility, you know, but again, Imran was trying to
10 just get out of this as cleanly as we could.

11 Q. Was there a meeting in early October 2015 at
12 Dr. Kazem's house between the parties?

13 A. Yes.

14 Q. Who attended that meeting?

15 A. There was Dave and Shadi, Imran and myself, and
16 we all met in -- or I'm sorry, Imran's living room. And
17 we -- we basically committed that we would try and figure
18 out a way to make this work and that we weren't going to
19 leave until we had some kind of an agreement.

20 And we were there probably for four, maybe
21 five hours. It went late into the night. We were there
22 just trying to negotiate, trying to get a resolution, so
23 that there wouldn't be this lawsuit.

24 Q. And was the framework discussed throughout that
25 meeting of buyout by NRPC of Agricann's rights under the

1 contract going forward and its rights under the -- rights
2 to the facility?

3 A. Correct, yes. It was contemplated that they
4 would buy our lease rights to the 26th Ave. facility.
5 There was also some discussion about them buying -- you
6 know, buying the 24th Street facility as well, because
7 that's another topic.

8 You know, the long story short on that is
9 that we did come to an agreement finally that night, and
10 it took a lot of -- I did not want to do it. Imran and I
11 talked before the meeting. I told --

12 Q. Well, let me ask you about before the meeting.

13 A. Okay.

14 Q. When you were persuaded to at least entertain the
15 idea of a buyout, what was the amount in your head that
16 you would be willing to take to give up Agricann's rights
17 under the contract going forward and its rights to the
18 26th Ave. facility?

19 A. Well, that's a good question. We asked -- we
20 wanted 1.5 million. That was what Imran and I agreed to.
21 We went in there saying we're not going to accept anything
22 less than 1.5 million. It could be broken into payments,
23 whatever.

24 But that building is worth at least 1.5
25 just based on tenant improvements that had gone in from

1 the previous owner, how much tenant improvements we had
2 put in, additional lights, et cetera, and the fact that,
3 you know, it was just -- 1.5 is what we agreed to, between
4 Imran and I.

5 But as the meeting progressed and we talked
6 and we hammered it out, it wasn't happening. The closest
7 we could get to, I think, was like 1.2 million or
8 something like that. And Imran pulled me inside into his
9 -- one of his rooms, he has a home gym, and we talked for
10 a long time. He begged me, he's like, Brig, please,
11 please, I don't want a lawsuit, please just sell for the
12 terms that they propose.

13 MS. URIAS: Objection, hearsay.

14 THE WITNESS: I --

15 THE COURT: Hold on.

16 I'll take it, but not for the truth of the
17 matter asserted, but just to explain their subsequent
18 conduct.

19 MS. URIAS: Okay.

20 THE WITNESS: So I was -- you know, I told
21 Imran this is not what we agreed to, we agreed we wouldn't
22 settle for less than 1.5 million, you know, and he said,
23 well -- you know, he was very frustrated.

24 We went back and forth, and finally -- I
25 did finally -- I did finally accommodate Imran and said,

1 fine, we'll accept their offer. So we came out of that
2 room and Imran announced to them, we'll accept your terms,
3 and the terms were \$20,000 per month for three years, with
4 a \$400,000 balloon. That was due either at the end or
5 when they sold their NRPC license, either one.

6 But that was what we agreed to. Imran -- I
7 can't remember if it was Imran or myself. One of us wrote
8 out the handwritten document, and then Dave and I signed
9 it.

10 Q. Okay. Your Honor, do you want me to keep going
11 for a few more minutes, or is this a --

12 THE COURT: We can go ahead and break for
13 lunch at this point. So I've got Plaintiff with 4 hours
14 and 49 minutes remaining. I have Defendant with 6 hours
15 and 57 minutes remaining.

16 So we'll take our lunch break. Everybody
17 please be back by about 1:25, so we can make sure to start
18 at 1:30.

19 COURT BAILIFF: All rise.

20 MS. URIAS: Your Honor, do you use a
21 computerized chess clock or how do you do it?

22 THE COURT: It's a very fancy game clock
23 that I toggle back and forth, that the County does not pay
24 for. (Indicating.)

25 (Recess held.)

1 COURT BAILIFF: All rise.

2 THE COURT: Please be seated. We're back
3 in CV2016-001283.

4 Ready to continue with Direct Examination.

5 MR. DEATHERAGE: Thank you, your Honor.

6 BY MR. DEATHERAGE:

7 Q. Brig, when we were -- before the lunch break, we
8 were talking about the meeting in early October of 2015 at
9 Dr. Kazem's house between the parties. And you had that
10 mentioned when you went into the meeting, you and
11 Dr. Kazem, or at least you, were insistent that the buyout
12 amount, however structured, be no less than 1.5 million?

13 A. Correct.

14 Q. Did you have sort of -- had you guys talked about
15 the possibility of payments over a period of time with the
16 balloon payment?

17 A. Yes. We talked about what would be acceptable
18 for him and I.

19 Q. And what was your expectation or what you wanted
20 going into the meeting in a monthly payment?

21 A. We had agreed between Imran and I, that it
22 wouldn't be anything less than \$30,000 per month for three
23 and a \$500,000 balloon, or thereabouts, 5 or 600,000
24 balloon. I don't remember it was 5 or, 600 but I know
25 30,000 a month is what him and I had agreed between

1 ourselves initially, and that we wouldn't go lower or
2 compromise below that.

3 Q. And towards the end of the meeting, when -- after
4 the session where Dr. Kazem pulled you aside into the home
5 gym area and you acquiesced to agreeing to what NRPC was
6 offering?

7 A. Correct.

8 Q. Tell us what that offer was. What was NRPC
9 saying it was willing to do?

10 A. NRPC, Dave and Shadi, were offering to do a
11 buyout of the facility, including all of the equipment,
12 for 30 -- I'm sorry, not 30, but \$20,000 a month for three
13 with a \$400,000 balloon, which would be paid at the end of
14 the three-year term or whenever they sold their license.

15 Q. Based on the discussions between the parties at
16 that meeting, would that deal include Agricann giving up
17 its rights to the 80/20 split of revenue going forward?

18 A. Going forward, yes. We would just basically let
19 them run the facility the way they saw fit. There was
20 rumors that they were doing things that were illegal out
21 of the facility. We have written testimony from several
22 of the employees that can attest to that fact.

23 MS. URIAS: Objection, your Honor.

24 THE COURT: Yeah. Why don't we just focus
25 on what the agreement was or wasn't in terms of the 80/20

1 split.

2 THE WITNESS: Sorry.

3 MR. DEATHERAGE: And it only goes -- I
4 would agree it only goes to state of mind, your Honor.
5 BY MR. DEATHERAGE:

6 Q. And so based on that agreement in early
7 October 2015, it goes from Agricann being entitled to 80%
8 of revenues for the remaining term of the contract to
9 zero percent?

10 MS. URIAS: Objection, leading.

11 THE COURT: Overruled. You can go ahead --

12 THE WITNESS: From that point -- from that
13 point forward, yes.

14 BY MR. DEATHERAGE:

15 Q. And conversely, what would that do to -- what did
16 that agreement do to the share of revenues that NRPC would
17 get going forward?

18 A. Going forward, their share of the revenues would
19 be 100 percent instead of 20 percent.

20 THE COURT: So that I understand, are you
21 contending these are things that you discussed with the
22 NRPC folks in the meeting, or this was just your
23 understanding, or this is what you and Dr. Kazem
24 discussed, where are we in that spectrum?

25 THE WITNESS: Sure. So initially the

1 Q. And did Dave Sanchez sign where it says Dave
2 Sanchez, NRPC and PG?

3 A. Yes.

4 MR. DEATHERAGE: I move to admit Exhibit 2.

5 MS. URIAS: No objection.

6 THE COURT: Admitted.

7 BY MR. DEATHERAGE:

8 Q. What is the reference under the Dave Sanchez
9 signature to PG?

10 A. That stands for personal guarantee.

11 Q. What was the discussion at the meeting about Mr.
12 Sanchez personally guaranteeing this?

13 A. Well, it was very important to us that the PG be
14 in place, because up to this point, we had been cheated,
15 we had not been paid. He had diverted funds from NRPC, as
16 far as we know, to his personal account; in fact, he's
17 attested to that in his evidentiary hearing. We just
18 wanted some additional assurance that he would -- that he
19 would back this personally.

20 Q. The top of the document, November 2015 to
21 November 2018, what does that refer to?

22 A. That is when the note payments would start.
23 Originally, it was going to be October, but then we
24 decided to move it to November to give them an additional
25 period to begin payments. So you can see where it says

1 believe. And then in January they made a partial payment
2 of \$15,000.

3 Q. All right. Did you have to spur them on to make
4 any of those payments?

5 A. Yes.

6 Q. Describe what happened.

7 A. I would call, text, email Dave, saying, hey, you
8 guys agreed that from this point forward you would not
9 even be one day late going forward, and here we are, it is
10 whatever date it was, and you still haven't made the
11 \$20,000 payment, you know, here we go again, you know. We
12 have given over control of the facility, you guys have the
13 keys, et cetera; we just want to get our note payment for
14 the buyout of the facility.

15 Q. Is there any -- other than this agreement, is
16 there any other reason that you can think of that NRPC
17 would have been making those two, \$20,000 payments in
18 November and December of 2015 and then the \$15,000 payment
19 a little bit later?

20 A. No. The 20,000 was especially -- specifically
21 attributable to this note, number one. Number two, they
22 hadn't been making any of the payments, not even a
23 minor -- what they called a dividend payment for several
24 months prior to that initial \$20,000 payment. So they had
25 stopped paying on the 80/20 months ago. And so that first

1 \$20,000 payment was specifically for this note, as well as
2 the December \$20,000 note payment was specific to this
3 note.

4 Q. What happened after the two \$20,000 and then
5 \$15,000 payments were made, were any additional payments
6 made?

7 A. No. After that \$15,000 payment was made in
8 January, that was the last payment we received from them.

9 Q. Did you make further demands for payment under
10 that Exhibit 2 document?

11 A. Yes. We tried to get paid. And unfortunately
12 for us, they stopped paying the landlord, too, and we
13 actually ended up losing our lease rights as the tenant.

14 Q. When NRPC quit making the \$20,000 payments, did
15 NRPC offer to reinstate Agricann's rights on the -- under
16 the original contract going forward to a percentage of
17 revenues?

18 A. No, they did not. They made no attempt
19 whatsoever to try to resolve it.

20 Q. After NRPC quit making the payments, did it do
21 anything to offer or tender operation and control of the
22 26th Avenue facility back to Agricann?

23 A. No. To the contrary.

24 Q. Did -- after it quit making the payments, did
25 NRPC do anything or say anything to the effect that the

1 parties were going back to the original contract on a
2 going forward basis?

3 A. No.

4 Q. All right. Let's -- can you pull out Exhibit 31,
5 please?

6 A. Yes.

7 Q. What is exhibit -- well, let me ask you, first of
8 all, the template for Exhibit 31, when was this created?
9 When was this document as a template created?

10 A. This was created -- I would take it the original
11 format of it was taken from I believe it was Ruthie's
12 sales reports, so I used that as a template, and then
13 anytime I was able to obtain additional sales information
14 pertaining to our operation, I was able to cut and paste
15 that into here and just reformat it to accommodate the
16 addition.

17 Q. Is this the document that you were describing
18 earlier that you would send periodically to Dave Sanchez
19 and Shadi as a Google Docs link?

20 A. Correct, yes.

21 Q. And it was updated -- so it would -- each time it
22 was sent, the link would only be to whatever the current
23 information was that you had and translated into this
24 document?

25 A. Correct.

1 character for truthfulness or untruthfulness -- a
2 witness's credibility may be attacked or supported by
3 testimony about the witness's reputation for having a
4 character for truthfulness or untruthfulness or by
5 testimony in the form of an opinion about that character,
6 but evidence of truthful character is admissible only
7 after the witness's character for truthfulness has been
8 attacked. The witness's credibility is always at issue,
9 your Honor.

10 THE COURT: Well, certainly credibility is,
11 I'm just -- I guess you can ask him the question.

12 Go ahead. Overruled.

13 BY MS. URIAS:

14 Q. There's a fraud judgment against you, correct?

15 A. Yes, that is correct.

16 MR. DEATHERAGE: Again, your Honor, how
17 does that go to reputation?

18 THE COURT: Well, it is not reputation. It
19 is just character for truthfulness. He's answered the
20 question. Overruled.

21 MR. DEATHERAGE: Okay. All right.

22 BY MS. URIAS:

23 Q. And there was a jury trial, correct?

24 A. Yes.

25 Q. There was a reward of punitive damages against

1 you?

2 A. Yes.

3 MR. DEATHERAGE: Objection, relevance.

4 THE COURT: We'll just give you a standing
5 objection to this line of inquiry about fraud judgment.

6 MR. DEATHERAGE: Okay.

7 BY MS. URIAS:

8 Q. You appealed the judgment?

9 A. I did, yes.

10 Q. You appealed the punitive damages award?

11 A. At the same appeal, yes.

12 Q. And you lost the appeal, correct?

13 A. Yes. And I can explain.

14 Q. And the Court of Appeals issued a published
15 decision with respect to your case, true?

16 A. That is correct, yes.

17 MS. URIAS: And your Honor, that is
18 Exhibit 115, I would ask the Court to take judicial notice
19 of the Court of Appeals decision in Erdmann and Lechner
20 versus Burton.

21 MR. DEATHERAGE: Same objection, your
22 Honor, relevance.

23 THE COURT: Certainly under 608(b)
24 extrinsic evidence of specific instances is not
25 admissible.

1 MS. URIAS: Yes, I understand that, your
2 Honor, but the evidence itself is admissible to show a
3 pattern of conduct, and with respect to representations
4 that he made with respect to different financial partners
5 about the condition of businesses, about the finances, and
6 with respect to the course of dealing with his various
7 partners.

8 THE COURT: You've explored with him the
9 fraud conviction, and I'll let it go at that.

10 Why don't we move on to our next question.

11 MS. URIAS: Okay, your Honor.

12 BY MS. URIAS:

13 Q. Now, is it true that the Court of Appeals found
14 that you made misstatements to your former partner; is
15 that true?

16 A. My former partner? No, I don't believe so.

17 Q. Let me rephrase that.

18 A. Not a former partner, but --

19 Q. Okay. That you made misstatements to Mr. Erdmann
20 and Mr. Lechner?

21 A. Correct. They weren't partners, but yes.

22 Q. Okay. And the Court of Appeals also found that
23 the jury heard evidence that you provided multiple false
24 documents and statements in order to entice Mr. Lechner to
25 buy a company; isn't that true?

1 A. I would have to read -- I don't recall that exact
2 language if it is on there.

3 Q. Okay. But you do recall that there were findings
4 against you with respect to **misrepresentations and false**
5 **documents,** correct?

6 A. I believe that is correct.

7 Q. Okay. And there was also a finding that you
8 misrepresented a company called Kebco as a profitable
9 company; isn't that true?

10 A. That is correct.

11 Q. Okay. And the Court of Appeals also found that
12 the jury could have found, by clear and convincing
13 evidence, that your conduct was aggravated and outrageous,
14 correct?

15 A. I would have to see the actual statement from the
16 Court of Appeals. My recollection of the Arizona --

17 Q. It is a yes or no question --

18 THE COURT: Wait, wait, wait.

19 MS. URIAS: Sorry.

20 THE COURT: Let me clarify something --
21 because there's no fraud claim involved here, there's
22 breach of contract --

23 MS. URIAS: No, your Honor, but there were
24 representations made and Mr. --

25 THE COURT: Affirmative defenses --

1 MS. URIAS: No. But, your Honor,
2 Mr. Burton testified about representations that he made
3 with respect to his ability to perform under the contract,
4 and that goes to his inability to perform under the
5 contract.

6 THE COURT: And you're saying in this other
7 case the misrepresentations were about the ability to
8 perform --

9 MS. URIAS: No. We can move on, your
10 Honor.

11 THE COURT: Okay. Let's do that.

12 MS. URIAS: Okay.

13 BY MS. URIAS:

14 Q. You've had multiple judgments entered against
15 you, correct?

16 MR. DEATHERAGE: Relevance.

17 THE COURT: Sustained.

18 THE WITNESS: The --

19 THE COURT: Wait, hold on.

20 MR. DEATHERAGE: When I make an objection,
21 let the judge rule.

22 THE WITNESS: I'm sorry.

23 MS. URIAS: I can explain the relevance of
24 that, your Honor.

25 THE COURT: Okay.

1 MS. URIAS: It goes to his motive with
2 respect to the constant demands for payment from NRPC.
3 That he had these outstanding judgments and he was
4 constantly asking for money even when he wasn't entitled
5 to it.

6 THE COURT: But if it is a breach of
7 contract claim, motive is irrelevant. Either people
8 conformed to their promise or they didn't.

9 How is motive relevant to a breach of
10 contract claim?

11 MS. URIAS: I understand what you're
12 saying, your Honor. Motive in terms of his conduct and
13 how he conducted himself with respect to performance under
14 the contract.

15 THE COURT: Again, how is motive relevant?
16 Either somebody performed or they didn't. So I'm going to
17 sustain the objection.

18 MS. URIAS: Okay.

19 BY MS. URIAS:

20 Q. Mr. Burton, you also had a real estate license
21 suspended due to misrepresentations; isn't that true?

22 MR. DEATHERAGE: The same objection,
23 relevance.

24 THE COURT: I'll overrule it.

25 THE WITNESS: That was -- I believe that's

1 correct, yes.

2 BY MS. URIAS:

3 Q. Now, please look at Exhibit 117. We're going to
4 have it up on the screen.

5 Back to the first page?

6 You'll recall that I asked about this page
7 in your deposition, this represents a web page bio,
8 correct?

9 A. Yes.

10 Q. That's your picture?

11 A. Yes.

12 Q. It says Brig Burton?

13 A. Yes.

14 Q. And when I asked you, if you wrote the bio, your
15 response was that you didn't know if you wrote it, but you
16 would claim it; do you recall that?

17 A. I believe so, yes.

18 Q. And you also testified that it was accurate at
19 the time it was written; is that true?

20 A. I believe so, yes.

21 Q. So if you see the highlighted portion, it says:
22 In his most recent venture as president and managing
23 partner of Agricann, he's been successful in earning a
24 return on investment of more than ten times his and his
25 partner's original investment within a three-year period;

1 do you see that?

2 A. Yes.

3 MR. DEATHERAGE: Your Honor, objection,
4 this is not an admitted exhibit, and I would object. If
5 it is moved for --

6 THE COURT: Well, yes, it is not an
7 admitted exhibit. Do you want to move to admit? We don't
8 have a jury, so --

9 MS. URIAS: I will move to admit it.

10 MR. DEATHERAGE: But I object on relevance.

11 THE COURT: Okay. So what is the relevance
12 of 117?

13 MS. URIAS: The relevance is, he's making
14 representations about money -- and I will establish this,
15 about money that he earned in connection with the Agricann
16 and NRPC joint venture, that he's representing himself as
17 having earned a return of more than ten times the original
18 investment amount.

19 THE WITNESS: I did --

20 THE COURT: Wait, hold on, sir.

21 So let's say that's false, let's say it is
22 a false representation to the public at large. Are you
23 saying that your client relied on that information as part
24 of entering into this agreement?

25 MS. URIAS: No. Again, this goes to his

1 character for lack of truthfulness.

2 THE COURT: So, again, under 608(b), isn't
3 this using extrinsic evidence to prove a specific
4 instance --

5 MS. URIAS: I'm just cross-examining, I
6 haven't moved to admit it.

7 THE COURT: Well, you just did, and he
8 objected on relevance.

9 MS. URIAS: He objected before I moved to
10 admit, your Honor.

11 THE COURT: I think you did.

12 MR. KNIGHT: She said she would admit.

13 MS. URIAS: At that point I hadn't moved to
14 admitted, but if it is not admitted, then I can still
15 question him about it.

16 THE COURT: You can ask -- you're using --
17 you've moved well beyond somebody's reputation for
18 truthfulness at this point, and you're asking him about
19 specific instances.

20 MS. URIAS: Okay.

21 THE COURT: So that, to me, sounds an awful
22 lot like character evidence. You said something false to
23 somebody before, so I'm going to now ask you about all of
24 the false statements you've ever made in your life, as
25 opposed to getting somebody on the stand and saying, are

1 you familiar with Mr. Burton's reputation for truthfulness
2 in the community --

3 MS. URIAS: We can move on, your Honor.

4 THE COURT: Okay. Let's do that.

5 MS. URIAS: It's fine. I do have
6 questions.

7 BY MS. URIAS:

8 Q. Is it your position that Agricann has received a
9 ten times return on an investment with NRPC?

10 A. Not received, but certainly earned, yes, which is
11 what it says.

12 Q. Agricann has never held a dispensary license,
13 true?

14 A. True.

15 Q. It is a for-profit entity?

16 A. True.

17 Q. You testified that you're familiar with the rules
18 and regulations regarding the medical marijuana industry
19 in Arizona, correct?

20 A. Not as much as the license holder, but yes, I'm
21 somewhat familiar with them, yes.

22 Q. Your understanding is that Agricann cannot hold a
23 dispensary license because it is a for-profit entity,
24 correct?

25 A. Correct.

1 Q. And you've never applied for a license on behalf
2 of Agricann, correct?

3 A. Correct.

4 Q. Now, with respect to the management contract,
5 Exhibit 1. You wrote this agreement, correct?

6 A. I did not write it. I helped write it. I think
7 an initial draft was procured by another source from which
8 I do not know. If it was Jay Galt, my former partner, but
9 the template was provided by someone else. But yeah, I
10 did help write it, yes.

11 Q. Did you write this agreement or not?

12 A. I helped write it with others, like Shadi and
13 David Sanchez, for example.

14 Q. You gave testimony in a hearing in an application
15 for a receiver; do you recall that?

16 A. Yes.

17 Q. That was on March 14th of 2016?

18 A. Yes.

19 Q. And you were asked the question about whether you
20 prepared this document?

21 A. Yes.

22 Q. The question was: And it was your law firm or,
23 again, your people who prepared that document, correct?
24 And your response was, actually, I prepared this document.

25 Question: Oh, you prepared the document? Response: Yes.

1 A. Yes.

2 Q. So is that true, that you wrote the document?

3 A. Yes, I helped write this document.

4 Q. In your deposition you testified that you, Dave
5 and Shadi, sat down and typed it out together?

6 A. Correct.

7 Q. That's what your position is today?

8 A. Yes.

9 Q. Okay. You sent the contract by email to Kathy
10 and to Shadi, correct?

11 A. Yes.

12 Q. And the original file was it created by Jay Galt?

13 A. I believe so.

14 Q. He was a former member of Agricann?

15 A. Yes.

16 Q. The contract term was two years, correct?

17 A. Yes.

18 Q. It was signed on May 27th of 2014?

19 A. Yes.

20 Q. So it expired as of May 27, 2016, correct?

21 A. Correct.

22 Q. Now, you testified earlier about the expert team
23 that you had developed; do you recall that?

24 A. Yes.

25 Q. At the time that this agreement was entered into,

1 the only members of Agricann were you and Dr. Kazem,
2 correct?

3 A. Members of the Agricann entity, not
4 necessarily --

5 Q. That was my question.

6 A. We hired other people.

7 Q. Dr. Kazem is a practicing radiologist?

8 A. Yes.

9 Q. He did not grow cannabis to your knowledge?

10 A. Correct.

11 Q. And Dr. Kazem did not have expertise in cannabis,
12 correct, to your knowledge?

13 A. Not -- no. Yeah.

14 Q. You're not a botanist?

15 A. Correct.

16 Q. You're not an agriculturist?

17 A. Correct.

18 Q. Were you an expert in cannabis?

19 A. No. Other than what we had previously made under
20 TASI, which was --

21 Q. I'm asking if you're an expert.

22 A. No, but my team was.

23 Q. And your expert -- I'm asking about you,
24 Mr. Burton.

25 A. Sure.

1 Q. Your expertise as a team was based on the prior
2 work that was done for Total Accountability Systems?

3 A. Yes.

4 Q. And isn't it true that at the time this contract
5 was signed, Agricann had no employees?

6 A. No. Agricann still had employees actually. We
7 were still paying Alan and Matt and others to help clean
8 up the facility, for example. So they were still
9 employees of Agricann.

10 Q. You had testified earlier that Alan and the
11 others grew marijuana, correct?

12 A. Yes.

13 Q. And to do so they needed to have a dispensary
14 card?

15 A. Correct.

16 Q. And to have a dispensary card, they had to be
17 employees of TASI; isn't that true?

18 A. Correct, yes.

19 Q. So they were not employees of Agricann, were
20 they?

21 A. They were employees --

22 Q. Were they employees of Agricann?

23 A. Yes. They were employees of the Agricann at the
24 time this was entered into, yes.

25 Q. Can you point to a single document showing

1 payroll records reflecting any payments that were made by
2 Agricann to any of the so-called expert team?

3 A. I believe I can. I would need a binder, and I
4 could show you where I made those payments from, yes.

5 Q. Do you have any of them as we sit here today in
6 trial?

7 A. I'm pretty sure I do, yes.

8 Q. Okay. I will ask your lawyer to show those to
9 us.

10 A. Sure.

11 Q. Agricann's contract with TASI was signed in May
12 of 2013, correct?

13 A. Yes, that's correct.

14 Q. And the relationship between Agricann and TASI
15 ended in February 2014?

16 A. No. I believe it was May 5th of 2014.

17 Q. So at some point in early mid -- well, the first
18 half of 2014?

19 A. Yes. The relationship with TASI ended somewhere
20 in the middle of 2014, yes.

21 Q. So the intent of the contract was to grant
22 Agricann as a dispensary agent the exclusive and
23 unbreakable legal rights to cultivate and provide other
24 services under its dispensary certificate; do you see
25 where it says that?

1 A. Yes.

2 Q. Was that the intent of the contract?

3 A. Yes.

4 Q. And this was a provision that you wrote?

5 A. That we as a group wrote, yes. I might have
6 written it. I don't know who exactly put that sentence in
7 there. It might have been me, so --

8 Q. So did you write it or not?

9 A. I helped write it. I just don't -- I can't
10 recall, Sharon, which specific provisions I might have
11 typed versus Dave or Shadi, but we all worked on this
12 together.

13 Q. Okay. Agricann as an entity could not be a
14 dispensary agent, could it?

15 A. Correct. It can't hold an agent card in that
16 traditional sense, you're right.

17 Q. Okay. Agricann also could not legally cultivate
18 cannabis; isn't that true?

19 A. Well, without -- without being able to be --

20 Q. It is a yes or no question.

21 A. -- under a dispensary license, no, you're right.
22 It couldn't do so without some authorization.

23 Q. Agricann as an entity could not -- was not a
24 licensee?

25 A. Correct.

1 Q. So it could not grow cannabis?

2 A. It could only grow under and through a licensed
3 dispensary, correct.

4 Q. That's not my question. I'm not talking about
5 individuals. I'm talking about Agricann as an entity.
6 Agricann as an entity could not grow cannabis, correct?

7 A. Agricann as an entity without the authorization
8 or authority from NRPC, correct, could not grow marijuana
9 by itself, you're right.

10 Q. Okay. You threw in a lot of caveats there, but I
11 think you gave me an answer to my question. You
12 understand, again, that an entity cannot hold a dispensary
13 agency card?

14 A. That is correct.

15 Q. Okay. But under this contract, Agricann was
16 supposed to be a dispensary agent, true?

17 A. It was supposed to be --

18 Q. Yes or no?

19 A. What was the question, I'm sorry?

20 Q. That Agricann under the contract was supposed to
21 be a dispensary agent?

22 A. It didn't require it to be a dispensary agent, it
23 require -- it doesn't say that in there, that's not what
24 it says.

25 Q. Well, we just read a line that says the intent of

1 the contract was to grant Agricann as a dispensary agent.
2 So are you disputing that Agricann was supposed to be a
3 dispensary agent under the contract?

4 A. No. I'm just -- I'm just trying to clarify that
5 Agricann as an entity, having lease rights to a properly
6 zoned facility, has the rights under a dispensary license
7 to provide the services of exactly what it provided, which
8 was --

9 Q. Mr. Burton, that wasn't my question.

10 A. Okay. I'm trying to answer --

11 Q. My question was simply, yes or no, under this
12 contract, Agricann was supposed to be a dispensary agent?

13 A. I wouldn't call -- I don't know if I would call
14 Agricann a dispensary agent in the traditional sense of an
15 employee, because only an employee could be an agent, not
16 an entity, right, and that's what you're getting at.

17 Q. So you're saying that was not the intent of the
18 contract?

19 A. Right. I'm saying that the -- the intent of the
20 contract is what it says it is. You can read the terms
21 for yourself; I mean, I can read them for you. It says
22 right there, NRPC --

23 Q. No, Mr. Burton.

24 A. Okay, sorry.

25 Q. We can move on.

1 A. Okay.

2 Q. And under the contract Agricann was supposed to
3 grow, dispense, deliver, and cultivate marijuana, correct?

4 A. Correct.

5 Q. It was supposed to grow, cultivate, and cure
6 medical marijuana; do you see that? Whereas NRPC desires
7 to grant AC exclusive agency to handle all of its growing,
8 cultivation, and curing of medical marijuana products.

9 A. Right.

10 Q. In other words, Agricann was the only party that
11 had the right to cultivate marijuana under this agreement,
12 true?

13 A. True.

14 Q. In other words, even NRPC could not cultivate
15 marijuana under this provision, would you agree that?

16 A. No. I mean, that's -- I wouldn't say that's what
17 it says.

18 Q. Does the provision say that NRPC retain the right
19 to cultivate marijuana?

20 A. It says -- let's see, where was it again? You
21 highlighted it. I'm sorry, where was that again? NRPC
22 desires to grant Agricann exclusive agency to handle its
23 growing, cultivation, and curing of medical marijuana
24 product. So that's expressing its desire. I mean, it is
25 not a provision obviously. It's just saying this is what

1 its desire is. It is not saying that Agricann only has
2 the authority to grow, it is just saying that NRPC desires
3 to grant Agricann the exclusive agency to handle its --

4 Q. Okay. Mr. Burton --

5 A. -- you know, it wanted us to handle it according
6 to its desires.

7 Q. If you could please stick to my questions, this
8 will go faster and I would appreciate it.

9 A. Sure.

10 Q. Okay. You'll have a chance to explain when your
11 counsel does Redirect?

12 A. Okay.

13 Q. The intent was that Agricann would grow and NRPC
14 would sell, is that a true statement?

15 A. That -- well, see, Agricann --

16 Q. Is that a true statement, yes or no?

17 A. Well, I don't know if I can answer it yes or no.
18 Can I clarify? I don't know how to --

19 THE COURT: A lot of her questions call for
20 yes or no answers, if you can answer, yes, no, or I can't
21 answer yes or no, then she'll have a chance to ask
22 follow-up if she wants or your lawyer will have a chance
23 to ask follow-up.

24 THE WITNESS: See, I don't --

25 BY MS. URIAS:

1 Q. It is a yes or no question. The intent was that
2 -- I'm going to repeat it for you, was that Agricann would
3 grow and NRPC would sell; is that true?

4 A. Partially.

5 Q. Okay. Well, I'm going to take you back to your
6 testimony in the receiver hearing?

7 A. Okay.

8 Q. And you were asked about this agreement and the
9 question was: Question --

10 MR. DEATHERAGE: Could I have the page and
11 line of that?

12 MS. URIAS: Sure. I'm sorry. Page 20,
13 line 19.

14 THE COURT: Do you have a copy for the
15 witness, or no?

16 MS. URIAS: I was just going to read it to
17 the witness, your Honor.

18 MR. DEATHERAGE: I think he should be able
19 to see it.

20 MS. URIAS: It is not an exhibit.

21 MR. DEATHERAGE: It doesn't matter.

22 MS. URIAS: I'm just reading two short
23 sentences.

24 THE WITNESS: Sure.

25 MS. URIAS: So to put in layman's term --

1 MR. DEATHERAGE: And you're at line 20 --

2 MS. URIAS: Line 19.

3 MR. DEATHERAGE: Okay.

4 BY MS. URIAS:

5 Q. To put in layman's terms, you GROW, they sell,
6 correct? Are you disputing --

7 MR. DEATHERAGE: I apologize, where -- you
8 said page 20?

9 MS. URIAS: (Indicating.)

10 MR. DEATHERAGE: So that's not the official
11 transcript.

12 MS. URIAS: This is an official transcript,
13 we had this prepared by the Court.

14 MR. DEATHERAGE: Okay. I'm confused. I'm
15 looking at the official transcript that was prepared, and
16 I'm just not finding what you're --

17 MS. URIAS: I can --

18 THE COURT: I don't have a copy of any
19 transcript, so -- was this marked as an exhibit, too, or
20 no?

21 MS. URIAS: No. This is not marked as an
22 exhibit.

23 MR. DEATHERAGE: We've marked the official
24 transcript as exhibit --

25 MS. URIAS: Well, it is not an official

1 transcript. We ordered it from the Court, and we had the
2 court reporting service prepare one for use at trial.
3 Plaintiff had hired its own outside court reporter
4 service --

5 THE COURT: So everybody got the FTR and
6 then had your own court reporters make a transcript?

7 MS. URIAS: Yeah.

8 THE COURT: Got it. Well, so yours is at
9 page 20 --

10 MS. URIAS: 20, 19 -- line 19 through 20.

11 THE COURT: Mr. Deatherage, you're able to
12 find where they are?

13 MR. DEATHERAGE: I'm trying to -- I
14 honestly am trying to find it, your Honor, and I'm not
15 trying to be difficult. I just want to --

16 MS. URIAS: It is during Mr. Broberg's
17 questions. It is on page 21.

18 MR. DEATHERAGE: Okay.

19 BY MS. URIAS:

20 Q. Now, if you look at paragraph 2 of this
21 agreement -- no, paragraph 2, the next page.

22 It talks about taking out an insurance
23 policy; do you see that?

24 A. Yes.

25 Q. NRPC did not take out an insurance policy; is

1 that true?

2 A. That is correct.

3 Q. And you claim that NRPC breached the agreement
4 because they did not take out an insurance policy; is that
5 correct?

6 A. I think Mr. Broberg, my former attorney, made the
7 argument, but it was never really material to me, but it
8 was in there, and they did breach it --

9 Q. That's something you alleged in your complaint,
10 correct?

11 A. That was, yes. Uh-huh.

12 Q. Okay. And the paragraph also requires Agricann
13 to take out an insurance policy; isn't that true?

14 A. That is correct.

15 Q. And Agricann did not take out an insurance
16 policy?

17 A. We tried, we could not --

18 Q. It is a yes or no question.

19 A. Yes, I'm -- you're right.

20 Q. Neither party obtained insurance, correct?

21 A. As far as I know, that is correct, yes.

22 Q. And it says right here in the second line, this
23 agreement shall be made both ways; do you see that?

24 A. Yes.

25 Q. And neither party sent a demand letter to the

1 other with respect to the failure to obtain insurance;
2 isn't that true?

3 A. True.

4 Q. Paragraph three talks about corrective action,
5 correct?

6 A. Yes.

7 Q. It states that if there's a violation of law,
8 notice and a failure to correct, there may be a \$500 fine,
9 correct?

10 A. Correct.

11 Q. Agricann never provided a 30-day notice to NRPC
12 pursuant to this provision, correct?

13 A. In relation to what? In relation to --

14 Q. There was no 30-day notice that was ever issued
15 to NRPC; isn't that true?

16 A. I don't -- I don't know what you're referring to
17 there.

18 Q. I'm referring to paragraph 3.

19 A. No, no, I'm not talking about the document. I'm
20 talking about as it relates to when and how we eventually
21 severed.

22 Q. Did you ever demand that NRPC pay a \$500 fine for
23 violating some regulation or rule? Yes or no?

24 A. No, I don't think we ever actually imposed that.

25 Q. And NRPC never did likewise with respect to

1 Agricann, true?

2 A. True.

3 Q. Okay. Paragraph 4 requires NRPC to help -- well,
4 to warrant in good faith to help Agricann become attached
5 to a new dispensary should the parties wish to sever ties,
6 true?

7 A. True.

8 Q. And the paragraph also states that Agricann
9 warrants it will help NRPC find a new cultivation facility
10 should the parties wish to sever ties, true?

11 A. True.

12 Q. You wrote this provision, correct?

13 A. I believe -- I probably did. I think I did.

14 Q. And you wrote it because Agricann cannot legally
15 cultivate marijuana without an entity that has a
16 dispensary license, correct?

17 A. Correct.

18 Q. And Agricann did not have a dispensary license,
19 correct?

20 A. Prior to entering into this, correct.

21 Q. Agricann?

22 A. Correct.

23 Q. And you didn't have a dispensary agent card at
24 this time, correct?

25 A. Correct.

1 recess and then we'll come back.

2 COURT BAILIFF: All rise.

3 (Recess held.)

4 COURT BAILIFF: All rise.

5 THE COURT: Please be seated.

6 We're back in CV2016-001283. We're ready
7 to continue with Cross-Examination.

8 MS. URIAS: Thank you, your Honor.

9 BY MS. URIAS:

10 Q. Mr. Burton, if you look at paragraph ten of the
11 agreement. It says that -- it says that NRPC shall
12 maintain a separate escrow account for accumulated
13 reserves for tax purposes which is to be funded by both
14 parties.

15 The parties did not fund such an escrow
16 account, correct?

17 A. Correct.

18 Q. Let's look at paragraph seven of the agreement.
19 It says Agricann shall submit to NRPC invoices. So will
20 you agree that this means that the contract required
21 Agricann to submit invoices to NRPC?

22 A. Yes.

23 Q. Agricann was required to submit invoices to NRPC
24 for management services?

25 A. Yes.

1 Q. Rent?

2 A. Yes.

3 Q. Security?

4 A. (Nods head.)

5 Q. Also agriculture services, correct?

6 A. Correct.

7 Q. Agricann did not submit rent invoices to NRPC
8 every month the contract was in place, correct?

9 A. Correct.

10 Q. Now, at various points in time, you sent emails
11 to the principals of NRPC and also to Mr. Zaki demanding
12 payment, true?

13 A. True.

14 Q. And you were demanding money from NRPC even at
15 times when the parties were struggling to pay their
16 expenses; isn't that true?

17 A. I don't believe that's true, no.

18 Q. You're denying that?

19 A. I don't believe that's true.

20 Q. Okay. You frequently asked Imran, your partner,
21 for money; isn't that true?

22 A. Yes.

23 Q. And you wanted to control the money in the joint
24 operation; is that a true statement?

25 A. That was my responsibility, yes.

1 Q. And you knew that money was supposed to flow to
2 NRPC first, correct?

3 A. Correct.

4 Q. But you also sent that Exhibit 93, that we looked
5 at, to Shadi, demanding that he deposit \$30,000 into
6 Agricann's account; is that true?

7 A. Can I see exhibit -- was it 30 you said?

8 Q. You say, we need to get paid right away. Please
9 deposit 30,000 into the Wells Fargo-Agricann bank account
10 today. Do you see that?

11 A. Yes.

12 Q. Isn't it true that you never sent separate
13 documents to NRPC that were actually titled invoice with
14 respect to management, agriculture, or other services?

15 A. I don't know if the word invoice was on there,
16 but I knew we sent several breakdowns of expenses,
17 including rent and so forth, that explained what was owed.

18 Q. So you sent demands for payment, correct?

19 A. Correct.

20 Q. But they were not actually invoices, would you
21 agree with that?

22 A. No, I would not agree. They were invoices, they
23 just didn't have the word "invoice" on top of them.

24 Q. So point us to a document in the record that
25 reflects an invoice that you sent on behalf of Agricann to

1 NRPC.

2 A. Can I -- can I reference an exhibit? For
3 example, Exhibit 31 for example, where we have a breakdown
4 of what sales have come in, what the respective share of
5 operating expenses are, where there's showing an
6 accumulation of how the interest rate is impacting the
7 balance.

8 Q. Is it your position that Exhibit 31 is an
9 invoice, Mr. Burton?

10 A. Yes, one of many.

11 Q. Okay. Agricultural services refers to the
12 cultivation of marijuana plants, would you agree with
13 that?

14 A. Yes.

15 Q. When I asked you in your deposition whether
16 agricultural services meant cultivation of the plant, and
17 this is at page 87, lines 3 through 10, you testified that
18 it meant the cultivation of the facility, the development
19 of the employees.

20 That's not really what agricultural
21 services means, is it?

22 A. Well, I think I explained it.

23 Q. Yes or no?

24 A. What was the question?

25 Q. Agricultural services means the cultivation of

1 the plant, correct?

2 A. Partially, yes.

3 Q. All right.

4 MR. DEATHERAGE: For completeness, can we
5 read the following lines 11 through 16?

6 MS. URIAS: Okay. I'll read that whole
7 section to make it clear.

8 What does that mean, who is agricultural
9 services?

10 ANSWER: Agricann's agricultural services.

11 You mean the cultivation?

12 Correct.

13 Of the plant?

14 The cultivation of the facility, the
15 development of the employees.

16 You don't cultivate a facility, you
17 cultivate marijuana, correct?

18 You grow the people and the people grow the
19 plants, right?

20 The people under Agricann's stewardship
21 were growing the plants and they were licensed in and
22 through NRPC.

23 THE COURT: To make it clear for all of us.

24 MS. URIAS: The lines?

25 THE COURT: In the future, can we do,

1 Question: Is the light green? Answer: Yes.

2 MS. URIAS: My apologies, your Honor.

3 THE COURT: Thank you.

4 MS. URIAS: Okay.

5 BY MS. URIAS:

6 Q. Now, we have already established at this point in
7 time all of the employees actually were NRPC employees,
8 not Agricann employees, correct?

9 A. I don't know if we established that, but we
10 talked about the distinction there. Yes, we talked about
11 that.

12 Q. Okay. And the contract, however, contemplates
13 cultivation of plants by Agricann employees, not NRPC
14 employees; isn't that true?

15 A. By Agricann's original team, sure. It
16 contemplates that, yes.

17 Q. So, in reality, any product that were made by
18 those employees were made by NRPC, not by Agricann; isn't
19 that true?

20 A. I suppose we could argue that NRPC's --

21 Q. Thank you.

22 So let's turn to paragraph eight of
23 Exhibit 1. This provision says NRPC will pay Agricann
24 immediately for any and all product made by Agricann and
25 sold to or through NRPC, correct?

1 A. Correct.

2 Q. And this refers to cannabis product made by
3 Agricann employees, correct?

4 A. Correct.

5 Q. And this is the paragraph that has the 1 percent
6 per day interest rate, correct?

7 A. Correct.

8 Q. And by its terms, paragraph eight only applies to
9 product made by Agricann, as opposed to product made by
10 someone else or purchased from someone else, true?

11 A. Yes, I believe that's correct.

12 Q. And NRPC purchased product from other
13 dispensaries, correct?

14 A. Agricann didn't purchase product from other
15 dispensaries.

16 Q. I said NRPC. To your knowledge, NRPC purchased
17 product from other licensees; is that true?

18 A. I don't know if they did or not.

19 Q. Now, in your deposition when I asked you about
20 this one percent per day provision, and I asked you what
21 it applied to, let's look at what you said. It is at page
22 92, lines 12 through 20 -- through 20.

23 THE COURT: So this is his deposition?

24 MS. URIAS: This is his deposition.

25 THE COURT: Do we have a copy for him of

1 his deposition?

2 THE WITNESS: Yeah, I never get a copy.
3 I'm always relying on what you tell me, so I can't see the
4 deposition --

5 MS. URIAS: I'm reading it to you.

6 THE COURT: If we're ever going to impeach
7 the witness, I'd like the witness to have a copy of his or
8 her transcript.

9 BY MS. URIAS:

10 Q. 92. Line 12.

11 "QUESTION: This paragraph eight refers to
12 product made by Agricann that is cultivated and created by
13 Agricann.

14 ANSWER: Right.

15 QUESTION: As opposed to product purchased
16 from another entity?

17 ANSWER: Right.

18 QUESTION: You would agree with that?

19 ANSWER: That may be what it does, that's
20 what it says. That's not what the intent of the parties
21 is."

22 Do you recall giving that testimony?

23 A. I'm trying to remember it. Could I see the next
24 page?

25 Q. Do you recall giving that testimony, Mr. Burton?

1 tell me what the quantity was of marijuana plants
2 cultivated by Agricann in connection with this agreement,
3 can you?

4 A. It's -- you're right, it is very difficult when
5 the other party is not providing any transparency, you're
6 absolutely right.

7 Q. Mr. Burton, please just answer my question.

8 A. The answer would be yes, that's correct.

9 Q. You maintain records on behalf of Agricann?

10 A. Yes. Well, with an accountant as well, yes. And
11 my wife, Carly.

12 THE COURT: And your wife what?

13 THE WITNESS: My wife Carly also kept the
14 records.

15 BY MS. URIAS:

16 Q. Is it your position that Agricann did not keep
17 track of how much product it supposedly made?

18 A. No. I think we kept track as best we could with
19 the limited information we were provided with from NRPC.

20 Q. Now, the agreement under paragraph 7 and 8 would
21 require NRPC to pay Agricann within five days of each and
22 every sale; isn't that true?

23 A. Correct.

24 Q. It doesn't require weekly, bimonthly, monthly, or
25 some other payment arrangement, true?

1 A. That's true.

2 Q. So if there were sales is every day, then there
3 would be payment due every day; is that a true statement?

4 A. That's true.

5 Q. And it is your position that the payments that
6 were due were gross profits, not net after expenses; is
7 that true?

8 A. That is what it says, correct. Yes, that is
9 true.

10 Q. And is it your position that that is how the
11 parties conducted themselves?

12 A. That is not how the parties conducted themselves.

13 Q. Did -- according to the strict language of the
14 agreement, Agricann was to receive 80 percent of gross
15 sales within five days of each sale; is that your
16 position?

17 A. That is correct, yes.

18 Q. And that never happened; isn't that true?

19 NRPC never paid Agricann 80 percent of
20 gross sales within five days, throughout the entire
21 performance of the contract; is that a true statement?

22 A. That is correct.

23 Q. You also never received payment of one percent
24 interest from NRPC?

25 A. That is correct.

1 Q. And your position that Agricann is entitled to 80
2 percent of all gross sales is based on the language in
3 paragraph 7 of Exhibit 1; is that true?

4 A. Exhibit 7 and an additional exhibit, yes.

5 Q. Is this language in paragraph 7 of Exhibit 1
6 language that you drafted?

7 A. No. I do not believe I drafted this initial one.
8 I think the initial one was from a template, because --

9 Q. Mr. Burton, I asked if you drafted paragraph
10 seven in Exhibit 1.

11 MR. DEATHERAGE: He answered.

12 THE WITNESS: And I answered. I answered I
13 don't think so.

14 BY MS. URIAS:

15 Q. Your response was that this was in an earlier
16 version; is that correct?

17 A. I believe so.

18 Q. Let's go back to Exhibit 90. The next page.
19 Next page.

20 This is the exhibit that your counsel
21 showed you earlier, Exhibit 90; do you recall that? This
22 was the draft?

23 A. Oh, yes. Yes. Uh-huh.

24 Q. Show me where in this draft, paragraph seven, as
25 it appears in Exhibit 1 is in Exhibit 90?

1 A. Show you where it is?

2 Q. Yes.

3 A. Where it is?

4 Q. Yes.

5 A. From paragraph seven. Oh, yeah, on this one, it
6 was -- this was a different term put in, so we changed --
7 if you look at paragraph six --

8 Q. I understand that, Mr. Burton, the point is it is
9 not in Exhibit 90, correct?

10 A. Right. If this is Exhibit 90. Yeah, that's
11 different, you're right, yes.

12 Q. Thank you.

13 Now, turning back to Exhibit 1, paragraph
14 seven. Would you agree that this paragraph does not
15 explicitly state that Agricann shall be paid 80 percent of
16 all gross sales?

17 A. No, it does explicitly state that.

18 Q. It explicitly states, Agricann shall be paid 80
19 percent of all gross sales; is that your testimony?

20 A. 80 percent of all gross sales from both retail
21 and wholesale operations shall be paid to Agricann, yes.

22 Q. Mr. Burton, please answer my question.

23 A. I did. I said yes.

24 Q. This paragraph says that all invoices submitted
25 to Agricann to NRPC shall not exceed 80 percent; isn't

1 that true?

2 A. That's correct.

3 Q. The sentence does not say that the invoices shall
4 equal 80 percent, correct?

5 A. Correct -- Well, hold on, say that one more time.
6 What was your question? What was your question? I'm
7 sorry. You're turning too fast --

8 Q. That the invoices submitted by Agricann to NRPC
9 shall not exceed 80 percent of the sales income received
10 by NRPC. Do you agree with me that that's what it says?

11 A. If that's what it says, yes.

12 Q. Okay. Isn't it true that the parties always
13 split profits 50/50?

14 A. No, that's not true. That's what NRPC tried to
15 do and tried to argue, but that's not what happened.

16 Q. So it is your position that the parties did not
17 follow a course of conduct, where they split net profits
18 50/50; is that your testimony?

19 A. Yes. It is my testimony that they didn't do
20 that, right.

21 Q. Okay. Isn't it true the profits were split after
22 expenses were paid?

23 A. The profits were never split like they should
24 have been, no. Even on a 50/50 basis.

25 Q. Will you go to Exhibit 134?

1 Blow it up.

2 Exhibit 1 -- no, go. This is Exhibit 134.

3 A. Uh-huh.

4 Q. This is an email from you dated January 3rd to
5 David Sanchez, cc'ing Shadi, Imran, Carly and Kathy. Do
6 you agree?

7 A. Yes.

8 MS. URIAS: I move for admission of 134,
9 your Honor.

10 THE COURT: Any objection?

11 MR. DEATHERAGE: One quick second. No
12 objection.

13 THE COURT: 134 is admitted.

14 BY MS. URIAS:

15 Q. So if you take a look at the highlighted sentence
16 there, this is -- you would agree with me, this is an
17 email from you to Shadi, correct?

18 A. Correct.

19 Q. And you say Agricann's share of the sales to date
20 of 96,525 are 48,262 plus accrued interest of one percent
21 per day after each of the exceeded five-day grace periods.
22 Do you see that?

23 A. Yes.

24 Q. 48,262, I'm not a math wizard, but that's half of
25 96,525, correct?

1 A. Yeah. That looks right.

2 Q. So in this email you're telling Mr. Zaki that
3 you're entitled -- that Agricann's share is 50 percent.
4 Would you agree with that statement?

5 A. As of this email, yes.

6 Q. Okay. Exhibit 135.

7 So this is an email from you dated
8 January 3rd, 2015, to Shadi. Do you agree with that?

9 A. Yes, ma'am.

10 MS. URIAS: I move to admit Exhibit 135.

11 THE COURT: Objection?

12 MR. DEATHERAGE: No.

13 THE COURT: It is admitted.

14 BY MS. URIAS:

15 Q. And if you scroll through this email, you can see
16 that -- may I approach, your Honor?

17 THE COURT: Yes.

18 BY MS. URIAS:

19 Q. The black portion was written by you, and the red
20 was by Shadi responding to you. Do you agree with that
21 characterization, first of all?

22 A. Yes, I believe that is correct. Inasmuch as the
23 document hasn't been altered.

24 Q. So if you go to what is .6, that's you telling
25 Shadi all sales must be split and paid 50/50 between NRPC

1 and Agricann within five days of sale.

2 Do you see that?

3 A. Yes.

4 Q. And you agree that that was a statement that you
5 made to Shadi?

6 A. It is, yes, you're right.

7 Q. Okay. Let's go to Exhibit 143.

8 This is an email from you to Imran dated
9 April 7th, 2015. Do you see that?

10 A. Yes.

11 MR. DEATHERAGE: I'm sorry, which exhibit
12 number? I apologize.

13 MS. URIAS: 143.

14 MR. DEATHERAGE: Thank you.

15 MS. URIAS: I move for admission of
16 Exhibit 143.

17 MR. DEATHERAGE: Just give me one --

18 THE COURT: Any objection to 143?

19 MR. DEATHERAGE: No, your Honor.

20 THE COURT: It is admitted.

21 BY MS. URIAS:

22 Q. Please take a look at this email, Mr. Burton.
23 Would you agree that in this email you're discussing with
24 Imran sales and a proposed modification to how the parties
25 are paid? Do you agree with that?

1 A. That is -- that is unfortunately correct.

2 Q. Okay. Now take a look at what we have
3 highlighted. This is you to Imran, Shadi and I discussed
4 it and we're on the same page on both the minimum draw and
5 the thousand dollar sale for any sales made to NRPC, being
6 payable in full to Agricann, rather than the normal 50/50
7 split. You wrote that, correct?

8 A. Yes.

9 Q. And in it, you refer to the normal 50/50 split,
10 correct?

11 A. Correct.

12 Q. It does not say the normal 80/20 split, does it?

13 A. Correct.

14 Q. Let's turn to Exhibit 78.

15 THE COURT: 78?

16 MS. URIAS: 78.

17 THE COURT: Thank you.

18 BY MS. URIAS:

19 Q. This is an email from your wife Carly to Shadi
20 Zaki, to yourself, Imran, Kathy and Dave, dated June 11,
21 2015, correct?

22 A. Correct.

23 MS. URIAS: I move for admission of
24 Exhibit 78.

25 THE COURT: Any objection?

1 MR. DEATHERAGE: No, your Honor.

2 THE COURT: It is admitted.

3 BY MS. URIAS:

4 Q. You received this June 11th, 2015, email from
5 your wife, Carly? Yes?

6 A. Yes, ma'am, sorry.

7 Q. And go down, please. Move that up.

8 This is -- in this email Carly says, these
9 amounts are not conducive to our agreement to split the
10 net profits, these dividends total 20,317.

11 Do you see that?

12 A. Yes.

13 MR. DEATHERAGE: Can I ask where you're at?

14 MS. URIAS: 20,317.

15 MR. DEATHERAGE: I can't -- I'm sorry, I
16 can't follow up there. Where are you?

17 THE COURT: Can we have a Bates page?

18 THE WITNESS: Third paragraph down and then
19 the last sentence.

20 MR. DEATHERAGE: Okay. Thank you.

21 THE COURT: And the court reporter had a
22 question about the dollar amount, I believe, right?

23 COURT REPORTER: I think I got it. 20,317.

24 BY MS. URIAS:

25 Q. Did you respond to this email correcting this

1 statement; in other words, did you respond to this email
2 saying, no, our agreement was not to split the net
3 profits?

4 A. I don't -- I didn't object because --

5 Q. Did you -- did you, yes or no?

6 A. I don't object to this email, no, I don't think
7 so.

8 Q. Turn to NRPC Exhibit 39.

9 MR. DEATHERAGE: Which ones?

10 MS. URIAS: This is the same exhibit. It's
11 attached to Carly's email.

12 BY MS. URIAS:

13 Q. And you can see that Carly's spreadsheet states
14 that the total due to Agricann for NRPC sales as of
15 June 11, 2015, was 21,716. Do you see that?

16 A. I see that.

17 Q. You didn't object to this number as of this time,
18 did you?

19 A. I don't believe I did, no.

20 Q. Exhibit 63. This is a November 20th, 2015, email
21 from you to Dave Sanchez; do you agree with that?

22 A. Yes.

23 Q. You also sent it to Shadi, Carly, Imran and
24 Kathy?

25 A. Yes.

1 MS. URIAS: I move for admission of
2 Exhibit 63.

3 THE COURT: Any objection?

4 MR. DEATHERAGE: No, your Honor.

5 THE COURT: It is admitted.

6 COURT CLERK: What was that exhibit?

7 THE COURT: 63.

8 BY MS. URIAS:

9 Q. Now, if you go down to the sixth paragraph, you
10 say, to add insult to injury, as you may recall, we never
11 agreed to be paid 50 percent of profits ever. This is
12 what you said on November 20, 2015, correct?

13 A. Correct.

14 Q. That's not a true statement; is it?

15 A. There was -- you're right, I misstated.

16 Q. But your position is that Agricann is entitled to
17 80 percent of the gross of all sales made by NRPC from
18 May 2014 through January 2016; is that correct?

19 A. That sounds correct, yes.

20 Q. Okay. Let's talk about payments from NRPC to
21 Agricann. Agricann filed a verified application for
22 appointment of a receiver in this case. Do you recall
23 that?

24 A. Yes.

25 Q. And that's Exhibit 120.

1 listed in this email, did you?

2 A. I didn't. It was splitting hairs, but I should
3 have, yeah. There was just a slight variance, that's not
4 a big deal, but the dividend amount should have been --

5 Q. Mr. Burton?

6 A. Go ahead.

7 Q. Are you claiming that you -- let me ask you this.

8 A. Sure.

9 Q. What are you claiming your salary amount was from
10 Natural Agriculture?

11 A. It was typically combined with my wife and I, it
12 was roughly 3,000 a month.

13 Q. That wasn't my question.

14 A. I thought it was.

15 Q. My question is what you believe your salary
16 amount was from Natural Agriculture? What was that
17 amount?

18 A. I believe and it varied, depending on the
19 circumstances and the needs of the company at the time,
20 but on average it was about 1,500 a month for me and 1,500
21 a month for Carly.

22 Q. So you're claiming that you were entitled to a
23 salary in addition to what you're claiming under the
24 management agreement?

25 A. Yes, absolutely.

1 Q. How much are you claiming in salary?

2 A. It was approximately \$3,000 a month on average.

3 Q. That's not my question. How much are you
4 claiming in this case for salary, that you're claiming
5 that you weren't paid that you should have been paid?

6 A. Well, conveniently for you, I haven't claimed
7 anything for salary in this case. So I hope that makes it
8 easier for you as far as damages go, I haven't claimed
9 any.

10 Q. So all of the amounts that you're claiming in
11 this case --

12 A. Uh-huh.

13 Q. -- are either under the management agreement or
14 under the document that you call a promissory note; is
15 that correct?

16 A. Correct.

17 Q. Okay. Let's look at Exhibit 2. Now, it is your
18 testimony that this is a promissory note; is that correct?

19 A. Yes.

20 Q. You wrote this document, correct?

21 A. I believe it was -- it was probably me. It might
22 have been Imran, I'm not sure. It might have been Dave.
23 I don't recall who wrote it, but --

24 Q. Well, let's look at your deposition testimony.

25 A. Sure. Yeah, I think there -- I think I had said

1 that I did it, but --

2 Q. Do I need to show you your deposition testimony,
3 Mr. Burton?

4 A. No. I think in the deposition I said that I did
5 it.

6 Q. So are you changing your testimony now?

7 A. Well, I just -- I just -- I don't absolutely know
8 for sure. But I think I -- I think I was the one that
9 handwrote that out, but anyway.

10 Q. So I asked you, question -- this is page 148,
11 line eight.

12 "QUESTION: Whose handwriting is this?

13 ANSWER: This looks like my handwriting.
14 This is my handwriting."

15 A. Uh-huh.

16 Q. So as you sit here today, are you changing your
17 testimony to say that you don't remember if you wrote it
18 or not?

19 MR. DEATHERAGE: Again, can he see a copy
20 and make sure I --

21 MS. URIAS: He is seeing a copy of it.

22 MR. DEATHERAGE: Okay. I need a second --
23 just a second to get to it, too.

24 THE WITNESS: The only reason --

25 THE COURT: Wait, hold on, hold on. Make

1 sure your lawyer has a chance to catch up.

2 MR. DEATHERAGE: 148, lines --

3 THE COURT: 8 through 10.

4 MR. DEATHERAGE: Thank you.

5 THE COURT: Okay.

6 BY MS. URIAS:

7 Q. The question is, are you changing your position
8 today from what you earlier testified in your deposition,
9 that it was your handwriting?

10 A. I don't know. I'm just trying to clarify that
11 because Imran in his deposition he thought he was the one
12 that drafted it. So to clarify, I don't know if it was
13 Imran or myself, that's all. But at the time of my
14 deposition, I thought -- I thought I had been the one that
15 drafted this.

16 Q. Okay.

17 A. So I apologize.

18 Q. And your position is that the purpose of this
19 note was for Agricann to sell its lease rights to the 26th
20 Avenue facility to NRPC?

21 A. Correct.

22 Q. Is it your position that was the sole purpose of
23 this note?

24 A. To -- yeah, to basically sell them the lease
25 rights, to basic -- yes, that was pretty much it.

1 Q. And this is the lease rights for the facility on
2 26th Avenue that we have been discussing?

3 A. Correct. Only 26th Avenue.

4 Q. Do you know what the amount of rent was under the
5 lease?

6 A. That was approximately about 7,000 a month.

7 Yeah. Approximately 7,000 a month.

8 Q. So the sole purpose was just -- I want to make
9 sure I'm clear, was of this note, to transfer the lease
10 rights from Agricann to NRPC; is that correct?

11 A. Yes. Once the final payment was made, correct.

12 Q. Okay. Let's look at Exhibit 127.

13 MS. URIAS: May I, your Honor?

14 THE COURT: Yes.

15 BY MS. URIAS:

16 Q. This is a May 30th, 2014, document. Is that your
17 signature on it? I'm sorry, we're looking at the second
18 page.

19 A. Oh, I'm sorry.

20 Q. Is that your signature, Mr. Burton?

21 A. Yes. Yes, this looks like my signature.

22 Q. Go back to the first page. This is June 18th,
23 2014, email from you to Shadi, correct?

24 A. Yes.

25 MS. URIAS: I move to admit Exhibit 127.

1 THE COURT: Any objection?

2 MR. DEATHERAGE: No objection.

3 THE COURT: It is admitted.

4 BY MS. URIAS:

5 Q. And you're telling Shadi, attached are the
6 supporting documents from the landlord and from Agricann
7 transferring the lease to Natural Agriculture, LLC. Would
8 you agree with me that's what it says?

9 A. Yes.

10 Q. And on the next page, as of May 30th, 2014,
11 Agricann had transferred the lease interest to Natural
12 Agriculture; is that true?

13 A. Correct.

14 Q. Okay. Go back to Exhibit 2.

15 The payments were supposed to be \$20,000 a
16 month; is that correct?

17 A. Correct.

18 Q. For three years?

19 A. Correct.

20 Q. And it's your testimony that there was supposed
21 to be a balloon payment due in the event of a sale or at
22 the end of three years, whichever came first?

23 A. Correct.

24 Q. Would you agree that the note does not say in
25 advance of a sale anywhere on the document?

1 A. That is true.

2 Q. It also doesn't say at the end of three years?

3 A. It just has the term that is a three-year term.

4 Q. You would agree with me that it does not say at
5 the ends of three years, correct?

6 A. It says three years.

7 Q. Okay. It also doesn't say whichever came first?

8 A. Correct.

9 Q. It doesn't identify who the payor is, does it?

10 A. No, I think it is clear to the parties, but no.

11 Q. Does the document identify who the payor is, yes
12 or no?

13 A. I think it's clear, but no, I guess it doesn't
14 say those words.

15 Q. Does it identify who the payee is?

16 A. It does, but not with the word payee. It doesn't
17 say the word payee.

18 Q. Someone off the street looking at this document,
19 doesn't know who the payor and the payee is, correct?

20 A. Correct. Someone off the street wouldn't know.

21 Q. Okay. Thank you.

22 A. Sure.

23 Q. It doesn't say whether there's an interest rate
24 attached to this document, correct?

25 A. Correct.

1 Q. And your understanding was that a one percent
2 interest rate applied to this note?

3 A. Well, I think that's what I hoped for, but we
4 didn't get into the details on that, I don't think, so.

5 Q. Do you agree that the note does not include the
6 one percent interest rate?

7 A. I would agree with that, yes.

8 Q. Now, we'll turn to page 151 of your deposition.

9 A. I wish it would.

10 Q. Line seven, I asked --

11 THE COURT: Hold on, give counsel a second
12 to catch up.

13 MS. URIAS: I'm so sorry.

14 MR. DEATHERAGE: I'm there. Thank you.

15 BY MS. URIAS:

16 Q. "QUESTION: Was there interest on this
17 obligation?

18 Your counsel objected, form.

19 THE WITNESS: Yes, my understanding, even
20 though we didn't define interest on this simple napkin
21 agreement, is that the same interest rate applied?

22 QUESTION: What's the same interest rate?

23 ANSWER: As we contemplated in the original
24 joint venture agreement of one percent per day for any
25 late fees.

1 QUESTION: So your position is that the
2 amount due under Exhibit 23, and that was the note, is
3 1.12 million plus one percent per day?

4 ANSWER: For any day that it is late,
5 sure."

6 So in the deposition, you testified that
7 you believed the one percent interest rate applied to the
8 note. Is that your testimony here today as well?

9 A. No. I think I was maybe **overstretching** at my
10 deposition, so yeah.

11 Q. Let's go back to Exhibit 2. You signed this
12 document, correct?

13 A. Correct.

14 Q. David Sanchez signed this document?

15 A. Correct.

16 Q. Shadi Zaki did not sign it?

17 A. Correct.

18 Q. Shadi was supposed to sign on behalf of NRPC,
19 correct?

20 A. No. Because, as he reminded me, he's not even an
21 owner or officer of the company, so he couldn't sign,
22 apparently.

23 Q. When you first presented this document to Dave
24 and Shadi, it did not include the words, it did not
25 include the word PG on it, isn't that true?

1 A. No, that's not true.

2 Q. It did say PG on it at the time that Dave Sanchez
3 signed it?

4 A. Yes.

5 Q. So if Dave or Shadi said that it did not say PG
6 on it, when you presented it to them, would they be lying?

7 A. Yeah, they would be lying.

8 Q. And you're telling the truth?

9 A. Yes.

10 Q. Okay. You've written a lot of contracts over the
11 course of your professional career; isn't that true?

12 A. Yes.

13 Q. You've written agreements with NRPC?

14 A. Sure.

15 Q. You've written agreements with Total
16 Accountability Systems or TASI?

17 A. Yes.

18 Q. You have written contracts with your former
19 business partner, Imran Kazem?

20 A. Sure.

21 Q. You've drafted settlement agreements with
22 Dr. Kazem?

23 A. Actually, my attorney drafted those, but --

24 Q. Do you consider yourself sophisticated in the
25 drafting of agreements?

1 A. I suppose so, I try to be.

2 Q. You testified that you reviewed Dr. Kazem's
3 deposition transcript?

4 A. Yes.

5 Q. Do you consider Dr. Kazem a truthful person?

6 A. Yes, I do.

7 Q. And you're aware his deposition was on Monday,
8 October 28th, just recently?

9 A. I believe that's -- I don't know the exact date,
10 but that sounds about right.

11 Q. And you texted him over the weekend?

12 A. Uh-huh.

13 Q. Prior to his deposition; isn't that true?

14 A. I believe that's correct.

15 Q. And is it true that you said to him, Carly and I
16 have both been losing some sleep?

17 A. Correct.

18 Q. And you told him that we're not sure where you
19 stood on our friendship?

20 A. Correct.

21 Q. And that's because you were concerned about what
22 Dr. Kazem would testify; is that true, yes or no?

23 A. Well, there's more to it, that's not all of the
24 truth. I mean --

25 Q. You can explain with your attorney, please just

1 answer my question.

2 You were concerned about what Dr. Kazem
3 would testify, correct?

4 A. I would say I was more concerned with our
5 relationship than anything. It was more on that basis.

6 Q. Are you aware that Dr. Kazem -- Kazem testified
7 that when you typed up agreements with him, that you **did**
8 **not include terms that represented what the parties agreed**
9 **to?**

10 A. He might have said that.

11 Q. Was Dr. Kazem lying when he said that?

12 A. No. I think he was just emphasizing that
13 sometimes the terms weren't what he thought they should
14 be, or if you read the whole deposition, I think what he
15 mentioned was that there were times where I would maybe
16 misunderstand what was said, and so I would put in my
17 version of what was said in the agreement, and then I
18 would put it out there, and he would say, well, actually
19 we need to tweak it this way or that way, and we would go
20 back and forth.

21 So there were times when I would put my
22 first version of it, so to speak, and it may not have
23 included everything that the other party wanted initially,
24 so that was true. Yeah.

25 Q. Well, we're submitting that to the Judge so he

1 can decide that for himself.

2 A. Okay.

3 Q. Are you aware that Dr. Kazem testified that he
4 lost trust in you?

5 A. He might have said that.

6 Q. You continued negotiating with Shadi and Dave
7 after Exhibit 2 was created; isn't that true?

8 A. Exhibit 2 is which one again? I'm sorry. That's
9 the note, right? Yes, we continued to try.

10 Q. Did you continue negotiating, yes or no?

11 A. We continued to try to get the more formal stuff
12 signed that would solidify what was already agreed to,
13 yes.

14 Q. So your answer is, that even after Exhibit 2 was
15 signed, the parties continued negotiating its terms,
16 correct?

17 A. Yes.

18 Q. Okay. Let's turn to Exhibit 107.

19 MS. URIAS: Your Honor, I don't recall, do
20 we go to 4:00 or 4:30?

21 THE COURT: 4:30.

22 MS. URIAS: Okay. Thank you.

23 BY MS. URIAS:

24 Q. This is an email from you to Imran, cc'ing Carly,
25 dated October 16th, 2015. Do you see that?

1 answering your question properly.

2 Q. Well --

3 A. It will just take a sec.

4 Okay. Times .01 times -- what is the
5 number of days?

6 Q. 1,357.

7 A. 1,357 days. No, that's not how you would do it.

8 Q. Did you come up with 11 million 614?

9 A. The way you just described it, that's not the way
10 it should be.

11 Q. Is that the number you just came up with,
12 Mr. Burton?

13 A. Yes, based on what you just said. Yes. But --

14 Q. And so that was calculated by multiplying the
15 principal balance times the simple interest rate, times
16 the number of days, correct?

17 A. Yes.

18 Q. That's how we came up with that number?

19 A. That's not how you -- that's not how you
20 calculate, but okay, we'll go with that number, sure.

21 Q. Okay. That's not the number that is represented
22 in interest on this spreadsheet, correct?

23 A. That's correct.

24 Q. And you testified you're not a mathematician?

25 A. Correct.

1 Q. You're not an accountant?

2 A. I went to an accounting school, but --

3 Q. Do you have an accounting degree?

4 A. No, I do not. I just had a couple of accounting
5 internships, but no. I'm not an accountant.

6 Q. Do you have an advanced degree in accounting?

7 A. No.

8 Q. Okay. So you don't hold yourself out as an
9 accounting expert?

10 A. No.

11 Q. The next box under this 855 in this black area,
12 do you see the second line, where the total owed
13 Agricann --

14 A. Oh. Yeah, I'm sorry. Can I just say something
15 real quick?

16 Q. No, you can't. I'm sorry.

17 A. Okay.

18 Q. The second line where it says total owed Agricann
19 by NRPC and Sanchez per lease and payout note?

20 A. I got distracted. I'm sorry, where are we?

21 Q. Exhibit 31, the second to the last page.

22 A. Okay. Okay.

23 Q. The second line of the black box. That's how
24 much you're claiming on the note, correct?

25 A. Correct.

1 Q. One million sixty-five dollar -- excuse me,
2 \$1,065,000 in principal?

3 A. Correct.

4 Q. And 15,517,050, including interest.

5 Do you know what calculation you used to
6 reach that \$15 million number?

7 A. I don't know. Some of the columns in here were
8 put in there. I don't remember what that reference is.

9 Q. When you say put in there, you put them in there,
10 correct?

11 A. Right, right, right. I have to see -- Sharon, I
12 actually have to drill down on the formula to see how that
13 interacts with what that reference is.

14 The balance that we seek is the principal
15 balance, the 855,889, with the one percent interest, which
16 comes to about 29 plus million, plus the note which we
17 didn't attribute any interest to, which is a little over a
18 million. So the total amount is about 30 million.

19 Q. I know what you're asking for in damages, I'm
20 trying to understand how you get there, and the numbers
21 don't add up.

22 A. They do, if you would let me explain.

23 Q. You can explain that with your attorney.

24 A. Sure.

25 Q. You represented on this spreadsheet that it has

1 simple interest, correct?

2 A. Correct.

3 Q. Simple interest is calculated as I -- as we went
4 through?

5 A. Correct, uh-huh.

6 Q. Okay.

7 MS. URIAS: We can stop for today.

8 THE COURT: We can break for the evening.

9 MS. URIAS: Thank you, your Honor.

10 THE COURT: All right. So we'll take our
11 evening break at this point. I have Plaintiff with four
12 hours and 13 minutes remaining. Defendant with four hours
13 and 50, 5-0, minutes remaining.

14 So we'll see everybody in the morning.
15 Hopefully you can resolve the issues about a deposition,
16 and then we, of course, are going to make sure that
17 Plaintiff gets the email with the spreadsheet in --

18 MS. URIAS: Defendant gets.

19 THE COURT: I'm sorry?

20 MS. URIAS: Defendant gets --

21 THE COURT: Oh, I was going to say
22 Plaintiff gets it to Defendant.

23 MS. URIAS: Sorry.

24 THE COURT: So we'll get that tonight, as
25 well as the phone number for the woman whose name I'm now

1 forgetting. So okay.

2 MR. DEATHERAGE: Eileen Baca. Yes, your
3 Honor.

4 THE COURT: Any procedural issues,
5 housekeeping issues from Plaintiff before we adjourn?

6 MR. DEATHERAGE: No, your Honor.

7 THE COURT: Anything else from the
8 Defendant before we adjourn?

9 MS. URIAS: No, thank you.

10 THE COURT: Thank you, everybody. Have a
11 good night.

12 MR. DEATHERAGE: Is it 9:30 tomorrow.

13 THE COURT: That's when we'll start, but
14 everybody should be here -- I can't imagine showing up
15 later than 9:10.

16 MR. DEATHERAGE: I understand.

17 THE COURT: Thank you, we're adjourned.

18 (Proceedings concluded.)
19
20
21
22
23
24
25

C E R T I F I C A T E

I, **KRISTINE M. MAYO**, Official Certified Reporter
herein, hereby certify that the foregoing is a true and
accurate transcript of the proceedings herein all done to
the best of my skill and ability.

Dated at Phoenix, Arizona, this 26th day of November,
2019.

/s/ Kristine M. Mayo_____

Kristine M. Mayo, RPR, CRR, CRC

Certified Reporter No. 50958

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA

AGRICANN, LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	CV2016-001283
NATURAL REMEDY PATIENT)	
CENTER, LLC; and DAVID)	
SANCHEZ,)	
)	
Defendant.)	
)	

Phoenix, Arizona
 November 21, 2019

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL DAY 2

PREPARED FOR:
 COPY

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A P P E A R A N C E S

FOR THE PLAINTIFF:

BY: Mark M. Deatherage
Attorney at Law

FOR THE DEFENDANT
NATURAL REMEDY PATIENT CENTER:

BY: Sharon Urias
Stuart Knight
Attorneys at Law

FOR THE DEFENDANT DAVID SANCHEZ:

BY: Don Fletcher
Attorney at Law

Also Present:

Brig Burton
Chad Pipkin
Rachel Chuirazzi

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1 A. Well, when Brig was trying to form the new
2 relationship, this was the contract that he drew up, and I
3 can't remember the exact date, but when we were forming
4 that new relationship, this is the contract that he drew
5 up with them.

6 THE COURT: We've got an objection,
7 Plaintiff's objection.

8 MR. DEATHERAGE: Correct.

9 MS. URIAS: What is the objection to --

10 THE COURT: 37, 14 through 20. I'll
11 overrule it, so you can go ahead and read in 37, 14
12 through 20.

13 BY MR. DEATHERAGE:

14 Q. Do you know who wrote the contract?

15 A. I'm assuming it was Brig.

16 Q. Why are you assuming that?

17 A. Well, I mean, he was the only one that really did
18 any of the contract writing for us. I would -- I
19 basically never wrote anything for Agricann. I would only
20 see things after the fact.

21 Q. Now to page 38, line 2. Now, I want you to -- I
22 want to take you down to the second whereas paragraph.

23 A. Okay.

24 Q. If you look toward the end of that sentence, it
25 says AC represents that it has the facility and expertise

1 to finance, grow, market, manage and operate a commercial
2 growing facility; do you see that?

3 A. Let's see, oh, right here, yeah, uh-huh.

4 Q. Is it your understanding that Agricann had that
5 expertise?

6 A. Well, Agricann at the time was just Brig and I,
7 so neither one of us really had expertise to grow, but
8 that was, you know, what Brig was going to hire someone to
9 grow for the company.

10 Q. Did he have the expertise to operate a commercial
11 growing facility in your opinion?

12 A. No. I mean, that was outside of his realm, I
13 would think, because neither one of us had been involved
14 with medical marijuana before.

15 Q. Now, if you go down one, two, three more.

16 A. Uh-huh.

17 Q. And you see whereas AC has an expert team; do you
18 see that?

19 A. Yes, uh-huh.

20 Q. Developed and ready to grow quality product and
21 has the capacity to build the inventories by NRPC.

22 A. Yes.

23 Q. Do you agree with that statement?

24 A. No.

25 Q. Did you have an expert team?

1 A. No. At the time it was just Brig and I. I think
2 Brig's intention was to hire the people that he was going
3 to need.

4 Q. To create an expert team?

5 A. To create one, yeah.

6 Q. But at this time Agricann did not have an expert
7 team?

8 A. Well, unless Brig had someone else that he sort
9 of collaborated -- that he was sort of collaborating with,
10 and it is possible that he had growers that he was
11 speaking with or something else, but as far as Agricann
12 employees or people that -- that I knew about, I don't
13 think at the time we did.

14 Q. What was your understanding of Agricann's
15 obligations under the agreement?

16 A. Well --

17 THE COURT: We can just skip objections.

18 THE WITNESS: Okay. I think that, and
19 again, the details of the agreement itself when it was
20 written weren't really things that were known to me. Like
21 I said, Brig wrote these contracts, and after the fact I
22 would sort of learn about them and see them. I wasn't
23 involved at all in crafting any part of it. But just --
24 just what I had understood as a layperson in the industry
25 was that we had a -- a facility and zoning and equipment,

1 let me ask you this first: What was the total amount that
2 was supposed to be paid? It is not --

3 A. Well, the total amount was whatever this was
4 going to add up to be. It was going to be -- what is
5 that? 360 -- I mean, no, it was going to be 240 times
6 three, which is, what, around 800,000 -- or I'm sorry,
7 800, plus the 400. Around -- around 1.2 million, I think.
8 I would have to add it up, but there was what we were
9 going to get paid eventually.

10 Q. And what was NRPC supposed to get in exchange for
11 that \$1.2 million?

12 A. They were going to get the lease that Agricann
13 had put on the building, and they were going to get the
14 equipment that we had in the building.

15 Q. What was the value of the equipment?

16 A. Probably -- I'm just going to guess because we
17 bought piecemeal and things broke, but -- okay. Well, I
18 would estimate that the value of the equipment would be
19 somewhere between 150 and maybe two, 200 -- 150 to
20 200,000.

21 Q. Where did you get that estimate from?

22 A. Well, I'm trying to add up the amount that we
23 spent on lights and water and equipment and building the
24 little rooms, because I know we had something like 60,000
25 just in the lights in the initial purchase. And then

1 there were ones that broke, and then there was watering
2 systems, and so I think it's -- it's probably a fairly
3 reasonable estimate, 150 to 200, to sort of create that.
4 It wasn't all spent at once, and some of that was money
5 that we paid in labor for people to do stuff to, but
6 something in that ball park.

7 Q. What was the monthly lease payment?

8 A. I want to say that the monthly lease payment was
9 -- started out at like 6,000, and then it would gradually
10 increase to maybe 8,000 on year three. This is -- I'm
11 just trying to remember, I'm not sure if those were the
12 exact numbers, but it was -- it was somewhere in that 6 to
13 \$8,500; 6,000, \$8,500 range.

14 THE COURT: And then on 94, we've got some
15 objections.

16 MS. URIAS: This, we're talking about
17 Exhibit 2 -- trial Exhibit 2, your Honor.

18 THE COURT: Okay. Thank you.

19 So what was Dr. Kazem's relationship with
20 the company, with Agricann, at the point of his
21 deposition?

22 MR. DEATHERAGE: He was a minority member.

23 THE COURT: So he was still a member at the
24 time --

25 MR. DEATHERAGE: Oh, no, no, no, at the

1 Honor.

2 THE COURT: We'll turn it over to the
3 defense.

4 MS. URIAS: Your Honor, before we put on
5 our case, as a housekeeping matter, there was a
6 counterclaim that had been asserted, and we are dismissing
7 that counterclaim. We have not pursued it obviously in
8 this trial, so I just want to make that clear on the
9 record. We also have a motion that we would like to make
10 at this time that Mr. Knight is going to be arguing.

11 THE COURT: Okay.

12 MR. KNIGHT: Your Honor, Defendants will
13 make a motion to dismiss as it relates to Count 1. As we
14 sit here today, I have not heard, and I don't believe the
15 Court has heard any testimony as to what precisely the
16 damages are pursuant to the management services agreement.
17 As the Court correctly pointed out, the defendants blew a
18 hole in Plaintiffs' case, certainly as it relates to
19 damages, and even today, I have not heard any testimony as
20 to what it actually is today, and in cases like this, it
21 is -- it is important that -- or sorry, it is an element
22 that the defendants -- or that the Plaintiffs prove their
23 damages to a reasonable degree of certainty. That
24 requirement is raised even higher in cases such as this,
25 where the amount of damages could be calculated to a

1 operation for the board members at the time.

2 Q. Can you be more specific in terms of what you did
3 on a day-to-day basis, please?

4 A. Sure. So far as retail, for example, I would
5 coordinate on a daily basis with the managers and staff,
6 check numbers, check on inventory, and just make sure that
7 the business was running in full compliance with the law,
8 as well as making sure that there was no shrinkage.

9 Q. When you first became involved with NRPC, what
10 operations was it engaged in?

11 A. I'm not sure I understand.

12 Q. Was it engaged in any operations when you first
13 became with NRPC or were you involved with the startup of
14 the company?

15 A. I was involved with the startup of the company
16 and all the way back to the point where we applied. So
17 from inception, through award, through build-outs, through
18 operation.

19 Q. Did you write the application for the license for
20 NRPC?

21 A. I did.

22 Q. Are you familiar with NRPC's corporate structure
23 at the time that you were engaged as an independent
24 contractor?

25 A. To a certain extent, yes. I knew who the board

1 members were, and I knew that it was a not-for-profit
2 entity.

3 Q. How did you know that?

4 A. Because it is required by law, it is in the
5 Arizona Medical Marijuana Act.

6 Q. You need to be a licensee?

7 A. It needs to be a not-for-profit entity.

8 Q. In order to have a license?

9 A. That's correct, yes.

10 Q. Okay. Who issues dispensary licenses?

11 A. DHS.

12 Q. Do you know David Sanchez?

13 A. I do.

14 Q. And do you know Kathy Sanchez?

15 A. I do.

16 Q. Can you talk about your -- the background of your
17 relationship with the Sanchezes?

18 A. Sure.

19 Q. When you first met them and so on?

20 A. Yeah. I first met the Sanchezes at -- I think it
21 was called Club Red at the time, it was at 101 and
22 University. It was a venue that was used a lot by those
23 in the cannabis industry, specifically at the time it was
24 the Arizona Dispensary Association, and I was there
25 speaking, and after this -- this meeting, they had

1 Peter, here is a revised agreement on the 50/50 basis we
2 talked about. Do you know what that refers to?

3 A. Yeah, the agreed-upon split.

4 Q. Can you expand upon that?

5 A. Yeah. So the deal essentially with Brig and
6 Agricann is, we were going to come in, we would drop in
7 the license for a cultivation facility at the already
8 entitled and fully built-out, turnkey, ready-to-go
9 facility that was represented to NRPC and myself, and that
10 for doing so, we would split all of the expenses and then
11 also split any profits that were remaining there, and also
12 have a -- like a tax reserve, because NRPC didn't want to
13 get stuck with taxes for income that they never realized.

14 Q. Was that split that you just described, that was
15 50/50?

16 A. Yeah. It was a 50/50 split on all of the net, so
17 a net of all of the expenses, and it was supposed to be a
18 net of all of the taxes as well.

19 Q. Is -- how do the parties throughout the
20 relationship conduct themselves with respect to the
21 distribution of those profits?

22 A. Anytime there was money left over in the -- I'll
23 call it in the "account", even though there wasn't a
24 physical account, it was mostly all cash except for the
25 time we were able to open an account at Wells Fargo and

1 then it was shut down months later. But I would run a
2 spreadsheet, a rolling spreadsheet, that showed all of the
3 expenses, and all of the sales, and any time that there
4 was money left over after covering all of the expenses,
5 then that was to be split 50/50 between Agricann and NRPC.

6 Q. We're going take a look back at Exhibit 1, which
7 is the contract. You can see on the first page, the fifth
8 whereas down. It says, whereas Agricann has an expert
9 team; do you see that?

10 A. The fifth one down, yep, I see it. Yep.

11 Q. Yes. Do you know whether Agricann had an expert
12 team developed and ready to go at the time that NRPC
13 entered into the contract?

14 A. They definitely did not.

15 Q. Why do you say that?

16 A. Well, I mean, experts, in general, have many
17 years of experience, and with an industry that was just
18 beginning, experts didn't exist. I mean, I would even
19 argue today that there really still aren't any real
20 experts because it is nascent industry that has a lot of
21 potential and is just starting, but we're just at the
22 starting line. So for someone to come in and call
23 themselves an expert, it is like calling themselves a
24 master grower, well, what's your credentials? And the
25 only credentials that Alan and Matt really had were

1 growing essentially in closets. They weren't commercial
2 growers.

3 Q. What's a commercial grower, what's the
4 distinction?

5 A. So a commercial grower is essentially a grower
6 that works in a commercial facility that has grown more
7 than a handful of plants.

8 Q. What was the potential capacity to grow in that
9 facility?

10 A. We were lucky to get, you know, 25 to 30, maybe a
11 little bit more than 30 pounds every month.

12 Q. Why is that?

13 A. Again, the facility wasn't built properly. There
14 weren't even doors on the grow rooms. So you had a lot of
15 cross-contamination. So if one room had a pest problem,
16 we couldn't segregate that room, and then all of the HVAC
17 was connected, too. So bugs could go through the return
18 or mold spores could go through the return and then hit
19 another room. So there was a lot of crop failure in that
20 facility.

21 Q. Was there a performance quota under the
22 management services agreement?

23 A. Yeah. Agricann represented that they could grow
24 50 pounds a month out of that facility.

25 Q. To your recollection, were there any months in

1 which 50 pounds was grown in that facility?

2 A. No. I mean, we came close several times, but I
3 don't think we ever really hit 50 or broke 50.

4 Q. Did NRPC ever enforce that performance quota?

5 A. We brought it up several times and then continued
6 to spend money that was generated from sales into the
7 facility to improve it, to try to get it to it. But like
8 I said, I mean, we were really averaging closer to
9 30 pounds, as opposed to 50.

10 Q. But you never tried to terminate the agreement
11 based on the failure to meet a performance quota; is that
12 right?

13 A. I would say that would be right. I don't think
14 anything was ever formally, you know, written or discussed
15 to terminate.

16 Q. Who was in charge of the books and records for
17 NRPC?

18 A. So we had a compliance officer, the compliance
19 officer would always, you know, essentially do the books,
20 and then I would oversee and double check to make sure
21 that those books were correct.

22 Q. How are the books maintained?

23 A. We were using MJ Freeway at the time and then
24 Excel spreadsheets.

25 Q. Did you maintain the Excel spreadsheets?

1 A. I did. I had my own rolling spreadsheet where I
2 had the expenses and sales.

3 Q. So can you talk about the process that you used
4 to create and maintain that spreadsheet, please?

5 A. Sure. Anytime I was given a receipt for an
6 expense, I would add it to the spreadsheet. Anytime a
7 sale was generated, I would add it to the spreadsheet, and
8 then it would just continue to roll and roll and roll
9 throughout the -- throughout the duration of the time that
10 NRPC was there.

11 Q. Did you have regular communications with Brig?

12 A. Yeah, I would call them regular.

13 Q. Would it be fair to say that you were the primary
14 representative of NRPC communicating with respect to its
15 dealings with Agricann?

16 A. Yes.

17 Q. And would it be fair to say that Brig Burton was
18 the primary representative of Agricann with respect to its
19 dealings with NRPC?

20 A. Yes.

21 Q. Do you know whether both parties, Agricann and
22 NRPC, complied with all of the terms of this agreement?

23 A. I mean, during my experience there, both parties
24 definitely didn't comply. There was a lot of stuff.

25 Q. Well, let's go through it.

1 A. Sure.

2 Q. Go to the second page, please. We have already
3 talked about the insurance policy in paragraph two?

4 A. Yes.

5 Q. Neither side took out an insurance policy?

6 A. That's right.

7 Q. Did Agricann ever send a demand letter asking
8 NRPC to take one out?

9 A. No. But we had conversations, and I was pretty
10 clear that we tried, and I also even pushed back and said,
11 well, where is yours, and they didn't have it either,
12 because, really, both parties knew that you couldn't get
13 it.

14 Q. In paragraph three, it talks about notice of
15 correction.

16 You might want to go to the next page.

17 May I approach, your Honor?

18 THE COURT: Yes.

19 BY MS. URIAS:

20 Q. I'll give you a hard copy if it is easier to
21 read.

22 Did either party send a notice of
23 corrective action to the other under paragraph three?

24 A. Not, not to my knowledge.

25 Q. Okay. Look at paragraph four. Would you say

1 that either party complied with paragraph four?

2 A. I would say that NRPC did.

3 Q. How so?

4 A. Because after the end of that relationship, I
5 went out and contacted Ingrid, who said that she had a
6 relationship with the receiver, Pam something or another,
7 and that she could bring in another licensee into that
8 facility.

9 Q. Do you know whether Agricann ever had any
10 discussions with that licensee?

11 A. I do not, no.

12 Q. Are you familiar with paragraph seven of the
13 agreement?

14 A. Yes.

15 Q. Do you know who wrote it?

16 A. Yeah.

17 Q. Who wrote it?

18 A. Brig.

19 MR. DEATHERAGE: Foundation.

20 THE COURT: Overruled.

21 BY MS. URIAS:

22 Q. Did you revise it?

23 A. No, I don't think I revised that.

24 Q. Did Agricann submit invoices to NRPC for
25 management and agricultural services?

1 A. No. I never saw one invoice.

2 Q. In your role with NRPC, is an invoice a document
3 that would have gone to your attention?

4 A. Absolutely.

5 Q. Did Agricann submit invoices to NRPC for rent?

6 A. No. NRPC paid all of the rent. NRPC paid all of
7 the utilities. NRPC paid all of the employees. NRPC paid
8 for everything.

9 Q. We're going to come back to that.

10 I want to ask you about this provision
11 first.

12 A. Sure.

13 Q. Did Agricann submit any invoices to NRPC that you
14 can recall?

15 A. No.

16 Q. Did Agricann provide management services to NRPC?

17 A. No. I wouldn't say they provided management
18 services. Again, the entire structure here makes it very
19 difficult to bring in a third party, essentially.

20 Q. Can you explain what you mean?

21 A. Yeah. So each license is, you know, vertically
22 integrated within itself. It is actually a -- it is a
23 topic that's right now in front of the Florida Supreme
24 Court, where they took the same position there in Florida
25 when they handed out the licenses.

1 So one license allowed you to do
2 everything, as opposed to say getting a license for
3 retail, or getting a license for processing, or getting a
4 license for cultivation. So it was all under -- here it
5 is all under one license, so to be able to split it within
6 it, and not have that other party be a member of the
7 actual not-for-profit entity makes it very difficult to
8 operate.

9 Q. What was your understanding of what Agricann was
10 supposed to do under the contract?

11 A. They were supposed to manage essentially the
12 cultivation portion of the business.

13 Q. What does that mean?

14 A. So they were supposed to oversee the production
15 of the facility. So the day-to-day operations, for
16 example, and everything leading up and through sales.

17 Q. Just so we're clear, dispensary cards are issued
18 through NRPC?

19 A. Yes, through -- yeah, through the licensed
20 entity.

21 Q. And so the people who worked on the cultivation,
22 were they NRPC employees or Agricann employees?

23 A. No, they were NRPC employees. They had to be.
24 They have NRPC on their dispensary agent card along with
25 the CHAA number on the bottom of that card and the

1 address.

2 Q. So then how did it work that Agricann was in
3 charge of that portion if they were NRPC employees, if you
4 could explain that?

5 A. So the liability always falls under NRPC. It
6 falls under the license holder. You can't have an entity
7 be a dispensary agent. Individuals are dispensary agents,
8 and therefore, they were working and being paid through
9 NRPC, which is why I say that NRPC paid the employees.

10 Q. So with respect to this provision, what was your
11 understanding about what Agricann was supposed to be paid
12 in connection for its services?

13 A. So after all of the expenses were deducted and
14 taxes accounted for, whatever was left was supposed to be
15 split 50/50.

16 Q. At any point in time did NRPC ever pay Agricann
17 off the gross as opposed to after the net?

18 A. Never.

19 Q. Why is that?

20 A. They would be a -- well, for one, it would be a
21 failing business model that there's not enough money to
22 support that. Expenses were running anywhere from 40 to
23 \$50,000 a month to operate that place.

24 Q. What was your understanding of the provision, all
25 invoices submitted by AC to NRPC shall not exceed

1 80 percent of the sales income received by NRPC?

2 A. So that whole thing came up in discussions
3 regarding really minimizing the tax liability. So with
4 280(e), IRS tax code 280(e), which essentially says that
5 only cost of goods sold can be deducted and regular
6 business expenses can't be, the way to minimize tax
7 liability is to fatten your cost of goods sold. So Brig
8 had brought it up that essentially as a tactic to keep the
9 tax liability low.

10 Q. Was it your understanding that Agricann was
11 supposed to be paid 80 percent of the gross sales?

12 A. That was never the intent, no.

13 Q. What was the intent?

14 A. To split it 50/50 after covering all of the
15 expenses and the taxes.

16 THE COURT: So, sir, you've got an MBA,
17 right?

18 THE WITNESS: I do.

19 THE COURT: Did you ever say to the folks
20 at NRPC, paragraph seven is talking about effectively
21 revenue as opposed to income, we need to alter that
22 language because this doesn't make any sense?

23 THE WITNESS: Well, we had talked about
24 that, but it just, I guess, never got changed, and
25 ultimately it wasn't my decision to sign the contract.

1 THE COURT: Who did you talk to about that?

2 THE WITNESS: To Dave.

3 THE COURT: Anybody else at NRPC?

4 THE WITNESS: No. I'm sure Kathy was
5 probably there as well, but, I mean, the discussions
6 were -- most of my contact was usually with Dave.

7 THE COURT: Did you ever talk to anybody at
8 Agricann about the problematic nature of paragraph seven.

9 THE WITNESS: I don't believe I did.

10 THE COURT: Thank you.

11 BY MS. URIAS:

12 Q. And what was your understanding of the sentence
13 that says all distributions of sales income shall be on a
14 pro rata basis? What does that mean to you?

15 A. I mean, again, it was confusing language. I'm
16 not even sure really to what -- what to make of that. On
17 a pro rata basis would mean to me on the split. So
18 whatever is -- is due, based on the agreed-upon split,
19 which was again 50/50 after all of the expenses and taxes,
20 that would be, I guess, the pro rata basis.

21 Q. You would agree this doesn't say 50/50?

22 A. It does not.

23 Q. This also says that NRPC agrees to pay Agricann
24 within five days of the receipt of sales by NRPC; do you
25 see that?

1 A. Yep.

2 Q. Did NRPC ever pay Agricann within five days of
3 receipt of sales?

4 A. Sometimes, but the majority of the times, it was
5 not within five days.

6 Q. Why is that?

7 A. Well, it is a difficult thing to do. I mean,
8 returns, for example. Payments weren't always made on
9 time from the customer themselves, sometimes they would
10 ask for terms or want a little bit longer instead of
11 paying on delivery. Those essentially were -- and working
12 capital, too. Again, with that facility, a lot of things
13 were going wrong, whether it was the AC, or blowing fuses,
14 because I think there was only a 400-amp service and they
15 were pushing a lot more power, more lights than what that
16 service could really bear. So a lot of costs with
17 maintaining that facility.

18 Q. Take a look at paragraph eight, please. This is
19 the one percent per day interest rate paragraph. Have you
20 ever seen this provision?

21 A. Yeah, it was definitely talked about.

22 Q. Talked about by whom?

23 A. By the parties.

24 Q. Can you be more specific?

25 A. Yeah, by Agricann and NRPC.

1 Q. Okay. What was discussed?

2 A. That it was a bit crazy and that it would never
3 really hold, but it would end up staying in the agreement
4 regardless.

5 Q. Why do you say it was -- who said it was crazy?
6 Can you expand on that, please?

7 A. Yeah, I did. NRPC did. I mean, to charge one
8 percent on a -- you know, essentially what is a startup, a
9 late fee every day; I mean, it is just -- it is not right.
10 The -- it doesn't align the interests of the parties
11 essentially.

12 Q. And this paragraph says NRPC will pay AC
13 immediately for any and all product made by AC. Did AC
14 actually make any product, AC meaning Agricann?

15 A. No. The dispensary agents of NRPC were the ones
16 that were growing and overseeing the production in that
17 facility.

18 Q. So then when we talk about a performance quota,
19 did that apply to NRPC dispensary agents, who did that
20 apply to?

21 A. No. It would have applied to Agricann, with the
22 way that's written, but, again, Agricann, as an entity,
23 could never get an agent card. You can't fingerprint an
24 entity.

25 Q. Who were the individuals who actually grew the

1 have above in the third paragraph net in all caps.

2 Q. Do you recall whether he ever sent you an email
3 saying, no, no, no, this isn't right?

4 A. He never sent me an email saying, no, this is not
5 right.

6 Q. And so what was your custom and practice with
7 respect to making deposits into the Natural Agriculture
8 account?

9 A. I'm not sure I understand.

10 Q. Okay. What -- how did you -- who made the
11 decision about what amount would be deposited into Natural
12 Agriculture?

13 A. Oh, that would be me.

14 Q. Okay. And how did you decide what amount to put
15 in there?

16 A. Well, I would have to deduct all of the expenses,
17 so your salaries, your utilities, any SG&A that may be
18 needed.

19 Q. What is that?

20 A. Selling, general, and administrative costs. So
21 all of that had to be accounted for, and then once there
22 was enough money left for operating expenses, then a
23 distribution was supposed to be done 50/50 on the net,
24 whatever was left.

25 Q. So what account did the expense money come out of

1 before the distributions were made?

2 A. Sometimes it would come out of Natural AG and
3 sometimes it would just come just straight from the sales.
4 So sales would happen, Ruthie would collect the funds. I
5 would say, Ruthie, these are the expenses that need to be
6 paid, and she would give me the money, and the expenses
7 would get paid. And then if there's anything leftover, we
8 would either put it in the account or on the rolling
9 spreadsheet saying, this is what is left over and this is
10 what can be split 50/50 because all of this accounted for.

11 THE COURT: How can you deposit money into
12 the Natural Agriculture account if it wasn't the license
13 holder?

14 THE WITNESS: It was -- it was deposited
15 after it went to Natural Remedy Patient Center.

16 MS. URIAS: Do you want me to keep going,
17 your Honor?

18 THE COURT: If this is a good break point,
19 we can break. All right. We'll go ahead take our evening
20 recess at this point.

21 So I've got Plaintiff with 2 hours and
22 26 minutes remaining. Defendant with 2 hours and
23 4 minutes remaining. We may get a little extra time in
24 tomorrow, because we, of course, don't have jury
25 questions, et cetera, but --

1 MR. DEATHERAGE: I didn't hear you right,
2 your Honor, what was our Plaintiff's time?

3 THE COURT: 2 hours and 26 minutes.

4 MR. DEATHERAGE: Thank you.

5 MS. URIAS: Your Honor, are you saying that
6 you may extend the amount of time that we have?

7 THE COURT: Yeah, but it wouldn't be huge
8 amounts. At the most, it would be up to ten minutes each,
9 so --

10 MS. URIAS: Okay. We won't hold you to
11 that, your Honor.

12 THE COURT: And it all depends, if FTR
13 doesn't work, who knows what will happen, so --

14 MS. URIAS: Thank you.

15 THE COURT: Okay. We'll recess for the
16 evening. Thank you.

17 COURT BAILIFF: All rise.

18 (Proceedings concluded.)
19
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25

C E R T I F I C A T E

I, **KRISTINE M. MAYO**, Official Certified Reporter
herein, hereby certify that the foregoing is a true and
accurate transcript of the proceedings herein all done to
the best of my skill and ability.

Dated at Phoenix, Arizona, this 26th day of November,
2019.

/s/ Kristine M. Mayo_____

Kristine M. Mayo, RPR, CRR, CRC

Certified Reporter No. 50958

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AGRICANN, LLC,)
)
Plaintiff,)
)
vs.)
) CV2016-001283
NATURAL REMEDY PATIENT)
CENTER, LLC; and DAVID)
SANCHEZ,)
)
Defendant.)
_____)

Phoenix, Arizona
November 22, 2019

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL DAY 3

PREPARED FOR:
COPY

KRISTINE M. MAYO, RPR, CRR, CRC
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A P P E A R A N C E S

FOR THE PLAINTIFF:

BY: Mark M. Deatherage
Attorney at Law

FOR THE DEFENDANT
NATURAL REMEDY PATIENT CENTER:

BY: Sharon Urias
Stuart Knight
Attorneys at Law

FOR THE DEFENDANT DAVID SANCHEZ:

BY: Don Fletcher
Attorney at Law

Also Present:

Brig Burton
Chad Pipkin
Rachel Chuirazzi

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1 So going through it, you've got your wages,
2 you've got sales, you've got consumables through Phoenix
3 Hydro, who provided that, or Chem Lab Supply, or PPE
4 Equipment from Abatix, a lot of stuff from Home Depot to
5 fix a lot of these rooms, or Harbor Freight, or what have
6 you.

7 Q. And in terms of the structure of the spreadsheet
8 itself, Excel is a program where you can have multiple
9 pages or tabs?

10 A. Yes. Yep.

11 Q. Was there more than one tab within a single
12 workbook?

13 A. Yeah. So the file was always called account
14 reconciliation, and then I would have a date attached to
15 that file. And the first tab is the spreadsheet that
16 you're looking at in the majority of the pages, and then
17 tab two is the second on page 80, which was the
18 disbursement summary, and that very last in this e-mail
19 was the projection, which would have been tab three of
20 this specific file, that was e-mailed on August 5th.

21 Q. Okay. So to be clear, you're saying the document
22 that's labeled NRPC 61 on the bottom, the second to the
23 last page of Exhibit 60 --

24 A. Hold on, NRPC --

25 Q. And I'm sorry, Exhibit 80, the one you're looking

1 at.

2 A. Okay.

3 Q. So the second to the last page, you see that it
4 has the number NRPC 61?

5 A. Yeah.

6 Q. That's tab two?

7 A. That would be tab two, yes.

8 Q. And then the last page labeled NRPC 62 is tab
9 three?

10 A. That's correct.

11 Q. You prepared the spreadsheet?

12 A. I did.

13 Q. Did anybody else input data into the spreadsheet?

14 A. No. This was my spreadsheet.

15 Q. How often did you update it?

16 A. Oh, constantly. Daily. Sometimes multiple times
17 a day.

18 Q. And what documents did you use for purposes of
19 creating it?

20 A. So I would get the sales invoices and the trip
21 plans off of either MJ Freeway or from Eileen. Those
22 would represent the sales, or if Ruthie did a sale, she
23 would let me know, and then that would go in here, and
24 then as far as say payroll, that was all tracked by the
25 compliance officer again, which was Eileen, and then I

1 Q. Did the parties continue to negotiate after this
2 document was created?

3 A. Yes.

4 Q. What were the parties negotiating?

5 A. Real terms. I mean, the only thing that was
6 listed on these notes were, as you can see, a monthly
7 payment, a balloon and the number of years.

8 I mean, typically when there's a balloon
9 and the number of years and a monthly payment, there's
10 like an interest rate. I mean, it is hard to even tell
11 what this is. And then next to it, it says, you know, a
12 sublease, and, again, it wasn't clear because sublease
13 what?

14 Natural Agriculture had that lease, and
15 Kathy was part of that entity. It wasn't even Agricann
16 that had the lease, because they transferred it over
17 before the relationship actually started.

18 Q. Did you ever agree on behalf of NRPC to pay
19 whatever this amount totals? I can't do the math quickly.

20 A. No, I never agreed to pay that. Again, these
21 were just initial talks hoping to get to a real definitive
22 agreement on essentially breaking ties and moving on.

23 Q. Did NRPC ever make any of the \$20,000 payments
24 under the note?

25 A. No. All of the payments that were made I have as

1 represented in Exhibit 89. And again, just like the
2 spreadsheet, it is a rolling account. So any time a
3 payment was made, it came off the 50/50 split after
4 expenses mentioned, or intended to, in the agreement that
5 NRPC had with Agricann.

6 Q. Did NRPC ever receive a transfer of lease rights
7 from either Agricann or Natural Agriculture?

8 A. No, not to my knowledge.

9 Q. When did the parties' relationship terminate?

10 A. By contract, it terminated in June -- or May, end
11 of May 2016, but, I mean, effectively once the lawsuit was
12 filed in February of 2016, I mean, that was pretty much
13 the end of things.

14 Q. At some point in time did NRPC move out of the
15 26th Avenue facility?

16 A. They did.

17 Q. When?

18 A. They moved out sometime towards the end of May,
19 the beginning of June.

20 Q. And during that time period, who paid the rent?

21 A. So I was working on bringing in another licensee,
22 according to that agreement that we had, and that licensee
23 that I was working with to bring in was through Ingrid,
24 and her receiver person, Pam, who had a few different
25 licenses that she was overseeing as a receiver, that

1 needed a cultivation facility. So we had set up 26th
2 Avenue ventures to be able to facilitate that, and that's
3 who started paying rent.

4 Q. Will you please take a look at Exhibit 125? It
5 should be on the ledge.

6 A. Okay.

7 Q. This is a March 2nd, 2016, email exchange between
8 you and Brig.

9 A. Okay.

10 MS. URIAS: I move this into evidence.

11 THE COURT: Any objection?

12 MR. DEATHERAGE: No objection.

13 THE COURT: It is admitted.

14 BY MS. URIAS:

15 Q. Now, in this email Brig tells you that the lease
16 is in default, correct?

17 A. He is saying that, yes.

18 Q. Did you pay the lease -- or the rent, I mean?

19 A. Yeah, the rent was paid. It wasn't always paid
20 on time, but the rent was paid.

21 Q. Did you pay APS?

22 A. I did.

23 Q. Was there ever a time that NRPC did not pay the
24 rent during the time that it occupied the space?

25 A. No. NRPC always paid the rent; again, out of

1 sales, when sales were there. And with the payments on
2 the utilities, it got to such a point that I actually took
3 out a credit card in my name, American Express, to which I
4 still have to date, to pay APS and push things down the
5 line, until sales money came in.

6 Q. Will you please take a look at Exhibit 102?

7 MS. URIAS: May I, your Honor?

8 THE COURT: Yes.

9 BY MS. URIAS:

10 Q. Can you tell me what we're looking at in
11 Exhibit 102?

12 A. This looks like a July rent check that was paid
13 to the landlord, Jim there, of 26th Avenue, LLC.

14 Q. Can you flip through the exhibit and just tell me
15 briefly what the pages are?

16 A. So these pages are all of the little bank slips,
17 basically. After the sales came in and they went to NRPC
18 and whatever was needed to be paid was paid, we then took
19 some money and put that into Natural Agriculture, which
20 then we could pay rent out of that account, because Jim,
21 again, and his team there weren't real happy when I was
22 coming in with cash.

23 MS. URIAS: Your Honor, I move 102 into
24 evidence.

25 THE COURT: Any objection?

1 about that. And in addition to paragraph 13 or in line
2 paragraph 13, just the title of the document itself where
3 on page one of this contract, it states that Agricann,
4 herein after known as AC or the dispensary agent, wasn't
5 probably legal, because how can an entity be a dispensary
6 agent?

7 THE COURT: And what about either
8 conversations -- or conversations with folks at Agricann,
9 did you ever talk to folks at Agricann about your concerns
10 about paragraph 13?

11 THE WITNESS: I did. Not specifically, I
12 don't know if it was specifically 13, so let me rephrase
13 that. It was about the agent relationship and what
14 Agricann can and cannot do, and Brig's response was, well,
15 we just had a similar contract with a previous tenant and
16 they didn't lose their license, so it should work. And,
17 again, being so early on and not having attorneys involved
18 when they probably should have been involved, at least, I
19 didn't speak directly to an attorney about this, it just
20 kept going.

21 THE COURT: Thank you.

22 MS. URIAS: No further questions. Thank
23 you.

24 THE COURT: I'm going to take some of my
25 own time, could I indulge one of you to hand the witness

1 Exhibit 63?

2 MS. URIAS: May I --

3 THE COURT: Yes. Thank you. Thank you for
4 acting as my clerk there.

5 MS. URIAS: I'm happy to.

6 THE COURT: So, Sir, Exhibit 63 looks like
7 an email chain that you were a part of. Is that a fair
8 statement?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: So on the second -- the end of
11 the first page, the bottom of the first page, going on to
12 the second page, so this AC6125 at the bottom. It appears
13 to be an email from David Sanchez, apparently to Brig.

14 THE WITNESS: Uh-huh.

15 THE COURT: So the first paragraph on the
16 second page, Mr. Sanchez wrote, correct me if I'm wrong,
17 but didn't we agree to start payments on November 15th for
18 \$20,000 while you, me, Shadi and Imran were present?

19 So did you ever comment to Mr. Sanchez
20 about whether there was an agreement for \$20,000 payments
21 beginning on November 15th?

22 THE WITNESS: Yeah. That was in reference
23 to the talks on moving to another agreement. So that was
24 all still being hammered out, is what that's in relation
25 to. And it was -- you know, all of the payments that were

1 made that I was told about, whether it was 15,000 or
2 20,000, or whatever it was, I would always take right off
3 of the contract, on my rolling spreadsheet in tab two on
4 the payments to them.

5 I didn't say, oh, this is from the napkin,
6 this is from the contract, because in my mind, it was only
7 the contract. We had just started these talks. I mean,
8 there was no definitive document ever signed.

9 THE COURT: Any follow-up?

10 MR. DEATHERAGE: No, your Honor.

11 THE COURT: Did you want any follow-up to
12 what I just asked?

13 MS. URIAS: I thought you were asking me to
14 follow-up with another exhibit.

15 THE COURT: Oh, no, no, no. Sorry. No.

16 MS. URIAS: I was still your clerk, your
17 Honor.

18 THE COURT: Did the Plaintiff have any
19 follow-up to what I just asked?

20 MR. DEATHERAGE: No, your Honor.

21 THE COURT: I'm sorry, did Sanchez have any
22 follow-up to what I asked?

23 MR. FLETCHER: No.

24 THE COURT: Thank you, sir. You can go
25 ahead step down.

1 A. He means he wants us to honor the agreement that
2 we entered into, that there was a \$20,000 per note
3 payment, and that he would start making payments on
4 November 15th, rather than the October 15th, which is
5 acknowledged on the note itself.

6 Q. And let me ask you just specifically about the
7 very last part of that, where it says, while you, me,
8 Shadi and Imran were present; what meeting do you
9 understand he's referring to?

10 A. That was the October meeting where the four of us
11 met together and spent several hours negotiating and
12 finalizing the agreement that was put together and
13 ratified by signing myself on behalf of Agricann, Dave
14 Sanchez on behalf of Natural Remedy Patient Center, and
15 personally guaranteeing; we would not have accepted
16 anything short of a personal guarantee.

17 Q. But it is that meeting? I want to reiterate
18 that.

19 A. Yes, absolutely.

20 Q. One more question about Exhibit 2. Under your
21 signature, it says Brig Burton, Agricann, LLC; were the
22 words Agricann, LLC on the document at the time it was
23 signed?

24 A. Yes, absolutely.

25 Q. And where it says Dave Sanchez, after Dave

1 with preparing this spreadsheet; isn't that true?

2 A. I believe you're correct on that.

3 Q. And isn't it also true that Natural Agriculture
4 didn't have a bank account during the entire time of the
5 relationship between Agricann and NRPC?

6 A. That is not true. We have all of the bank
7 statements from that.

8 Q. That's not my question.

9 My question was, Natural Agriculture did
10 not have a bank account at Wells Fargo for the entire
11 duration of the relationship between NRPC and Agricann?

12 A. That is not true.

13 Q. That is -- how is that not true? Didn't you
14 testify earlier that Natural Agriculture's bank account
15 was closed?

16 A. It was closed, yes. During the time of the
17 relationship, you're right, yes.

18 Q. Thank you.

19 Now, during your Rebuttal Direct, you
20 testified that you could not calculate expenses,
21 precisely, do you recall testifying that?

22 A. And I still to this day cannot, yes.

23 Q. You didn't hire a damages expert in connection
24 with this case, did you?

25 A. No, I did not.

1 Q. And that was your decision, wasn't it?

2 A. Yes.

3 Q. Nobody stopped you from hiring a forensic
4 accountant to prepare a damages spreadsheet?

5 A. That is correct.

6 Q. Okay. Now, I would like you to take a look at
7 Exhibit 10.

8 MS. URIAS: May I approach, your Honor?

9 THE COURT: Yes.

10 THE WITNESS: It is hard to afford one when
11 you're broke.

12 THE COURT: There's not a question pending,
13 so we'll strike the comment.

14 BY MS. URIAS:

15 Q. We talked about Exhibit 10 a day or two ago; do
16 you recall that, Mr. Burton?

17 A. Yes.

18 Q. And Exhibit 10 is another iteration of
19 Exhibit 31, correct?

20 A. I believe so.

21 Q. Okay. And you can see that Exhibit 10 does not
22 have a compound interest column?

23 A. Correct.

24 Q. Okay. And nevertheless, if you look at the
25 second page, which is AC6862, and look at the line where

1 THE COURT: Okay. Anything else before we
2 adjourn? No? Okay.

3 MR. DEATHERAGE: If we can just also say
4 thanks to your staff.

5 THE COURT: Oh, absolutely, yes.

6 MR. DEATHERAGE: They are very helpful.

7 THE COURT: They are. And we have our
8 substitute bailiff. Thank you. We're adjourned.
9 Everybody have a good weekend.

10 COURT BAILIFF: All rise.

11 (Proceedings concluded.)

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C E R T I F I C A T E

I, **KRISTINE M. MAYO**, Official Certified Reporter
herein, hereby certify that the foregoing is a true and
accurate transcript of the proceedings herein all done to
the best of my skill and ability.

Dated at Phoenix, Arizona, this 27th day of November,
2019.

/s/ Kristine M. Mayo_____

Kristine M. Mayo, RPR, CRR, CRC

Certified Reporter No. 50958

2020 WL 4007051

Only the Westlaw citation is currently available.

NOTICE: NOT FOR OFFICIAL PUBLICATION.

UNDER ARIZONA RULE OF THE SUPREME

COURT 111(c), THIS DECISION IS NOT

PRECEDENTIAL AND MAY BE CITED

ONLY AS AUTHORIZED BY RULE.

Court of Appeals of Arizona, Division 1.

BAMFORD REALTY, INC,
et al., Plaintiffs/Appellants,

v.

TOLL BROTHERS, INC, et
al., Defendants/Appellees.

No. 1 CA-CV 19-0478

|

FILED 7-16-2020

Appeal from the Superior Court in Maricopa County

No. CV2016-016367

The Honorable [Daniel G. Martin](#), Judge

AFFIRMED

Attorneys and Law Firms

Keller Rohrback LLP, Phoenix, By Gary [A. Gotto](#),
[Ron Kilgard](#), [Jerald Bien-Willner](#), Counsel for Plaintiffs/
Appellants

Cohen Dowd Quigley PC, Phoenix, By Daniel G. Dowd,
[Daniel E. Durchslag](#), [Rebecca L. van Doren](#), Counsel for
Defendants/Appellees

Judge [Jennifer B. Campbell](#) delivered the decision of the
Court, in which Presiding Judge [Paul J. McMurdie](#) and Judge
[Kent E. Cattani](#) joined.

MEMORANDUM DECISION

[CAMPBELL](#), Judge:

*1 ¶1 Bamford Realty, Inc., dba Bamford Southwest, Inc.,
and Bamford Equity Corp. (collectively, “Bamford”) appeals
the superior court’s order granting summary judgment
to defendants, Toll Brothers, Inc., Toll Brothers AZ
Construction Company, and Toll Brothers Affiliated Entities

1-5 (collectively, “TBI”). For the reasons stated below, we
affirm the judgment.

BACKGROUND

¶2 Several years before the events in question, Bamford and
Morrison Enterprises, Inc. (“Morrison”) jointly owned and
developed residential communities through an entity known
as Whitewing. In dealing with Whitewing, Bamford acted
primarily through its president, Greg Bamford. Mr. Bamford’s
adult sons, David and Adam, were minority owners of
Bamford.

¶3 Whitewing’s assets consisted of 101 finished lots in
the Germann Estates subdivision, seven finished homes in
Germann Estates, two unfinished subdivisions known as
San Tan Magma and Encanto Tierra, and two lots in other
Whitewing neighborhoods. In early 2015 Morrison’s founder
passed away. New Morrison management sought to terminate
its interest in Whitewing. To that end, Morrison and Bamford
reached a settlement agreement providing that Morrison
would receive Whitewing’s assets in exchange for releasing
Bamford’s significant financial obligations to Whitewing.
Bamford received an option to purchase Encanto Tierra
and San Tan Magma for \$8.7 million and agreed to “assist
and consult” with the sale of Whitewing for six months in
return for \$5,000 per month from Morrison. The settlement
agreement had a delayed closing to allow Bamford to locate
an investor to buy and continue developing the Whitewing
properties.

¶4 Through a mutual acquaintance, Mr. Bamford and
TBI executives, Robert Flaherty and Jeff Nielsen, met in
November 2015 to discuss TBI acquiring and developing the
Whitewing properties. Based on his history with Morrison,
Mr. Bamford believed Morrison would be interested in selling
the Whitewing assets as a package for \$30 million. According
to Mr. Bamford, at this initial one-hour meeting, Bamford
and TBI agreed to jointly acquire and develop the Whitewing
properties, with TBI funding the \$30 million purchase in
exchange for Bamford assisting with the deal and foregoing
its option to buy San Tan Magma and Encanto Tierra.
Mr. Bamford contends that the parties agreed to split the
proceeds after TBI recouped its investment, but later agreed
that Bamford would receive the seven finished homes as
its share of the profits. At this time, Mr. Flaherty believed
Bamford held an ownership interest of about \$7 million in

the Whitewing assets and wanted to replace its capital partner Morrison or get paid out for its interest.

¶5 Bamford prepared and sent TBI a draft letter of intent (“LOI”) regarding its role in the purchase of Whitewing assets from Morrison. TBI responded with a modified LOI, which Bamford then forwarded to Morrison on behalf of TBI. When TBI first met with representatives from Morrison in December 2015, it learned that Bamford did not have any equity or ownership interest in the Whitewing assets. From that point, TBI negotiated directly with Morrison, at Morrison’s insistence,¹ and did not respond to Bamford’s inquiries into the status of the TBI-Morrison sale. Morrison accepted the offer of \$30 million. When Bamford expressed concern that its interests might not be protected because TBI was negotiating directly with Morrison, Bamford claims Mr. Flaherty stated TBI would honor the agreement. During this same period, Bamford marketed its option to other investors.

*2 ¶6 After TBI and Morrison reached an agreement regarding the sale of the Whitewing assets, Bamford notified Morrison that it would not exercise its option on the San Tan and Encanto Tierra properties. During TBI’s due diligence period, Bamford communicated with TBI on various issues relating to the Whitewing properties, Germann Estates homeowner’s association, and the Town of Gilbert. The parties dispute whether Bamford provided this assistance as part of the alleged Bamford-TBI agreement or because he was obligated to assist in the sale of Whitewing assets pursuant to the Bamford-Morrison settlement agreement. The TBI-Morrison sale closed in July 2016.

¶7 Thereafter, Bamford met with Messrs. Flaherty and Nielsen to discuss Bamford’s contention that TBI reneged on their agreement. TBI informed Bamford that the initial talks of reaching an agreement were based on the incorrect impression, allegedly given by Bamford, that Bamford had an ownership interest in the Whitewing assets. Bamford then sued TBI for breach of contract, breach of fiduciary duty, unjust enrichment, and detrimental reliance, seeking a constructive trust, among other remedies.

¶8 The superior court granted summary judgment in favor of TBI because Bamford failed to present sufficient evidence of a contract, partnership, or joint venture. Specifically, the court found any agreement lacked specificity and consideration. Alternatively, the court found the statute of frauds barred the alleged contract. Finally, the court found insufficient evidence to support Bamford’s claims for unjust enrichment

and detrimental reliance. The court awarded TBI \$238,760 in attorneys’ fees. Bamford timely appealed.

DISCUSSION

¶9 Summary judgment is appropriate “if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Orme School v. Reeves*, 166 Ariz. 301, 309 (1990). We review the superior court’s decision to grant summary judgment de novo, considering the facts and any inferences drawn from those facts in the light most favorable to the party opposing the motion. *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 199, ¶ 15 (App. 2007).

I. The Evidence Did Not Establish the Existence of an Enforceable Agreement.

¶10 An enforceable contract requires “an offer, an acceptance, consideration, and *sufficient specification of terms so that the obligations involved can be ascertained.*” *Regal Homes, Inc. v. CNA Ins.*, 217 Ariz. 159, 166, ¶ 29 (App. 2007) (quoting *Savoca Masonry Co. v. Homes & Son Const. Co.*, 112 Ariz. 392, 394 (1975) (emphasis added in *Regal Homes*)). Whether the terms of the alleged agreement are reasonably certain “is important as a factor in determining whether the parties intended to make a binding offer and acceptance.” *Schade v. Diethrich*, 158 Ariz. 1, 9 (1988).

¶11 The superior court found insufficient evidence regarding the specific terms of an agreement between Bamford and TBI. Bamford contends summary judgment was improper because the evidence showed Bamford and TBI agreed to jointly pursue the purchase and development of the Whitewing properties for \$30 million, to be paid by TBI. In exchange, Bamford would assist in the deal, forego its option, and receive seven finished homes as its share of the profits. According to TBI, at the initial meeting, it expressed interest in potentially working with Bamford to purchase the Whitewing assets in which TBI mistakenly believed Bamford had an ownership interest.

¶12 There was no written agreement after the initial meeting. Bamford relies on Mr. Bamford’s deposition testimony and declaration to support its claim that the parties entered into an enforceable agreement. Bamford also cites the draft LOI

which referred to the creation of a "new entity" between Bamford and TBI after TBI and Morrison reached an agreement for the purchase of the Whitewing.

*3 ¶13 After receiving the draft LOI prepared by Bamford, Mr. Flaherty thanked Mr. Bamford for "entertaining this partnership" and expressed hope that they could "put something together that benefits all parties." He stated that Mr. Nielsen was working on the deal and hoped to have an offer to Mr. Bamford the next day. TBI never produced an offer relating to a Bamford-TBI agreement or partnership. Instead, TBI submitted a modified LOI regarding the purchase of Whitewing assets from Morrison. TBI's LOI omitted any reference to a Bamford-TBI entity and stated only that TBI and Bamford came to a "preliminary agreement" regarding Bamford's option. According to Mr. Nielsen, this was because they had not discussed whether Bamford would become part of the TBI entity. Bamford sent the modified LOI to Morrison and, therefore, was aware of TBI's position—the parties had not reached an agreement.

¶14 Bamford also contends the deposition testimony of Mr. Flaherty and Mr. Nielsen shows an intent to enter into an agreement. According to Mr. Flaherty, the parties discussed the "opportunity to do a venture" to purchase assets it believed Bamford owned and "the next step" if TBI was interested. He believed they had a deal that Bamford would retain some of the San Tan lots, which was later changed to seven finished homes with an equivalent value. Mr. Nielsen testified, consistently, that they discussed two possible compensation options with Bamford, but they had not discussed whether Bamford would become part of the TBI entity.

¶15 The fact that one or more terms in an alleged agreement are unspecified may show that a party does not intend to agree, but a party's actions "may show conclusively that they have intended to conclude a binding agreement, even though one or more terms are missing or are left to be agreed upon." Restatement (Second) of Contracts ("Restatement") § 33, cmt. a (1981). Bamford contends TBI's actions show it agreed that Bamford would receive seven homes as part of the Bamford-TBI agreement. For example, TBI's proforma did not include proceeds for the seven homes in its calculations. Similarly, Mr. Flaherty's December 2015 email to Mr. Nielsen and the TBI legal department did not mention the seven homes when describing what TBI would acquire in the Whitewing deal.

¶16 Bamford contends this evidence creates a question of fact regarding the existence of an agreement. However, there is also significant evidence *from Bamford* that the parties did not reach an enforceable agreement after the initial meeting. For example, a month after the meeting in an email from Bamford's attorney to Morrison's attorney:

Bamford understands this business context and *was willing to wait and see what TB had in mind until later in the process*, so that you would have a clear path to negotiate your best deal with TB. As I said in our phone conversation last week, in my view deferring this issue is more a risk for Bamford than for your clients, but he was willing to take that risk in order to facilitate the process.

However, at your request, Bamford is happy to try to accelerate that step, so that your client can have assurance that the relationship between Bamford and TB, or lack thereof, will not upset the deal that you negotiate with TB. In that spirit, he spoke with TB again last week and asked them to try to arrive at a concrete understanding with him as soon as possible. However, Bamford did not present any specific demands or proposals. *The talks to date have simply involved ideas for incentivizing Bamford's continuing participation after TB acquires the assets, such as brokerage and participation in profits from future development, and Greg has now asked TB to present a focused proposal to him ASAP.* (Emphasis added).

¶17 Even before this email, in a November 2015 letter to Morrison, Bamford stated that "during the due diligence period, Bamford will be working with [TBI] in developing a plan which will include the option Bamford holds on Whitewing IV, LLC." In addition, Mr. Bamford emailed his sons in December 2015, stating that the closing of the Morrison-Bamford settlement agreement, "leads to the alternative of Bamford forming our deal to go forward directly with [TBI.]"

*4 ¶18 As late as March 2016, Bamford's attorney asked TBI to let Bamford know if TBI does not want to proceed so he can "work with other parties" In a May 2016 email to his attorney, Mr. Bamford described his interactions with TBI's "due diligence team" and stated that he would like to help but "wanted an up-date on how [TBI] is currently viewing the eventual involvement of Bamford on a portion of the [Whitewing] assets as was discussed when I presented them the opportunity in October. Bamford also continued to market its option to other potential buyers during this time.

¶19 All of these communications by Bamford establish that Bamford and TBI had not finalized an agreement in the initial meeting, as Bamford now claims. We must consider Bamford's claim in the context in which it arose; that is, parties who had never met or done business together orally agreed to a complex \$30 million real estate transaction in a one-hour meeting with no contemporaneous writing.² See Restatement § 26 cmt. a ("If the addressee of a proposal has reason to know that no offer is intended, there is no offer even though he understands it to be an offer. 'Reason to know' depends not only on the words or other conduct, but also on the circumstances, including previous communications of the parties. ...") (Emphasis added.) Bamford and TBI lacked any previous course of dealing upon which a reasonable person could conclude they had reached an enforceable "agreement to agree." For this reason, this case is distinguishable from *AROK Const. Co. v. Indian Const. Servs.*, 174 Ariz. 291, 293-94, 298 (App. 1993) (holding terms of a contract were sufficiently certain, in part, because the parties had a previous "course of dealing involving a standard form contract which could be used to supply any missing terms.").

¶20 The evidence Bamford cites does not create a question of fact sufficient to preclude summary judgment in light of the overwhelming evidence, including Bamford's statements and conduct showing the parties had not entered into an enforceable contract. No reasonable juror could conclude that the initial meeting resulted in an enforceable contract. See *Orme School*, 166 Ariz. at 309 (summary judgment is appropriate when the facts produced by the nonmoving party "have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent."). At most, Bamford presented evidence of a preliminary agreement to reach an agreement in the future, the terms of which were broadly discussed, but never finalized. We affirm the superior court's ruling that Bamford did not present sufficient evidence that the parties agreed to specific terms, and, therefore, no enforceable agreement existed. Accordingly, we need not address the alternative grounds on which the court ruled in favor of TBI.

II. The Lack of an Enforceable Agreement Precludes Finding a Joint Venture

¶21 "A joint venture is formed when two or more parties agree to pursue a particular enterprise in the hope of sharing a profit." *Ellingson v. Sloan*, 22 Ariz. App. 383, 386 (App. 1974). The five elements required for a joint venture are

(1) a contract, (2) a common purpose, (3) a community of interest, (4) an equal right of control, and (5) participation in profits and losses. *Id.* The superior court found Bamford failed to produce sufficient evidence of a contract, equal rights of control, and participation in profits and losses.

*5 ¶22 As discussed above, there was insufficient evidence as to the existence of a contract, one of the necessary elements to establish a joint venture. See *id.* Therefore, the superior court properly granted summary judgment on Bamford's claim that the parties entered into a joint venture.

III. The Evidence Does Not Support an Unjust Enrichment Claim

¶23 To establish an unjust enrichment claim, Bamford must show (1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the absence of justification for the enrichment and impoverishment, and (5) the absence of any remedy at law. See *Freeman v. Sorchych*, 226 Ariz. 242, 251, ¶ 27 (App. 2011). Bamford contends he was impoverished by foregoing the option and by the time and effort spent assisting TBI with the sale. Bamford argues TBI was enriched by the lucrative Whitewing transaction, which Bamford contends would not have transpired without its actions in reliance on the agreement with TBI.

¶24 Relief under the theory of unjust enrichment is available only when it would be inequitable or unjust for the defendant to retain the benefit without compensating the plaintiff. See *Murdock-Bryant Constr., Inc. v. Pearson*, 146 Ariz. 48, 54 (1985). Bamford argues that TBI unjustly cut it out of the Whitewing deal. However, as discussed above, no agreement obligated TBI to compensate Bamford for foregoing its option or assisting on the transaction. Thus, Bamford did not reasonably rely on these alleged oral assurances. Moreover, it is undisputed that Bamford continued to market its option to other investors, which further indicates Bamford did not believe there was a binding agreement with TBI. Thus, its decision to let the option lapse without a binding agreement from TBI does not mean that TBI caused the alleged impoverishment. The superior court properly granted judgment in favor of TBI on the unjust enrichment claim.

IV. The Evidence Does Not Support a Detrimental Reliance Claim.

¶25 The basis for Bamford's detrimental reliance claim is that it relied on TBI's assurance that it would not exclude

Bamford, even though TBI was negotiating directly with Morrison. This claim fails for the same reason as the unjust enrichment claim—Bamford was not justified in relying on a nonexistent agreement.

fees and costs on appeal upon compliance with [ARCAP 21](#). See [A.R.S. §§ 12-341.01, 12-342](#); [ML Servicing Co. v. Coles](#), 235 Ariz. 562, 570, ¶ 30 (App. 2014) (for purposes of [§ 12-341.01](#), a claim “arises out of contract” when the defendant successfully proves no contract exists).

CONCLUSION

¶26 We affirm the judgment in favor of TBI. In the exercise of our discretion, we award TBI its reasonable attorneys’

All Citations

Not Reported in Pac. Rptr., 2020 WL 4007051

Footnotes

- 1 Morrison representatives denied imposing this condition, but it is not relevant for resolving the issues on appeal.
- 2 The alleged oral agreement did not specify corporate form, name of the relevant terms such as future capital calls, percentage ownership of the partnership, voting shares, or funding future costs of development, among other things.

2020 WL 1312879

Only the Westlaw citation is currently available.

NOTICE: NOT FOR OFFICIAL PUBLICATION.

UNDER ARIZONA RULE OF THE SUPREME

COURT 111(c), THIS DECISION IS NOT

PRECEDENTIAL AND MAY BE CITED

ONLY AS AUTHORIZED BY RULE.

Court of Appeals of Arizona, Division 1.

METRO PHOENIX BANK INC.,

Plaintiff/Appellee/Cross-Appellant,

v.

RPM PRIVATE WEALTH LLC, et al.,

Defendants/Appellants/Cross-Appellees.

No. 1 CA-CV 19-0106

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FILED 3/19/2020

Appeal from the Superior Court in Maricopa County, No. CV2016-002429, The Honorable [Hugh E. Hegyi](#), Judge *Retired*. **AFFIRMED IN PART, VACATED AND REMANDED IN PART**

Attorneys and Law Firms

May, Potenza, Baran & Gillespie, P.C., Phoenix, By Christopher B. Ingle, [Michelle L. Mozdzen](#) Counsel for Plaintiff/Appellee/Cross-Appellant

McCarthy Law PLC, Scottsdale, By Kevin F. McCarthy, [Jacob W. Hippensteel](#), Counsel for Defendants/Appellants/Cross-Appellees

Presiding Judge [Samuel A. Thumma](#) delivered the decision of the Court, in which Judge [Randall M. Howe](#) and Judge [Diane M. Johnsen](#) joined.¹

MEMORANDUM DECISION

[THUMMA](#), Judge:

*1 ¶1 RPM Private Wealth LLC (RPM) and Raymond G. and Marzita Brehm, individually and in their capacities as trustees of the Three Musketeers Trust (collectively Appellants), challenge the superior court's (1) entry of summary judgment in favor of Metro Phoenix Bank Inc. on Metro's claims and Appellants' counterclaims; (2) denial of

sanctions and (3) denial of their motion for leave to amend the complaint. Metro cross-appeals the court's fee award. This court affirms on all issues raised by RPM but vacates the fee award and remands for further consideration.

FACTS AND PROCEDURAL HISTORY

¶2 In December 2014, Metro extended a \$50,000 line of credit to RPM. The parties documented the transaction in a Promissory Note, a Commercial Security Agreement and a Business Loan Agreement. The Brehms separately guaranteed the line of credit personally and as trustees. Collectively, these documents are referred to as the Loan Documents.

¶3 The Promissory Note grants Metro, as lender, a setoff right against other RPM-owned accounts:

To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

The Commercial Security and Business Loan Agreements contain virtually identical terms, while the guaranties grant Metro similar rights against all accounts held by the Brehms or the Three Musketeer Trust.

¶4 RPM defaulted on the line of credit by failing to timely repay the loan. On March 10, 2016, Metro, through counsel, emailed a letter to RPM stating that it had “exercised its right to offset the amount owed” against an RPM-owned account (the Setoff Account). Appellants objected, asserting in an emailed letter on March 11, 2016 that the Setoff Account was a “trust account” and that the funds therein did not belong to RPM. In response, Metro’s counsel emailed RPM’s counsel later that day that the funds were “released based on avowal ... that [they] belong entirely to third parties.”

¶5 Metro sued Appellants, alleging breach of contract, and Appellants counterclaimed, alleging breach of contract and conversion. Metro moved for summary judgment on its claim and on the counterclaims, arguing (1) RPM conceded liability on the loan; (2) Appellants could show no breach of the Loan Documents or any resulting damages and (3) there was no conversion because the setoff “was contemplated, but then reversed at Defendants’ request before it posted to the account.” Metro offered account statements to show the setoff “was cancelled before the withdrawal of the funds posted ..., meaning that no funds were actually withdrawn from the account.”

*2 ¶6 In December 2017, after briefing Metro’s summary judgment motion, Appellants moved for sanctions against Metro and its counsel. *See Ariz. R. Civ. P. 11* (2020).² Appellants contended Metro’s position that the setoff never took place contradicted its earlier position that the setoff had been reversed. They also contended counsel failed to conduct a reasonable inquiry into Metro’s prior admission that the setoff had occurred.

¶7 In January 2018, the superior court granted summary judgment for Metro and denied the request to impose [Rule 11](#) sanctions. Metro filed an application seeking more than \$81,000 in attorneys’ fees. In April 2018, Appellants moved for leave to amend, to add counterclaims for consumer fraud, fraud and negligent misrepresentation. The court ordered Metro to file an amended fee application with unredacted billing statements. When Metro did so, it increased the claim to \$111,851.50, stating it had inadvertently omitted fees from December 2017 and January 2018.

¶8 The superior court denied Appellants’ motion for leave to amend, finding the request came “more than two years after the Complaint was filed, more than sixteen months after the parties’ agreed deadline to move to amend, and two and a half months after the time set for trial to begin in this matter.” The

court then awarded Metro \$25,000 in fees and entered final judgment.

¶9 Appellants timely appealed, and Metro timely cross-appealed the fee award. This court has jurisdiction pursuant to [Article 6, Section 9, of the Arizona Constitution](#) and [Arizona Revised Statutes \(A.R.S.\) sections 12-120.21\(A\)\(1\) and -2101\(A\)\(1\)](#).

DISCUSSION

I. Appellants’ Appeal.

A. The Superior Court Did Not Err in Granting Summary Judgment For Metro on Appellants’ Counterclaims.

¶10 Although Appellants do not challenge the entry of summary judgment against them on Metro’s breach of contract claim, they challenge the court’s ruling rejecting their counterclaims on various grounds. The superior court granted summary judgment for Metro on those counterclaims because Appellants (1) failed to disclose any cognizable damages and (2) the purported setoff (if it occurred) was authorized by the Loan Documents. This court reviews de novo whether summary judgment is warranted, including whether genuine issues of material fact exist and whether the trial court properly applied the law. *Dreamland Villa Community Club, Inc. v. Raimey*, 224 Ariz. 42, 46 ¶ 16 (App. 2010). The facts are construed in favor of Appellants. *Melendez v. Hallmark Ins. Co.*, 232 Ariz. 327, 330 ¶ 9 (App. 2013). This court “will affirm summary judgment if it is correct for any reason supported by the record.” *KB Home Tucson, Inc. v. Charter Oak Fire Ins. Co.*, 236 Ariz. 326, 329 ¶ 14 (App. 2014).

1. Breach of Contract Counterclaim.

¶11 Even if, as Appellants claim, there were disputed issues of material fact as to whether the Setoff Account was a “trust account” for which setoff would be barred by law, this court may affirm summary judgment if it is correct for any reason supported by the record. *Id.* at 329 ¶ 14. Thus, this court considers the alternative ground of whether Appellants failed to properly disclose their claimed damages.

¶12 In opposing Metro’s motion for summary judgment, Appellants had the burden to provide admissible evidence “set[ting] forth specific facts showing a genuine issue for

trial.” *Ariz. R. Civ. P. 56(e)*. For damages, Appellants needed to “set forth specific facts,” *id.*, establishing “a computation and measure” of damages, *Ariz. R. Civ. P. 26.1(a)(7)*, with “reasonable certainty,” “supply[ing] some reasonable basis for computing the amount of damage ... with such precision as, from the nature of [their] claim and the available evidence, [wa]s possible,” *Gilmore v. Cohen*, 95 Ariz. 34, 36 (1963). The superior court properly concluded Appellants failed to meet this standard.

*3 ¶13 In granting Metro’s motion for summary judgment, the superior court noted that, just three weeks before trial, Appellants had disclosed “no calculation [of] damages” allegedly arising from their counterclaims.³ Appellants contend they properly disclosed their damages stemming from the alleged setoff. But, during oral argument on the motion, Appellants conceded they had not disclosed any damage calculation. Indeed, the only damages evidence in the summary judgment record is Mr. Brehm’s testimony that

- (1) the trust between himself, his employees, and his broker was damaged;
- (2) he suffered “[l]ots of migraines in the following two months,” which resulted in “a couple doctor visits;”
- (3) his broker “said she didn’t sleep for two weeks;” and
- (4) he incurred unspecified expenses in transferring his and RPM’s other accounts to a different bank, although Metro did not require him to do so.

¶14 “Generally, the non-breaching party to a loan agreement” can recover as damages “the amount that would place him in the same position in which he would have been had the contract been performed.” *Great Western Bank v. LJC Dev., LLC*, 238 Ariz. 470, 480–81 ¶ 36 (App. 2015). Appellants made no effort on summary judgment to quantify the damages they contended they incurred as a result of the breach. *See, e.g., All American School Supply Co. v. Slavens*, 125 Ariz. 231, 233 (1980) (“Arizona has long held that damages for breach of contract are those damages which arise naturally from the breach itself or which may reasonably be supposed to have been within the contemplation of the parties at the time they entered the contract.”). Nor have they provided any authority showing they would be entitled to recover emotional distress damages on their breach of contract counterclaim. *See Restatement (Second) of Contracts § 353* cmt. a (1981) (“Damages for emotional disturbance are not ordinarily allowed.”). Accordingly, the court did not err in finding

Appellants failed to substantiate their claim for damages arising from the purported breach of contract and in granting summary judgment on that basis.

2. Conversion Counterclaim.

¶15 Conversion is the “act of wrongful dominion or control over personal property in denial of or inconsistent with the rights of another.” *Sears Consumer Fin. Corp. v. Thunderbird Products*, 166 Ariz. 333, 335 (App. 1990). To show conversion, the claimant must prove it had the right to immediate possession of the property at the time of the conversion. *Id.* Money can be converted if it “can be described, identified or segregated and there is an obligation to treat the funds in a specific manner.” *Koss Corp. v. Am. Exp. Co.*, 233 Ariz. 74, 90 ¶ 54 (App. 2013).

¶16 Because it turns on the same allegations underlying Appellants’ breach of contract counterclaim, it is not clear that the conversion counterclaim could survive under Arizona’s economic loss doctrine. Even if it could, under Arizona law, the measure of damages for conversion is the value of the property plus “other damage suffered because of the wrongful detention or deprivation ... such as damages for loss of use.” *Collins v. First Financial Services, Inc.*, 168 Ariz. 484, 486 (App. 1991). Appellants did not show they suffered any compensable damages from the brief interruption in their enjoyment of the right to immediate possession of the funds in the Setoff Account. Appellants contend they “disclosed multiple categories of damages,” including “pre-litigation legal fees, consequential damages related to moving the funds from [the] Trust Account to a new bank, punitive damages, and emotional distress damages,” but they offered no evidence of any such damages beyond Brehm’s testimony recounted above. They did not “set forth specific facts,” *Ariz. R. Civ. P. 56(e)*, establishing “a computation and measure” of damages with reasonable certainty, *Ariz. R. Civ. P. 26.1(a)(7)*. Moreover, they admitted the setoff did not cause them to miss any payments and that none of their clients knew about the setoff.

*4 ¶17 To the extent Appellants claim they were entitled to emotional distress damages on their conversion counterclaim that could not properly be quantified, they have shown no authority for such a claim. Moreover, they have waived any such contention on appeal. Metro, in its answering brief, showed that such damages are not compensable on a conversion claim. *See Farmers Ins. Exchange v.*

Henderson, 82 Ariz. 335, 343 (1957) (noting proper recovery for conversion is “the value of the property [taken plus] interest”); accord Restatement (Second) of Torts § 927 (1979); Restatement (Second) of Torts § 222A cmt. c (1965). Appellants failed to cite any supporting authority in their reply.⁴ For these reasons, the court did not err in granting summary judgment on the conversion counterclaim.

B. Denial of Rule 11 Motion.

¶18 Appellants argue Metro and its counsel violated Rule 11 by taking the position on summary judgment that the setoff never took place, a position they claim is inconsistent with Metro’s earlier admissions that the setoff took place but was quickly reversed. By signing a filing, the attorney or party “certifies that to the best of the person’s knowledge, information, and belief formed after reasonable inquiry ... the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.” Ariz. R. Civ. P. 11(b)(3). In assessing whether to impose sanctions, a court evaluates the conduct under an objective reasonableness standard. *Cal X-Tra v. W.V.S.V. Holdings, L.L.C.*, 229 Ariz. 377, 410 ¶ 113 (App. 2012). The superior court’s ruling on Appellants’ motion for Rule 11 sanctions is reviewed for an abuse of discretion. *Id.*

¶19 In denying the motion for sanctions, the superior court noted Metro promptly and appropriately took steps to clarify when it discovered the inaccuracy. There is no suggestion or finding that Metro or its counsel knowingly made a material misrepresentation. Appellants had the opportunity to, and did, dispute Metro’s changed position in their response to Metro’s summary judgment motion. On this record, Appellants have not shown the superior court abused its discretion in denying Rule 11 sanctions.

C. Denial of Leave to Amend Counterclaims.

¶20 Appellants contend the court erred in denying them leave to amend their counterclaims to allege consumer fraud, fraud and negligent misrepresentation. Leave to amend should be liberally granted, *MacCollum v. Perkinson*, 185 Ariz. 179, 185 (App. 1996); Ariz. R. Civ. P. 15(a)(1), but is properly denied in cases of undue delay, bad faith, dilatory motive, futility, repeated failure to cure deficiencies by previous amendments, or undue prejudice, *Carranza v. Madrigal*, 237 Ariz. 512, 515 ¶ 13 (2015); *Timmons v. Ross Dress For Less, Inc.*, 234 Ariz. 569, 572 ¶ 17 (App. 2014). The denial of

a motion to amend a pleading is reviewed for an abuse of discretion. *Timmons*, 234 Ariz. at 572 ¶ 17.

¶21 The superior court denied Appellants’ request because it came too late. Appellants contend they did not seek to allege new facts, only new legal theories, rendering the court’s ruling an abuse of discretion. See, e.g., *MacCollum v. Perkinson*, 185 Ariz. 179, 185 (App. 1996) (“Denial of leave to amend is generally an abuse of discretion where the amendment merely seeks to add a new legal theory.”). However, neither *MacCollum* nor any other Arizona case suggests that a party may add new legal theories at any time.

*5 ¶22 Appellants’ reliance on *Spitz v. Bache & Co.*, 122 Ariz. 530 (1979), is equally misplaced. There, the court granted leave to amend in a case that “was still in the discovery stage,” noting the opposing party did not argue “the amendment ... would cause undue delay.” *Id.* at 531. Here, the deadlines for discovery and to amend pleadings expired long before Appellants sought leave to amend. Moreover, Appellants offered no compelling reason for their delay, instead acknowledging that “the Fraud and Misrepresentation arguments” they sought to press had “existed in the undercurrent of this case since its inception.” On this record, the court did not abuse its discretion in denying leave to amend. See *Contractor & Mining Service & Supply, Inc. v. H & M Tractor & Bearing Corp.*, 4 Ariz. App. 29, 32 (1966) (affirming denial of leave to amend complaint sought “well after the pre-trial order was issued ... and further discovery precluded”).

II. Metro’s Cross-Appeal.

¶23 Metro challenges the \$25,000 fee award under the terms of the Loan Documents. Generally, contractual attorney fee provisions are enforced according to their terms, *Harle v. Williams*, 246 Ariz. 330, 333 ¶ 10 (App. 2019), although a provision mandating an unreasonable fee award will not be enforced, *McDowell Mountain Ranch Community Ass’n v. Simons*, 216 Ariz. 266, 270 ¶ 16 (App. 2007).

¶24 The Promissory Note provides:

Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable

law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees ... and appeals.

The Commercial Security and Business Loan Agreements contain the same language with the addition that Borrower/Grantor "agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement." The guaranties contain the same language as the Commercial Security and Business Loan Agreements, but refer to "Guarantor" and "Guaranty" as opposed to "Borrower" or "Grantor" and "Agreement."

¶25 Metro contends under *McDowell* that the court should have granted its entire fee claim because Appellants did not show it was "clearly excessive." 216 Ariz. at 271 ¶ 20; see also *Bocchino v. Fountain Shadows Homeowners Ass'n*, 244 Ariz. 323, 326 ¶ 15 (App. 2018) ("Even a contractual entitlement to 'all' attorney fees incurred can be overcome by an evidentiary showing that the fees were 'clearly excessive.'"). While Appellants objected to \$24,482.70 in fees claimed in Metro's original application, the superior court expressly rejected most of their objections when affording Metro the opportunity to file an amended application. Appellants also objected to Metro's addition of the December 2017 and January 2018 fees, which totaled \$30,431.00, and \$452.50 in fees relating to a disclosure issue. The record is unclear, however, whether the superior court considered any of the objected-to fees to be clearly excessive.

¶26 Even if the court accepted all of Appellants' objections — including their "overruled" objections to Metro's original application — the result would have reduced the claimed amount by \$55,366.20, not the more than \$86,000 implicit in the award made. Accordingly, the record does not support the court's decision to reduce the fee award to \$25,000. Thus, the fee award is vacated, and the issue remanded for entry of a new fee award consistent with this decision. See *McDowell*, 216 Ariz. at 271 ¶ 21 ("[T]he trial court's discretion is more narrowly circumscribed when the parties contractually agree that the prevailing party shall be awarded all its attorneys' fees.").

III. Attorneys' Fees and Costs on Appeal.

*6 ¶27 Metro's request for its attorneys' fees and costs incurred in this appeal pursuant to the Loan Documents is granted contingent upon compliance with [Arizona Rule of Civil Appellate Procedure 21](#). Given this ruling, and in the exercise of its discretion, the court denies Metro's request for sanctions under [Arizona Rule of Civil Appellate Procedure 25](#).

CONCLUSION

¶28 The judgment, with the exception of the award of attorneys' fees, is affirmed; the award of attorneys' fees is vacated and remanded for further proceedings consistent with this decision.

All Citations

Not Reported in Pac. Rptr., 2020 WL 1312879

Footnotes

- 1 Judge Johnsen was a sitting member of this court when the matter was assigned to this panel of the court. She retired effective February 28, 2020. In accordance with the authority granted by [Article 6, Section 3, of the Arizona Constitution](#) and pursuant to [A.R.S. § 12-145](#), the Chief Justice of the Arizona Supreme Court has designated Judge Johnsen as a judge pro tempore in the Court of Appeals, Division One, for the purpose of participating in the resolution of cases assigned to this panel during her term in office.
- 2 Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.
- 3 Although Brehm requested additional time to provide supplemental disclosures, the ruling denying that request is not challenged on appeal.

- 4 The only authority Appellants cite in reply, [Murray v. Farmers Ins. Co.](#), 239 Ariz. 58 (App. 2016), was depublished, meaning it cannot be cited here, [Ariz. R. Sup. Ct. 111\(c\)\(1\)\(C\)](#). The case also does not discuss or mention a conversion claim.

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